Law Commission
Reforming the law

The 6HQWHQFLQJ &RGH
Volume 2: Draft Legislation

Consultation Paper No 23

Law Commission

Consultation Paper No 232

The Sentencing Code

Volume 2: Draft Legislation

27 July 2017

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THE LAW COMMISSION – HOW WE CONSULT

About the Law Commission: The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Law Commissioners are: The Right Honourable Lord Justice Bean, *Chair*, Professor Nicholas Hopkins, Stephen Lewis, Professor David Ormerod QC and Nicholas Paines QC. The Chief Executive is Phillip Golding.

Topic of this consultation: This consultation paper is to obtain consultees' views on the draft Sentencing Code.

Geographical scope: This consultation paper applies to the law of England and Wales.

Availability of materials: The issues paper is available on our website at http://www.lawcom.gov.uk/project/sentencing-procedure/.

Duration of the consultation: We invite responses from 27 July 2017 until 26 January 2018.

Comments may be sent:

By email:	sentencing@lawcommission.gsi.gov.uk.
By post:	Lyndon Harris, 1st Floor, Tower, Post Point 1.54, 52 Queen Anne's Gate, London SW1H 9AG (access via 102 Petty France)
By telephone:	Tel: 020 3334 0200

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically (for example, on CD or by email to the above address, in any commonly used format).

After the consultation: In the light of the responses we receive, we will decide on our final recommendations and present them to Government.

Consultation Principles: The Law Commission follows the Consultation Principles set out by the Cabinet Office, which provide guidance on type and scale of consultation, duration, timing, accessibility and transparency. The Principles are available on the Cabinet Office website at: https://www.gov.uk/government/publications/consultation-principles-guidance.

Information provided to the Law Commission: We may publish or disclose information you provide us in response to this consultation, including personal information. For example, we may publish an extract of your response in Law Commission publications, or publish the response in its entirety. We may also be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. If you want information that you provide to be treated as confidential please contact us first, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by your IT system will not be regarded as binding on the Law Commission. The Law Commission will process your personal data in accordance with the Data Protection Act 1998.

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Appendix 3: Draft Pre-Consolidation Amendment Bill (6 pages)

Appendix 2: Draft Sentencing Code Bill

The draft Sentencing Code Bill can also be found on the project's page on the Law Commission website:

http://www.lawcom.gov.uk/project/sentencing-code/.

DRAFT SENTENCING BILL

ABBREVIATIONS USED IN ORIGINS

This Table shows the abbreviations used for the purposes of the origins shown in the Bill.

Acts of Parliament

CJA 1982	Criminal Justice Act 1982 (c. 48)
CJA 1991	Criminal Justice Act 1991 (c. 53)
POA 1985	Prosecution of Offences Act 1985 (c. 23)
CPIA 1996	Criminal Procedure and Investigations Act 1996 (c. 25)
PHA 1997	Protection from Harassment Act 1997 (c. 40)
CDA 1998	Crime and Disorder Act 1998 (c. 37)
PCC(S)A 2000	Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)
ACSA 2001	Anti-terrorism, Crime and Security Act 2001 (c. 24)
PRA 2002	Police Reform Act 2002 (c. 30)
C(IC)A 2003	Crime (International Co-operation) Act 2003 (c. 32)
CJA 2003	Criminal Justice Act 2003 (c. 44)
DVCVA 2004	Domestic Violence, Crime and Victims Act 2004 (c. 28)
CRA 2005	Constitutional Reform Act 2005 (c. 4)
SOCPA 2005	Serious Organised Crime and Police Act 2005 (c. 15)
CDSA 2006	Criminal Defence Service Act 2006 (c. 9)
PJA 2006	Police and Justice Act 2006 (c. 48)
AFA 2006	Armed Forces Act 2006 (c. 52)
TCEA 2007	Tribunals, Courts and Enforcement Act 2007 (c. 15)
OMA 2007	Offender Management Act 2007 (c. 21)
LSA 2007	Legal Services Act 2007 (c. 29)
CJIA 2008	Criminal Justice and Immigration Act 2008 (c. 4)
CTA 2008	Counter Terrorism Act 2008 (c. 28)
CJA 2009	Coroners and Justice Act 2009 (c. 25)
PRSRA 2011	Police Reform and Social Responsibility Act 2011 (c. 13)
LASPOA 2012	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10)
PFA 2012	Protection of Freedoms Act 2012 (c. 9)
DVCV(A)A 2012	Domestic Violence, Crime and Victims (Amendment) Act 2012 (c. 4)

Acts of Parliament

PSHFA 2013	Prevention of Social Housing Fraud Act 2013 (c. 3)
CCA 2013	Crime and Courts Act 2013 (c. 22)
ORA 2014	Offender Rehabilitation Act 2014 (c. 11)
ABCPA 2014	Anti-social Behaviour, Crime and Policing Act 2014 (c. 12)
CJCA 2015	Criminal Justice and Courts Act 2015 (c. 2)
MSA 2015	Modern Slavery Act 2015 (c. 30)
DA(NI) 2016	Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

Subordinate legislation

SI 1982/1857	Criminal Justice Act 1982 (Commencement No 1) Order 1982
SI 1992/333	Criminal Justice Act 1991 (Commencement No. 3) Order 1992
SI 2004/2035	Courts Act 2003 (Consequential Amendments) Order 2004
SI 2005/643	Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005
SI 2005/886	Courts Act 2003 (Consequential Provisions) Order 2005
SI 2005/950	Criminal Justice Act 2003 (Commencement No. 8 and Saving Provisions) Order 2005
SI 2007/391	Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) (Amendment) Order 2007
SI 2007/3001	Offender Management Act 2007 (Commencement No.1 and Transitional Provisions) Order 2007
SI 2008/912	Offender Management Act 2007 (Consequential Amendments) Order 2008
SI 2008/1587	Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008
SI 2009/616	Criminal Justice Act 2003 (Commencement No. 8 and Saving Provisions) (Amendment No. 2) Order 2009
SI 2009/1059	Armed Forces Act 2006 (Transitional Provisions etc) Order 2009
SI 2009/1182	Health Care and Associated Professions (Miscellaneous Amendments and Practitioner Psychologists) Order 2009
SI 2010/197	Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2010
SI 2010/813	Health and Social Care Act 2008 (Consequential Amendments No. 2) Order 2010
SI 2010/816	Coroners and Justice Act 2009 (Commencement No.4, Transitional and Saving Provisions) Order 2010
SI 2010/1858	Coroners and Justice Act 2009 (Commencement No. 5) Order 2010

Subordinate legislation

SI 2011/2298	Criminal Justice and Licensing (Scotland) Act 2010 (Consequential Provisions and Modifications) Order 2011
SI 2012/2906	Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No.4 and Saving Provisions) Order 2012
SI 2016/413 (W.131)	Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) Regulations 2016
SI 2016/992	Secretaries of State for Business, Energy and Industrial Strategy, for International Trade and for Exiting the European Union and the Transfer of Functions (Education and Skills) Order 2016
SI 2017/80	Bank of England and Financial Services (Consequential Amendments) Regulations 2017

Other abbreviations

clean sweep	prospective change under clause 1 of the Sentencing (Pre-consolidation Amendments) Bill
PCA	proposed change under clause 2 of the Sentencing (Pre-consolidation Amendments) Bill

Draft Sentencing Bill

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A

B I L L

TO

Consolidate certain enactments relating to sentencing.

BE 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:—

FIRST GROUP OF PARTS

INTRODUCTORY PROVISIONS AND OVERVIEW

PART 1

INTRODUCTORY PROVISIONS AND OVERVIEW

1 Overview

(1) Parts 2 to 13 of this Act together make up a code called the "Sentencing Code".

(2) They deal with the following matters.

Before sentencing

Part 2 is about powers exercisable by a court before passing sentence.

Sentencing

Part 3 is about court procedure when sentencing.

Part 4 is about the discretion a court has when sentencing.

Sentences

Part 5 is about absolute and conditional discharges.

Part 6 is about orders relating to conduct.

Part 7 is about fines and other orders relating to property.

Part 8 is about disqualification.

Part 9 is about community sentences.

Part 10 is about custodial sentences.

Part 11 is about behaviour orders.

General

Part 12 contains miscellaneous and general provision about sentencing.

Part 13 deals with interpretation.

(3) Part 14 of this Act contains supplementary provision.

(4) For other provision that may be relevant in relation to sentencing, see—
(a) Criminal Procedure Rules, and
(b) sentencing guidelines.

Origin: Drafting.

2 Application of Code

(1) The Sentencing Code does not apply where a person is convicted of an offence before the date on which this Act comes into force (see section 284).

(2) Any provision repealed or amended by this Act continues on or after that date to have effect in relation to—
(a) dealing with a person in respect of an offence of which the person was convicted before that date, and
(b) any sentence passed in respect of an offence of which a person was convicted before that date.

(3) Where on or after that date a court is dealing with a person in relation to an offence of which the person was convicted before that date and is required to treat the person as just convicted of the offence, the requirement does not mean that subsection (2) no longer applies.

(4) In this section references to conviction for an offence include—
(a) a special verdict within the meaning of section 1 of the Criminal Procedure (Insanity) Act 1964 being returned in respect of the offence, and
(b) a finding mentioned in section 5(1)(b) of that Act being made in respect of the offence.

(5) Section 257 (restraining orders on acquittal), and Chapter 2 of Part 11 as it applies for that section, do not apply where a person is acquitted of an offence before the date on which this Act comes into force.

Origin: Drafting.

SECOND GROUP OF PARTS

PROVISIONS APPLYING TO SENTENCING COURTS GENERALLY

PART 2

POWERS EXERCISABLE BEFORE PASSING SENTENCE

CHAPTER 1

DEFERMENT OF SENTENCE

3 Deferment order

In this Code "deferment order" means an order—

(a) deferring passing sentence on an offender in respect of one or more offences until the date specified in the order, and

(b) imposing requirements ("deferment requirements") as to the offender's conduct during the period of deferment which the court considers it appropriate to impose on the offender.

Origin: PCC(S)A 2000 s.1(1) (part), (3) (part), (5) (part); CJA 2003 Sch.23 para.1; drafting.

4 Availability of deferment order

The Crown Court or a magistrates' court may make a deferment order in relation to an offence where—

(a) the offender is before the court to be dealt with for the offence, and

(b) no previous deferment order has been made in respect of the offence.

See also section 11(4) (power of Crown Court to make further deferment order where magistrates' court commits offender for sentence).

Origin: PCC(S)A 2000 s.1(1), (4) (part); CJA 2003 Sch.23 para.1; drafting.

5 Making a deferment order

(1) The purpose for which a deferment order may be made is to enable a court, in dealing with the offender, to have regard to—

(a) the offender's conduct after conviction (including, where appropriate, the making by the offender of reparation for the offence), or

(b) any change in the offender's circumstances.

Origin: PCC(S)A 2000 s.1(1) (part); CJA 2003 Sch.23 para.1.

(2) Deferment requirements may include—

(a) requirements as to the residence of the offender during all or part of the period of deferment;

(b) restorative justice requirements.

Origin: PCC(S)A 2000 s.1ZA(1), s.1A(1); CJA 2003 Sch.23 para.1. CCA 2013 Sch.16 para.5.

(3) A court may make a deferment order in respect of an offence only if—

(a) the offender consents,

(b) the offender undertakes to comply with the deferment requirements,

(c) if the deferment requirements include a restorative justice requirement, section 7(2) (consent of participants in restorative justice activity) is satisfied, and

(d) the court is satisfied, having regard to the nature of the offence and the character and circumstances of the offender, that it would be in the interests of justice to make the order.

Origin: PCC(S)A 2000 s.1(3); CJA 2003 Sch.23 para.1; drafting.

(4) The date specified under section 3(a) in the order may not be more than 6 months after the date on which the order is made.

Origin: PCC(S)A 2000 s.1(4) (part); CJA 2003 Sch.23 para.1.

(5) A court which makes a deferment order must forthwith give a copy of the order—

(a) to the offender,

(b) if the deferment requirements include a restorative justice requirement, to every person who would be a participant in the activity concerned (see section 7(1)),

(c) where an officer of a provider of probation services has been appointed to act as a supervisor, to that provider, and

(d) where a person has been appointed under section 8(1)(b) to act as a supervisor, to that person.

Origin: PCC(S)A 2000 s.1(5), s.1ZA(5); CJA 2003 Sch.23 para.1; CCA 2013 Sch.16 para.5; SI 2008/912 Sch.1 para.14(2).

(6) A court which makes a deferment order may not on the same occasion remand the offender, notwithstanding any enactment.

Origin: PCC(S)A 2000 s.1(6); CJA 2003 Sch.23 para.1.

6 Effect of deferment order

(1) - Where a deferment order is made in respect of an offence, the court dealing with the offender for the offence may have regard to—

(a) - the offender's conduct after conviction, or

(b) - any change in the offender's circumstances.

Origin: PCC(S)A 2000 s.1(1) (part); CJA 2003 Sch.23 para.1.

(2) - Without prejudice to the generality of subsection (1)(a), the matters to which the court may have regard in dealing with the offender include—

(a) - where appropriate, the making by the offender of reparation for the offence, and

(b) - the extent to which the offender has complied with any deferment requirements.

Origin: PCC(S)A 2000 s.1(1) (part), (2); CJA 2003 Sch.23 para.1.

(3) Subsection (4) applies where—

(a) the court which made a deferment order proposes to deal with the offender on the date specified in the order, or

(b) the offender does not appear on that date.

Origin: PCC(S)A 2000 s.1(7) (part); CJA 2003 Sch.23 para.1.

(4) The court may—

(a) issue a summons requiring the offender to appear before the court at the time and place specified in the summons, or

(b) issue a warrant for the offender's arrest which requires the offender to be brought before the court at the time and place specified in the warrant.

Origin: PCC(S)A 2000 s.1(7) (part); CJA 2003 Sch.23 para.1.

(5) - Subsection (6) applies where a magistrates' court makes a deferment order.

Origin: Drafting. -

(6) - In making the order the court is to be regarded as having adjourned the trial under section 10(1) of the Magistrates' Courts Act 1980.

Accordingly, sections 11(1) and 13(1) to (3A) and (5) of that Act (non-appearance of the accused) apply if the offender does not appear on the date specified in the deferment order (but this is without prejudice to subsection (4)).

Origin: PCC(S)A 2000 s.1D(1); CJA 2003 Sch.23 para.1.

7 Restorative justice requirements

(1) - Any reference in section 5 or this section to a restorative justice requirement is to a requirement to participate in an activity—

(a) - where the participants consist of, or include, the offender and one or more of the victims,

(b) - which aims to maximise the offender's awareness of the impact of the offending concerned on the victims, and

(c) - which gives an opportunity to a victim or victims to talk about, or by other means express experience of, the offending and its impact.

Origin: PCC(S)A 2000 s.1ZA(2); CCA 2013 Sch.16 para.5.

(2) - A restorative justice requirement may be imposed as a deferment requirement only with the consent of every person who would be a participant in the activity.

Origin: PCC(S)A 2000 s.1ZA(3) (part); CCA 2013 Sch.16 para.5.

(3) - For the purposes of subsection (2), a supervisor and the offender do not count as proposed participants.

Origin: PCC(S)A 2000 s.1ZA(3) (part), (4); CCA 2013 Sch.16 para.5.

(4) - A person running an activity for the purposes of a restorative justice requirement must have regard to any guidance issued by the Secretary of State with a view to encouraging good practice in connection with such an activity.

Origin: PCC(S)A 2000 s.1ZA(6); CCA 2013 Sch.16 para.5.

(5) - In this section "victim" means a victim of, or other person affected by, the offending concerned.

Origin: PCC(S)A 2000 s.1ZA(7); CCA 2013 Sch.16 para.5.

8 Deferment order: supervisor

Appointment of supervisor

(1) Where a court makes a deferment order, it may appoint—

(a) an officer of a provider of probation services, or

(b) any other person the court thinks appropriate who consents to the appointment,

to act as a supervisor in relation to the offender.

Origin: PCC(S)A 2000 s.1A(2), (3); CJA 2003 Sch.23 para.1; SI 2008/912 Sch.1 para.14(3); PCA.

Function of supervisor

(2) - A supervisor must—

(a) - monitor the offender's compliance with the deferment requirements, and

(b) - provide the court which deals with the offender for any offence in respect of which the order was made with such information as the court may require relating to the offender's compliance with the deferment requirements.

Origin: PCC(S)A 2000 s.1A(4); CJA 2003 Sch.23 para.1.

Supervisor appointed under subsection (1)(b): power of magistrates' court to issue summons

(3) - Where—

(a) - a deferment order has been made,

(b) - it falls to a magistrates' court to—

(i) - deal with the offender for any offence in respect of which the order was made, or

(ii) - determine under section 9(3)(b) whether the offender has failed to comply with a deferment requirement, and

(c) - a justice of the peace is satisfied that a supervisor appointed under subsection (1)(b)—

(i) - is likely to be able to give evidence that may assist the court in determining that matter, and

(ii) will not voluntarily attend as a witness,

the justice may issue a summons directed to that supervisor requiring the supervisor to attend before the court at the time and place appointed in the summons to give evidence.

Origin: PCC(S)A 2000 s.1D(4), (5), (6); CJA 2003 Sch.23 para.1. -

9 Failure to comply with deferment requirement

(1) - This section applies where—

(a) a court has made a deferment order, and
(b) a supervisor has reported to the court that the offender has failed to comply with one or more of the deferment requirements.

Origin: PCC(S)A 2000 s.1B(1) (part), (2) (part); CJA 2003 Sch.23 para.1.

(2) The court may issue—
(a) a summons requiring the offender to appear before it at the time and place specified in the summons, or
(b) a warrant for the offender's arrest which requires the offender to be brought before it at the time and place specified in the warrant.

Origin: PCC(S)A 2000 s.1B(2) (part), (3); CJA 2003 Sch.23 para.1.

(3) The court may deal with the offender before the end of the period of deferment if—
(a) the offender appears or is brought before the court under subsection (2), and
(b) the court is satisfied that the offender has failed to comply with one or more of the deferment requirements.

For the powers of the court in dealing with the offender under this subsection, see section 11.

Origin: PCC(S)A 2000 s.1B(1); CJA 2003 Sch.23 para.1; drafting.

10 Conviction of offence during period of deferment

(1) - This section applies where a court has made a deferment order in respect of an offence.

Origin: PCC(S)A 2000 s.1C(1) (part), (2) (part); CJA 2003 Sch.23 para.1.

Power of court which made deferment order

(2) - The court which made the order ("the original court") may deal with the offender before the end of the period of deferment if during that period the offender is convicted in Great Britain of any offence.

For the powers of the original court in dealing with the offender under this subsection, see section 11.

Origin: PCC(S)A 2000 s.1C(1) (part); CJA 2003 Sch.23 para.1; drafting.

(3) - Where the original court proposes to deal with the offender by virtue of subsection (2) before the end of the period of deferment, it may issue—
(a) - a summons requiring the offender to appear before the court at the time and place specified in the summons, or
(b) - a warrant for the arrest of the offender, requiring the offender to be brought before the court at the time and place specified in the warrant.

Origin: PCC(S)A 2000 s.1C(4); CJA 2003 Sch.23 para.1.

Power of court which sentences offender for later offence

(4) - Subsection (5) applies where during the period of deferment the offender is convicted in England and Wales of any offence ("the later offence").

This is subject to subsection (6).

Origin: PCC(S)A 2000 s.1C(2); CJA 2003 Sch.23 para.1; drafting.

(5) The court which passes sentence on the offender for the later offence may also deal with the offender for the offence or offences in respect of which the deferment order was made (if this has not already been done).
For the powers of the court in dealing with the offender under this subsection, see section 11.

Origin: PCC(S)A 2000 s.1C(3) (part); CJA 2003 Sch.23 para.1; drafting.

(6) Subsection (5) does not apply where—
(a) the deferment order was made by the Crown Court, and
(b) the court which passes sentence on the offender for the later offence is a magistrates' court.

Origin: PCC(S)A 2000 s.1C(3)(a); CJA 2003 Sch.23 para.1.

(7) Subsection (5)—
(a) is without prejudice to subsection (2), and
(b) applies whether or not the offender is sentenced for the later offence during the period of deferment.

Origin: PCC(S)A 2000 s.1C(3) (part); CJA 2003 Sch.23 para.1.

11 Powers of court dealing with offender following deferment order

(1) Subsection (2) applies where an offender who is subject to a deferment order is being dealt with for any offence in respect of which the order was made—
(a) by the court which made the order ("the original court")—
(i) at the end of the period of deferment, in accordance with the deferment order,
(ii) under section 9(3) (failure to comply with deferment requirement), or
(iii) under section 10(2) (original court dealing with offender following conviction during period of deferment), or
(b) by any court under section 10(5) (conviction during period of deferment: convicting court dealing with offender).

Origin: PCC(S)A 2000 s.1D(2) (part); CJA 2003 Sch.23 para.1.

(2) The court may deal with the offender in any way in which the original court could have dealt with the offender if it had not made a deferment order.

Origin: PCC(S)A 2000 s.1D(2)(a); CJA 2003 Sch.23 para.1.

(3) Without prejudice to the generality of subsection (2), where a magistrates' court is dealing with the offender, its power under that subsection includes the power conferred by section 13 to commit the offender to the Crown Court for sentence.

Origin: PCC(S)A 2000 s.1D(2)(a), (b); CJA 2003 Sch.23 para.1; drafting;

(4) Where a magistrates' court deals with the offender by committing the offender to the Crown Court under section 13, the power of the Crown Court to deal with the offender includes the same power to make a deferment order as if the offender had just been convicted of the offence on indictment before it.

Origin: PCC(S)A 2000 s.1D(3); CJA 2003 Sch.23 para.1.

12 Deferment orders: interpretation and supplementary

(1) Nothing in this Chapter affects—

(a) the power of the Crown Court to bind over an offender to come up for judgment when called upon, or

(b) any other power of a court to defer passing sentence.

Origin: PCC(S)A 2000 s.1(8); CJA 2003 Sch.23 para.1; CCA 2013 Sch.16 para.6; drafting.

(2) In this Chapter—

"deferment requirement" has the meaning given by section 3(b);

"period of deferment", in relation to a deferment order, means the period from the date on which the deferment order is made until the date specified in the order under section 3(a);

"restorative justice requirement" has the meaning given by section 7;

"supervisor", in relation to a deferment order, means a person appointed under section 8(1).

Origin: Drafting.

(3) In relation to a deferment order made by a magistrates' court, any reference in this Chapter to the court which made the order includes a reference to any magistrates' court acting in the same local justice area as that court.

Origin: PCC(S)A 2000 s.1D(7); PCA.

CHAPTER 2

COMMITTAL TO THE CROWN COURT FOR SENTENCE

Committal following summary trial: adults and corporations

13 Committal for sentence on summary trial of offence triable either way: adults and corporations

(1) This section applies where—

(a) on the summary trial of an offence triable either way a person aged 18 or over is convicted of the offence, and

(b) the court is of the opinion that—

(i) the offence, or

(ii) the combination of the offence and one or more offences associated with it,

was so serious that the Crown Court should have the power to deal with the offender in any way it could deal with the offender if the offender had been convicted on indictment.

This is subject to the provisions mentioned in subsection (4).

Origin: PCC(S)A s.3(1), (2) (part); CJA 2003 Sch.3 para.22A; CJIA 2008 Sch.13 para.8; clean sweep; PCA.

(2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 20(2).

Origin: PCC(S)A s.3(2) (part); CJA 2003 Sch.3 para.22A; CJIA 2008 Sch.13 para.8.

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 19.

Origin: PCC(S)A 2000 s.3(3).

(4) For offences in relation to which this section does not apply see sections 17D and 33 of the Magistrates' Courts Act 1980 (exclusion in respect of certain offences where value involved is small).

Origin: PCC(S)A 2000 s.3(4); CJA 2003 Sch.3 para.22A; CJIA 2008 Sch.13 para.8.

(5) This section applies to a corporation as if—

(a) the corporation were an individual aged 18 or over, and

(b) in subsection (2) the words "in custody or on bail" were omitted.

Origin: PCC(S)A 2000 s.3(5).

14 Committal for sentence of dangerous adult offenders

(1) This section applies where—

(a) on the summary trial of a specified offence (see section 221) triable either way a person aged 18 or over is convicted of the offence, and

(b) the court is of the opinion that an extended sentence of detention in a young offender institution or of imprisonment (see section 181 or 194) would be available in relation to the offence.

Origin: PCC(S)A 2000 s.3A(1), (2) (part); CJA 2003 Sch.3 para.23; LASPOA 2012 Sch.21 para.8.

(2) The court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 20(2).

Origin: PCC(S)A 2000 s.3A(2) part; CJA 2003 Sch.3 para.23.

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 19.

Origin: PCC(S)A 2000 s.3A(3); CJA 2003 Sch.3 para.23.

(4) In reaching any decision under or taking any step contemplated by this section, the court is not bound by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable).

Origin: PCC(S)A 2000 s.3A(4) (part); CJA 2003 Sch.3 para.23.

(5) Nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is inconsistent with an indication of sentence.

Origin: PCC(S)A 2000 s.3A(4) (part); CJA 2003 Sch.3 para.23; PCA.

(6) Nothing in this section prevents the court from committing an offender convicted of a specified offence to the Crown Court for sentence under section 13 or 17 if the provisions of that section are satisfied.

Origin: PCC(S)A 2000 s.3A(5); CJA 2003 Sch.3 para.23; CJIA 2008 Sch.13 para.9; PCA.

Committal following summary trial: persons under 18

15 Committal for sentence of young offenders on summary trial of certain serious offences

(1) This section applies where—

(a) on the summary trial of an offence within paragraph 1 or 2 of Schedule 6 (offences punishable with imprisonment for 14 years or more and certain sexual offences), a person is convicted of the offence,

(b) the person is aged under 18 at the time of conviction, and

(c) the court is of the opinion that—

(i) the offence, or

(ii) the combination of the offence and one or more offences associated with it,

was such that the Crown Court should have power to deal with the offender by imposing a sentence of detention under section 168.

Origin: PCC(S)A 2000 s.3B(1), (2) (part); CJA 2003 Sch.3 para.23; CJCA 2015 s.53(1); clean sweep.

(2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 21(2).

Origin: PCC(S)A 2000 s.3B(2) (part); CJA 2003 Sch.3 para.23.

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 19.

Origin: PCC(S)A 2000 s.3B(3); CJA 2003 Sch.3 para.23.

16 Committal for sentence of dangerous young offenders

(1) This section applies where—

(a) on the summary trial of a specified offence (see section 221) a person aged under 18 is convicted of the offence, and

(b) the court is of the opinion that an extended sentence of detention under section 164 would be available in relation to the offence.

Origin: PCC(S)A 2000 s.3C(1), (2) (part), (5); CJA 2003 Sch.3 para.23; LASPOA 2012 Sch.21 para.9; PCA.

(2) The court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 21(2).

Origin: PCC(S)A 2000 s.3C(2); CJA 2003 Sch.3 para.23.

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 19.

Origin: PCC(S)A 2000 s.3C(3); CJA 2003 Sch.3 para.23.

(4) Nothing in this section prevents the court from committing a person convicted of a specified offence to the Crown Court for sentence under section 15 or 18 if the provisions of that section are satisfied.

Origin: PCC(S)A 2000 s.3C(4); CJA 2003 Sch.3 para.23; PCA.

Committal for sentence following indication of guilty plea

17 Committal for sentence on indication of guilty plea to offence triable either way: adult offenders

(1) Where a magistrates' court—

(a) has convicted an offender of an offence triable either way following an indication of a guilty plea, and

(b) has sent the offender to the Crown Court for trial for one or more related offences,

it may commit the offender in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 20(2).

Origin: PCC(S)A 2000 s.4(1) (part), (2); CJA 2003 Sch.3 para.24(4), (4A); CJIA 2008 Sch.13 para.10.

(2) For offences in relation to which subsection (1) does not apply see section 17D of the Magistrates' Courts Act 1980 (cases where value involved is small).

Origin: PCC(S)A s.4(1A); CJA 2003 Sch.3 para.24(4).

(3) Where a magistrates' court—

(a) convicts an offender of an offence triable either way following an indication of a guilty plea, and

(b) is still to determine to send, or whether to send, the offender to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998, for one or more related offences,

it must adjourn the proceedings relating to the offence until after it has made those determinations.

Origin: PCC(S)A 2000 s.4(3) (part); CJA 2003 Sch.3 para.24(5). -

(4) - Where the court—

(a) - commits the offender under subsection (1) to the Crown Court to be dealt with in respect of the offence, and

(b) - in its opinion also has power under section 13(2) or is required under section 14(2) to commit the offender to the Crown Court to be dealt with in respect of the offence,

the court may make a statement of that opinion.

Origin: PCC(S)A 2000 s.4(4); CJA 2003 Sch.3 para.24(6).

(5) - For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 19.

Origin: PCC(S)A 2000 s.4(6).

(6) - For the purposes of this section, a magistrates' court convicts a person of an either-way offence following an indication of a guilty plea if—

(a) - the person appears or is brought before the court on an information charging the person with the offence,

(b) - the person or (where applicable) the person's representative indicates under—

(i) section 17A or 17B of the Magistrates' Courts Act 1980 (indication of intention as to plea in case of offence triable either way), or

(ii) section 20(7) of that Act (summary trial appears more suitable),

that the person would plead guilty if the offence were to proceed to trial, and

(c) proceeding as if—

(i) section 9(1) of that Act were complied with, and

(ii) the person pleaded guilty under it,

the court convicts the person of the offence.

Origin: PCC(S)A 2000 s.4(1) (part); CJA 2003 Sch.3 para.24(2), (3).

(7) For the purposes of this section—

(a) "related offence" means an offence which, in the opinion of the court, is related to the offence, and

(b) one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.

Origin: PCC(S)S 2000 s.4(2) (part), (7).

(8) The court is not bound, in doing anything under this section, by any indication of sentence given in respect of the offence under section 20 of the Magistrates' Courts Act 1980 (procedure where summary trial appears more suitable).

Origin: PCC(S)A 2000 s.4(8); CJA 2003 Sch.3 para.24(7); drafting.

(9) Nothing the court does under this section may be challenged or be the subject of any appeal in any court on the ground that it is inconsistent with an indication of sentence.

Origin: PCC(S)A 2000 s.4(8); CJA 2003 Sch.3 para.24(7); PCA; drafting.

18 Committal for sentence on indication of guilty plea by child or young person with related offences

(1) Where—

(a) a magistrates' court—

(i) has convicted a young person of an offence following an indication of a guilty plea, and

(ii) has sent the person to the Crown Court for trial for one or more related offences, and

(b) the offence falls within paragraph 1 or 2 of Schedule 6 (offences punishable with imprisonment for 14 years or more and certain sexual offences),

the court may commit the offender in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 21(2).

Origin: PCC(S)A 2000 s.4A(1) (part), (2); CJA 2003 Sch.3 para.25.

(2) Where a magistrates' court—

(a) convicts a young person of an offence mentioned in paragraph 1 or 2 of Schedule 6 following an indication of a guilty plea, and

(b) is still to determine to send, or whether to send, the person to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 for one or more related offences,

it must adjourn the proceedings relating to the offence until after it has made those determinations.

Origin: PCC(S)A 2000 s.4A(3) (part); CJA 2003 Sch.3 para.25.

(3) Where the court—

(a) commits the offender under subsection (1) to the Crown Court to be dealt with in respect of the offence, and

(b) in its opinion, also has power so to commit the offender under section 15(2) or 16(2),

the court may make a statement of that opinion.

Origin: PCC(S)A 2000 s.4A(4) (part); CJA 2003 Sch.3 para.25.

(4) For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 19.

Origin: PCC(S)A 2000 s.4A(6); CJA 2003 Sch.3 para.25.

(5) For the purposes of this section, a magistrates' court convicts a young person of an offence following an indication of a guilty plea if—

(a) the person appears or is brought before the court when aged under 18 on an information charging the person with the offence,

(b) the person or the person's representative indicates under section 24A or 24B of the Magistrates' Courts Act 1980 (child or young person to indicate intention as to plea in certain cases) that the person would plead guilty if the offence were to proceed to trial, and

(c) proceeding as if—

(i) section 9(1) of that Act were complied with, and

(ii) the offender pleaded guilty under it,

the court convicts the person of the offence.

Origin: PCC(S)A 2000 s.4A(1) (part); CJA 2003 Sch.3 para.25; PCA.

(6) For the purposes of this section—

(a) "related offence" means an offence which, in the opinion of the court, is related to the offence, and

(b) one offence is related to another if, were they both to be prosecuted on indictment, the charges for them could be joined in the same indictment.

Origin: PCC(S)S 2000 s.4(7), s.4A(2) (part), (7); CJA 2003 Sch.3 para.25.

Committal for sentence where offender committed in respect of another offence

19 Committal in certain cases where offender committed in respect of another offence

(1) This section applies where a magistrates' court ("the committing court") commits an offender to the Crown Court under—

(a) sections 13 to 18 (committal for sentence for offences triable either way),

(b) paragraph 5(3) of Schedule 2 (further offence committed by offender given conditional discharge order), or

(c) paragraph 11(2)(a) of Schedule 10 (committal to Crown Court where offender convicted during operational period of suspended sentence),

(d) the Vagrancy Act 1824 (incorrigible rogues),

to be sentenced or otherwise dealt with in respect of an offence ("the relevant offence").

Origin: PCC(S)A 2000 s.6(1), (4); CJA 2003 Sch.3 para.28, Sch.32 para.91(3).

(2) Where—

(a) the relevant offence is an indictable offence, and

(b) the committing court has power to deal with the offender in respect of another offence,

the committing court may also commit the offender to the Crown Court to be dealt with in respect of the other offence.

Origin: PCC(S)A 2000 s.6(2) (part).

(3) It is immaterial for the purposes of subsection (2) whether the court which convicted the offender of the other offence was the committing court or another court.

Origin: PCC(S)A 2000 s.6(2) (part).

(4) Where the relevant offence is a summary offence, the committing court may commit the offender to the Crown Court to be dealt with in respect of—

(a) any other offence of which the committing court has convicted the offender which is punishable with—

(i) imprisonment, or

(ii) driving disqualification, or

(b) any suspended sentence in respect of which it falls to the committing court to deal with the offender by virtue of paragraph 11(1) of Schedule 10.

Origin: PCC(S)A 2000 s.6(3) (part); CJA 2003 Sch.32 para.91(2); drafting.

(5) For the purposes of subsection (4)(a) an offence is punishable with driving disqualification if the committing court has a power or duty to order the offender to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences) in respect of it.

Origin: PCC(S)A 2000 s.6(3) (part).

(6) A committal to the Crown Court under this section is to be in custody or on bail as the case may require.

Origin: PCC(S)A 2000 s.6(2) (part), (3) (part).

Power of Crown Court on committal for sentence

20 Power of Crown Court on committal for sentence of offender under section 13, 14 or 17

(1) This section applies where an offender is committed by a magistrates' court for sentence under—

(a) section 13(2) (committal for sentence on summary trial of offence triable either way),

(b) section 14(2) (committal for sentence of dangerous adult offenders), or

(c) section 17(1) (committal for sentence on indication of guilty plea to offence triable either way).

Origin: PCC(S)A 2000 s.5(1) (part), (2); CJA 2003 Sch.3 para.26.

(2) The Crown Court—

(a) must inquire into the circumstances of the case, and

(b) may deal with the offender in any way in which it could deal with the offender if the offender had just been convicted of the offence on indictment before the court.

This is subject to subsections (4) and (5).

Origin: PCC(S)A 2000 s.5(1) (part); CJA 2003 Sch.3 para.26.

(3) Any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court—

(a) is not to be discharged or exercised by that court, but

(b) is instead to be discharged or may instead be exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).

Origin: PCC(S)A 2000 s.7(3) (part); drafting.

(4) Subsection (5) applies where a magistrates' court—

(a) commits an offender under section 17(1) to be dealt with in respect of an offence ("the offence"), but

(b) does not make a statement under section 17(4) (statement of power to commit under section 13(2) or 14(2)).

Origin: PCC(S)A 2000 s.4(4) (part), (5) (part); CJA 2003 Sch.3 para.24(6).

(5) Unless the offender is convicted before the Crown Court of at least one of the offences for which the magistrates' court has sent the offender for trial (see section 17(1)(b))—

(a) subsection (2)(b) does not apply, and

(b) the Crown Court may deal with the offender for the offence in any way in which the magistrates' court could deal with the offender if it had just convicted the offender of the offence.

Origin: PCC(S)A 2000 s.4(4) (part), (5) (part); CJA 2003 Sch.3 para.24(6).

(6) Section 20A(1) of the Magistrates' Courts Act 1980 (which relates to the effect of an indication of sentence under section 20 of that Act) does not apply in respect of a specified offence—

(a) in respect of which the offender is committed under section 14(2) (dangerous adult offenders), or

(b) in respect of which—

(i) the offender is committed under section 17(1) (guilty plea to offence triable either way), and

(ii) the court makes a statement under section 17(4) that, in its opinion, it also has power to commit the offender under section 14(2).

Origin: PCC(S)A 2000 s.5(3); CJA 2003 Sch.3 para.26.

21 Power of Crown Court on committal for sentence of person under 18 under section 15, 16 or 18

(1) This section applies where an offender is committed by a magistrates' court for sentence under—

(a) section 15(2) (committal for sentence of young offenders on summary trial of certain serious offences),

(b) section 16(2) (committal for sentence of dangerous young offenders), or

(c) section 18(1) (committal for sentence on indication of guilty plea by child or young person with related offences).

Origin: PCC(S)A 2000 s.5A(1) (part), (2); CJA 2003 Sch.3 para.27.

(2) The Crown Court—

(a) must inquire into the circumstances of the case, and

(b) may deal with the offender in any way in which it could deal with the offender if the offender had just been convicted of the offence on indictment before the court.

This is subject to subsections (4) and (5).

Origin: PCC(S)A 2000 s.5A(1) (part), (2); CJA 2003 Sch.3 para.27; drafting.

(3) Any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court—

(a) is not to be discharged or exercised by that court, but

(b) is instead to be discharged or may instead be exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).

Origin: PCC(S)A 2000 s.7(3) (part); drafting.

(4) Subsection (5) applies where a magistrates' court—

(a) commits an offender under section 18(1) to be dealt with in respect of an offence ("the offence"), but

(b) does not make a statement under section 18(3) (statement of power to commit under section 15(2) or 16(2)).

Origin: PCC(S)A 2000 s.4A(4) (part); CJA 2003 Sch.3 para.25.

(5) Unless the offender is convicted before the Crown Court of at least one of the offences for which the magistrates' court has sent the offender for trial (see section 18(1)(a))—

(a) - subsection (2)(b) does not apply, and
(b) - the Crown Court may deal with the offender for the offence in any way in which the magistrates' court could deal with the offender if it had just convicted the offender of the offence.

Origin: PCC(S)A 2000 s.4A(4) (part), (5); CJA 2003 Sch.3 para.25. -

22 Power of Crown Court on committal for sentence under section 19

(1) Subsection (2) applies where under section 19(2) or (4)(a) (committal for sentence in certain cases where offender committed in respect of another offence) a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence.

Origin: PCC(S)A 2000 s.7(1) (part).

(2) The Crown Court—
(a) must inquire into the circumstances of the case, and
(b) may deal with the person in any way in which the magistrates' court could deal with the person if it had just convicted the person of the offence.

This is subject to subsections (3) and (4) (offender aged under 18 when tried).

Origin: PCC(S)A 2000 s.7(1) (part); drafting.

(3) Subsection (4) applies if the offence—
(a) is triable only on indictment in the case of an adult, but
(b) was tried summarily because of the offender's being aged under 18.

Origin: PCC(S)A 2000 s.7(4) (part).

(4) Once the offender has reached the age of 18, the Crown Court's power under subsection (2) in respect of the offender is a power to do either or both of the following—
(a) to impose a fine not exceeding £5,000;
(b) to deal with the offender in respect of the offence in any way in which the magistrates' court could deal with the offender if it had just convicted the offender of an offence punishable with imprisonment for a term not exceeding 6 months.

Origin: PCC(S)A 2000 s.7(4) (part).

(5) Subsection (6) applies where under section 19(4)(b) a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence.

Origin: PCC(S)A 2000 s.7(2) (part).

(6) The powers under paragraphs 13 and 14 of Schedule 10 (power of court to deal with suspended sentence) are exercisable by the Crown Court.

Origin: PCC(S)A 2000 s.7(2) (part); CJA 2003 Sch.32 para.92.

(7) Subsection (8) applies where under section 19 a magistrates' court commits a person to be dealt with by the Crown Court.

Origin: PCC(S)A 2000 s.7(3) (part).

(8) Without prejudice to subsections (1) to (6), any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court—

(a) is not to be discharged or exercised by that court, but

(b) is instead to be discharged or may instead be exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).

Origin: RTOA 1988 s.25(4); PCC(S)A 2000 s.7(3) (part), Sch.9 para.118.

Further powers to commit to Crown Court for sentence

23 Further powers to commit offender to the Crown Court to be dealt with

(1) For other powers of a magistrates' court to commit an offender to the Crown Court to be dealt with for an offence see—

(a) section 70 of the Proceeds of Crime Act 2002 (request by prosecution with a view to consideration of confiscation order under section 6 of that Act);

(b) section 43(1) of the Mental Health Act 1983 (power of magistrates' courts to commit for restriction order);

(c) section 6(6) of the Bail Act 1976 (offence of absconding by person released on bail);

(d) section 9(3) of that Act (offence of agreeing to indemnify sureties in criminal proceedings);

(e) the Vagrancy Act 1824 (incorrigible rogues).

Origin: Drafting.

(2) Nothing in subsection (1) is to be taken to limit any other power of a magistrates' court to commit an offender to the Crown Court.

Origin: Drafting.

CHAPTER 3

REMISSION FOR SENTENCE: YOUNG OFFENDERS ETC

24 Power and duty to remit young offenders to youth courts for sentence

(1) This section applies where a person aged under 18 is convicted by or before a court ("the convicting court") of an offence other than homicide.

Origin: PCC(S)A 2000 s.8(1).

(2) If the convicting court is the Crown Court, it must remit the offender to a youth court acting for the place where the sending court sat, unless satisfied that it would be undesirable to do so.

The "sending court" is the magistrates' court which sent the offender to the Crown Court for trial.

Origin: PCC(S)A 2000 s.8(2) (part); CJA 2003 Sch.3 para.74(2); PCA.

(3) If the convicting court is a youth court, it may remit the offender to another youth court.

Origin: PCC(S)A 2000 s.8(2) (part); CJA 2003 Sch.3 para.74(2); PCA.

(4) If the convicting court is a magistrates' court other than a youth court—

(a) where subsection (10) or (11) applies, it may remit the offender to a youth court, and

(b) otherwise, it must remit the offender to a youth court.

Origin: PCC(S)A 2000 s.8(2) (part), (6) (part) (7) (part); CJA 2003 Sch.3 para.74(2); PCA.

(5) Any remission of an offender under subsection (3) or (4) must be to a youth court acting for—

(a) the same place as the remitting court, or

(b) the place where the offender habitually resides.

Origin: PCC(S)A 2000 s.8(2); CJA 2003 Sch.3 para.74(2); PCA

(6) Where an offender is remitted to a youth court under this section—

(a) the offender must be brought before the youth court accordingly, and

(b) that court may deal with the offender in any way in which it could have dealt with the offender if the offender had just been tried and convicted by that court.

Origin: PCC(S)A 2000 s.8(3); PCA.

(7) Where the Crown Court remits an offender to a youth court under this section, it may, subject to section 25 of the Criminal Justice and Public Order Act 1994 (restrictions on granting bail), give such directions as appear to be necessary—

(a) with respect to the custody of the offender, or

(b) for the offender's release on bail,

until the offender can be brought before the youth court.

For provisions applying to a magistrates' court which remits an offender under this section, see section 27.

Origin: PCC(S)A 2000 s.8(4)(a); PCA; drafting.

(8) A court which remits an offender to a youth court under this section must provide to the designated officer for the youth court a certificate which—

(a) sets out the nature of the offence, and

(b) states—

(i) that the offender has been convicted of the offence, and

(ii) that the offender has been remitted for the purpose of being dealt with under subsection (6).

Origin: PCC(S)A 2000 s.8(4)(b); SI 2005/886 Sch. para.62; PCA.

(9) An offender who is remitted under this section—

(a) has no right of appeal against the order of remission, but

(b) has the same right of appeal against an order of the court to which the offender is remitted as if convicted by that court.

Origin: PCC(S)A 2000 s.8(5); PCA.

(10) This subsection applies if the court would be required by section 16(2) of the Powers of Criminal Courts (Sentencing) Act 2000 to refer the offender to a youth offender panel if it did not remit the offender to the youth court.

Origin: PCC(S)A 2000 s.8(7) (part); PCA.

(11) This subsection applies if subsection (10) does not apply but the court is of the opinion that the case is one which can properly be dealt with by means of—

(a) an order for absolute discharge or an order for conditional discharge, or

(b) an order for the payment of a fine, or

(c) an order (under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000) requiring the offender's parent or guardian to enter into a recognizance to take proper care of, and exercise proper control over, the offender,

with or without any other order that the court has power to make when making an order for absolute discharge or an order for conditional discharge.

Origin: PCC(S)A 2000 s.8(8).

(12) In subsection (11) "care" and "control" are to be construed in accordance with section 150(11) of the Powers of Criminal Courts (Sentencing) Act 2000.

Origin: PCC(S)A 2000 s.8(9).

(13) A document which purports—

(a) to be a copy of an order made by a court under this section, and

(b) to be certified as a true copy by the designated officer for the court,

is to be evidence of the order.

Origin: PCC(S)A 2000 s.8(10); SI 2005/886 Sch. para.62.

25 Power of youth court to remit offender who attains age of 18 to magistrates' court other than youth court for sentence

(1) Subsection (2) applies where a person who appears or is brought before a youth court charged with an offence subsequently reaches the age of 18.

Origin: PCC(S)A 2000 s.9(1) (part).

(2) The youth court may, at any time after conviction and before sentence, remit the offender for sentence to a magistrates' court other than a youth court ("the adult court").

Origin: PCC(S)A 2000 s.9(1) (part).

(3) Where an offender is remitted under subsection (2), the adult court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the offence which took place before the youth court had taken place before the adult court.

Origin: PCC(S)A 2000 s.9(2) (part).

(4) But where an offender is remitted under subsection (2), section 24(4) (duty of adult magistrates' court to remit young offenders to youth court for sentence) does not apply to the adult court.

Origin: PCC(S)A 2000 s.9(3).

(5) An offender who is remitted under subsection (2) has no right of appeal against the order of remission.
This is without prejudice to any right of appeal against an order made in respect of the offence by the adult court.

Origin: PCC(S)A 2000 s.9(4).

26 Power of magistrates' court to remit case to another magistrates' court for sentence

(1) Subsection (2) applies where—
(a) a person aged 18 or over ("the offender") has been convicted by a magistrates' court ("the convicting court") of an offence ("the present offence") which is punishable with—
(i) imprisonment, or
(ii) driving disqualification,
(b) it appears to the convicting court that some other magistrates' court ("the other court") has convicted the offender of another such offence in respect of which the other court has not—
(i) passed sentence on the offender,
(ii) committed the offender to the Crown Court for sentence, nor
(iii) dealt with the offender in any other way, and
(c) the other court consents to the offender's being remitted to it under this section.

Origin: PCC(S)A 2000 s.10(1) (part), (2) (part).

(2) The convicting court may remit the offender to the other court to be dealt with in respect of the present offence by the other court instead of by the convicting court.

Origin: PCC(S)A 2000 s.10(1) (part).

(3) For the purposes of subsection (1)(a) an offence is punishable with driving disqualification if the convicting court has a power or duty to order the offender to be disqualified under section 34, 35 or 36 of the Road Traffic Offenders Act 1988 (disqualification for certain motoring offences) in respect of it.

Origin: PCC(S)A 2000 s.10(2) (part).

(4) Where the convicting court remits the offender to the other court under this section the other court may deal with the case in any way in which it would have power to deal with it if all proceedings relating to the present offence which took place before the convicting court had taken place before the other court.
This is subject to subsection (8).

Origin: PCC(S)A 2000 s.10(3) (part).

(5) The power conferred on the other court by subsection (4) includes, where applicable, the power to remit the offender under this section to another magistrates' court in respect of the present offence.

Origin: PCC(S)A 2000 s.10(4).

(6) Where the convicting court has remitted the offender under this section, the other court may remit the offender back to the convicting court; and where it does so subsections (4) and (5) (so far as applicable) apply with the necessary modifications.

Origin: PCC(S)A 2000 s.10(5).

(7) An offender who is remitted under this section has no right of appeal against the order of remission.

This is without prejudice to any right of appeal against an order made in respect of the present offence by the other court.

Origin: PCC(S)A 2000 s.10(6); PCA.

(8) Nothing in this section precludes the convicting court from making any order which it has power to make under section 148 of the Powers of Criminal Courts (Sentencing) Act 2000 (restitution orders) by virtue of the offender's conviction of the present offence.

Origin: PCC(S)A 2000 s.10(7).

(9) In this section "conviction" includes a finding under section 11(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (remand for medical examination) that the person in question did the act or made the omission charged, and "convicted" is to be read accordingly.

Origin: PCC(S)A 2000 s.10(8) (part).

27 Remission by magistrates' court: adjournment and remand

(1) Where a magistrates' court ("the remitting court") remits an offender under section 24, 25 or 26 to another magistrates' court ("the other court") to be dealt with in respect of an offence—

(a) the remitting court must adjourn proceedings in relation to the offence, and

(b) any remand enactment has effect, in relation to the remitting court's power or duty to remand the offender on that adjournment, as if any reference to the court to or before which the person remanded is to be brought or appear after remand were a reference to the other court.

Origin: PCC(S)A 2000 s.8(4A) (part), 9(2) (part); 10(3) (part); PCA.

(2) In this section, "remand enactment" means section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) or any other enactment, whenever passed or made, relating to remand or the granting of bail in criminal proceedings; and for this purpose—

(a) "enactment" includes an enactment contained in any order, regulation or other instrument having effect by virtue of an Act, and

(b) "bail in criminal proceedings" has the same meaning as in the Bail Act 1976.

Origin: PCC(S)A 2000 s.8(4A) (part), s.9(5), s.10(8) (part); PCA.

PART 3

PROCEDURE

CHAPTER 1

INFORMATION AND REPORTS

Pre-sentence reports

28 Pre-sentence report requirements

(1) This section applies where, by virtue of any provision of this Code, the pre-sentence report requirements apply to a court in relation to forming an opinion.

Origin: Drafting; clean sweep.

(2) If the offender is 18 or over, the court must obtain and consider a pre-sentence report before forming the opinion unless, in the circumstances of the case, it considers that it is unnecessary to obtain a pre-sentence report.

Origin: CJA 2003 s.156(3) (part), (4); drafting.

(3) If the offender is under 18, the court must obtain and consider a pre-sentence report before forming the opinion unless—

(a) there exists a previous pre-sentence report obtained in respect of the offender, and

(b) the court considers—

(i) in the circumstances of the case, and

(ii) having had regard to the information contained in that report or, if there is more than one, the most recent report,

that it is unnecessary to obtain a pre-sentence report.

Origin: CJA 2003 s.156(3) (part), (4) (part), (5).

(4) Where a court does not obtain and consider a pre-sentence report before forming an opinion in relation to which the pre-sentence report requirements apply, no custodial sentence or community sentence is invalidated by the fact that it did not do so.

Origin: CJA 2003 s.156(6) (part).

29 Meaning of "pre-sentence report" etc

"Pre-sentence report"

(1) In this Code "pre-sentence report" means a report which—

(a) is made or submitted by an appropriate officer with a view to assisting the court in determining the most suitable method of dealing with an offender, and

(b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

Origin: CJA 2003 s.158(1).

(2) In subsection (1), "an appropriate officer" means—
  (a) where the offender is aged 18 or over, an officer of a provider of probation services;
  (b) where the offender is aged under 18—
    (i) an officer of a provider of probation services,
    (ii) a social worker of a local authority, or
    (iii) a member of a youth offending team.

Origin: CJA 2003 s.158(2); SI 2008/912 Sch.1 para.19(2).

"Obtaining" a pre-sentence report

(3) Where by any provision of this Code, the court is required to obtain a pre-sentence report, it may accept a pre-sentence report given orally in open court. But this is subject to—
  (a) any rules made under subsection (1)(b), and
  (b) subsection (4).

Origin: CJA 2003 s.158(1A); CJIA 2008 s.12.

(4) A pre-sentence report must be in writing if it—
  (a) relates to an offender aged under 18, and
  (b) is required to be obtained and considered before the court forms an opinion mentioned in—
    (i) section 159(2) (seriousness threshold for discretionary custodial sentence),
    (ii) section 160(2) (determining term of custodial sentence), or
    (iii) section 165(1)(c) (determining risk of harm to public for purpose of extended sentence).

Origin: CJA 2003 s.156(3)(a), s.158(1B); CJIA 2008 s.12; LASPOA 2012 Sch.21 para.22.

30 Disclosure of pre-sentence reports

(1) This section applies where the court obtains a pre-sentence report, other than a report given orally in open court.

Origin: CJA 2003 s.159(1).

Copy for offender and parent or guardian

(2) The court must give a copy of the report—
  (a) to the offender or the offender's legal representative, and
  (b) if the offender is aged under 18, to any parent or guardian of the offender who is present in court.

Origin: CJA 2003 s.159(2) (part); LSA 2007 Sch.21 para.147.

(3) But if—
  (a) the offender is aged under 18, and
  (b) it appears to the court that the disclosure of any information contained in the report—
    (i) to the offender, or
    (ii) to a parent or guardian of the offender,

would be likely to create a risk of significant harm to the offender,

a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

Origin: CJA 2003 s.159(3).

Copy for prosecutor

(4) The court must give a copy of the report to the prosecutor, that is to say, the person having the conduct of the proceedings in respect of the offence.

Origin: CJA 2003 s.159(2) (part).

(5) But a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for the prosecutor to be given it.

Origin: CJA 2003 s.159(4) (part).

(6) No information obtained by virtue of subsection (4) may be used or disclosed otherwise than for the purpose of—

(a) determining whether representations as to matters contained in the report need to be made to the court, or

(b) making such representations to the court.

Origin: CJA 2003 s.159(5).

31 Appeals: requirements relating to pre-sentence reports

(1) - Any court, on an appeal against a custodial sentence or a community sentence, must—

(a) - subject to subsection (2) or (3), obtain a pre-sentence report if none was obtained by the court below, and

(b) - consider any such report obtained by it or by the court below.

Origin: CJA 2003 s.156(6) (part).

(2) - If the offender is 18 or over, the court need not obtain a pre-sentence report if it considers—

(a) - that the court below was justified in not obtaining a pre-sentence report, or

(b) - that, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

Origin: CJA 2003 s.156(7) (part).

(3) - If the offender is under 18, the court need not obtain a pre-sentence report if—

(a) - there exists a previous pre-sentence report obtained in respect of the offender, and

(b) - the court considers, having had regard to the information contained in that report or, if there is more than one, the most recent report—

(i) - that the court below was justified in not obtaining a pre-sentence report, or

(ii) - that, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

Origin: CJA 2003 s.156(7) (part), (8).

Other reports of providers of probation services etc

32 Disclosure of other reports

(1) This section applies where—

(a) a report by—

(i) an officer of a provider of probation services, or

(ii) a member of a youth offending team,

is made to any court (other than a youth court) with a view to assisting the court in determining the most suitable method of dealing with any person in respect of an offence, and

(b) the report is not a pre-sentence report.

Origin: CJA 2003 s.160(1); SI 2008/912 Sch.1 para.19(3)(b).

(2) The court must give a copy of the report—

(a) to the offender or the offender's legal representative, and

(b) if the offender is aged under 18, to any parent or guardian of the offender who is present in court.

Origin: CJA 2003 s.160(2); LSA 2007 Sch.21 para.148.

(3) But if—

(a) the offender is aged under 18, and

(b) it appears to the court that the disclosure of any information contained in the report—

(i) to the offender, or

(ii) to a parent or guardian of the offender,

would be likely to create a risk of significant harm to the offender,

a complete copy of the report need not be given to the offender or, as the case may be, to that parent or guardian.

Origin: CJA 2003 s.160(3).

Reports for offenders aged under 18: interpretation

33 Interpretation of Chapter: offenders under 18

(1) In relation to an offender aged under 18—

(a) for whom a local authority have parental responsibility, and

(b) who—

(i) is in their care, or

(ii) is provided with accommodation by them in the exercise of any social services functions,

references in sections 30 and 32 to the offender's parent or guardian are to be read as references to that authority.

Origin: CJA 2003 s.159(6), s.160(4).

(2) In this Chapter—

"harm" has the same meaning as in section 31 of the Children Act 1989;

"local authority" and "parental responsibility" have the same meanings as in that Act (see section 105 of that Act);

"social services functions", in relation to a local authority, has—

(a) in relation to England, the meaning given by section 1A of the Local Authority Social Services Act 1970;

(b) in relation to Wales, the meaning given by section 143 of the Social Services and Well-being (Wales) Act 2014.

Origin: CJA 2003 s.159(7); SI 2016/413 (W.131) reg.211.

Financial circumstances orders

34 Powers to order statement as to offender's financial circumstances

(1) In this Code, "financial circumstances order", in relation to an individual, means an order requiring the individual to give the court, before the end of the period specified in the order, such a statement of the individual's assets and other financial circumstances as the court may require.

Origin: CJA 2003 s.162(3); CCA 2013 Sch.16 para.24.

(2) Where an individual has been convicted of an offence, the court may, before sentencing the individual, make a financial circumstances order with respect to the individual.

Origin: CJA 2003 s.162(1).

(3) Where a magistrates' court has been notified in accordance with section 12(4) of the Magistrates' Courts Act 1980 that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to the individual.

Origin: CJA 2003 s.162(2).

35 Financial circumstances order: offences

(1) It is an offence for an individual to fail without reasonable excuse to comply with a financial circumstances order.

Origin: CJA 2003 s.162(4) (part); drafting.

(2) An individual who is guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Origin: CJA 2003 s.162(4) (part); drafting.

(3) It is an offence for an individual, in furnishing any statement in pursuance of a financial circumstances order—

(a) to make a statement which the individual knows to be false in a material particular,

(b) recklessly to furnish a statement which is false in a material particular, or

(c) knowingly to fail to disclose any material fact.

Origin: CJA 2003 s.162(5) (part); drafting.

(4) An individual who is guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Origin: CJA 2003 s.162(5) (part): drafting.

(5) Proceedings for an offence under subsection (3) may be commenced at any time which is both—

(a) within 2 years from the date of the offence, and

(b) within 6 months from its first discovery by the prosecutor.

This subsection has effect despite anything in section 127(1) of the Magistrates' Courts Act 1980 (limitation of time).

Origin: CJA 2003 s.162(6); drafting.

Other powers to obtain reports etc

36 Reports and information: other powers of court

For other powers and duties of a court in relation to obtaining information or a report before passing sentence see—

(a) section 161 (medical report before passing certain custodial sentence in case of offender suffering from mental disorder);

(b) section 48(3) of the Children and Young Persons Act 1933 (power of youth court to remand for purpose of enabling information to be obtained with respect to offender aged under 18);

(c) section 10(3) of the Magistrates' Courts Act 1980 (adjournment by magistrates' court for purpose of enabling enquiries);

(d) section 35 of the Mental Health Act 1983 (remand to hospital for a report on the person's mental condition);

(e) section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (remand by magistrates' court for medical examination).

Origin: Drafting.

CHAPTER 2

DEROGATORY ASSERTION ORDERS

37 Derogatory assertion orders and restriction on reporting of assertions

(1) While a derogatory assertion order or interim derogatory assertion order has effect in relation to an assertion, the assertion must not—

(a) be published in Great Britain in a written publication available to the public, or

(b) be included in a relevant programme for reception in Great Britain.

Origin: CPIA 1996 s.59(1).

(2) In this Chapter—

"derogatory assertion order" means an order made under subsection section (3) of 38 in relation to an assertion to which that section applies;

"interim derogatory assertion order" means an order made under subsection (4) of section 38 in relation to an assertion to which that section applies.

Origin: Drafting.

38 Orders in respect of certain assertions

(1) - This section applies to an assertion forming part of a speech in mitigation made by an offender or on an offender's behalf before—

(a) a court determining what sentence should be passed on the offender in respect of an offence, or

(b) a magistrates' court determining whether the offender should be committed to the Crown Court for sentence.

Origin: CPIA 1996 s.58(1); clean sweep.

(2) - This section also applies to an assertion forming part of a submission relating to a sentence which is made by the offender or on the offender's behalf before—

(a) - a court hearing an appeal against or reviewing the sentence, or

(b) - a court determining whether to grant leave to appeal against the sentence.

Origin: CPIA 1996 s.58(2); clean sweep. -

(3) - Where there are substantial grounds for believing—

(a) - that an assertion to which this section applies is derogatory to a person's character (for instance, because it suggests that the person's conduct is or has been criminal, immoral or improper), and

(b) - that the assertion is false or that the facts asserted are irrelevant to the sentence,

the court may make a derogatory assertion order in relation to the assertion.

Origin: CPIA 1996 s.58(4).

(4) - Where it appears to the court that there is a real possibility that a derogatory assertion order will be made in relation to an assertion, the court may make an interim derogatory assertion order in relation to it.

Origin: CPIA 1996 s.58(3).

(5) - No derogatory assertion order or interim derogatory assertion order may be made in relation to an assertion which it appears to the court was previously made—

(a) - at the trial at which the offender was convicted of the offence, or

(b) - during any other proceedings relating to the offence.

Origin: CPIA 1996 s.58(5).

(6) - Section 37(1) has effect where a court makes a derogatory assertion order or an interim derogatory assertion order.

Origin: CPIA 1996 s.58(6); drafting.

(7) - A derogatory assertion order—

(a) - may be made after the court has made the relevant determination, but only if it is made as soon as is reasonably practicable after the determination has been made;

(b) - subject to subsection (9), ceases to have effect at the end of the period of 12 months beginning with the day on which it is made;

(c) - may be made whether or not an interim derogatory assertion order has been made with regard to the case concerned.

Origin: CPIA 1996 s.58(8) (part).

(8) An interim derogatory assertion order—

(a) may be made at any time before the court makes the relevant determination, and

(b) subject to subsection (9), ceases to have effect when the court makes the relevant determination.

Origin: CPIA 1996 s.58(7) (part).

(9) A derogatory assertion order or interim derogatory assertion order may be revoked at any time by the court which made it.

Origin: CPIA 1996 s.58(7)(b), (8)(b).

(10) For the purposes of subsections (7) and (8) "relevant determination" means the determination of—

(a) the sentence (where this section applies by virtue of subsection (1)(a));

(b) whether the offender should be committed to the Crown Court for sentence (where this section applies by virtue of subsection (1)(b));

(c) what the sentence should be (where this section applies by virtue of subsection (2)(a));

(d) whether to grant leave to appeal (where this section applies by virtue of subsection (2)(b)).

Origin: CPIA 1996 s.58(9).

39 Reporting of assertions: offences

(1) If an assertion is published or included in a relevant programme in contravention of section 37, each of the following persons is guilty of an offence—

(a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;

(b) in the case of publication in any other form, the person publishing the assertion;

(c) in the case of an assertion included in a relevant programme, any body corporate engaged in providing the service in which the programme is included and any person having functions in relation to the programme corresponding to those of an editor of a newspaper.

Origin: CPIA 1996 s.60.

(2) A person guilty of an offence under this section is liable on summary conviction to—

(a) in England and Wales, a fine;

(b) in Scotland, a fine of an amount not exceeding level 5 on the standard scale.

Origin: CPIA 1996 s.60(2); LASPOA 2012 s.85.

(3) Where a person is charged with an offence under this section it is a defence to prove that at the time of the alleged offence the person—

(a) was not aware, and neither suspected nor had reason to suspect, that a derogatory assertion order or interim derogatory assertion order had effect at that time, or

(b) was not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or (as the case may be) included, the assertion in question.

Origin: CPIA 1996 s.60(3).

(4) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

that person as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

Origin: CPIA 1996 s.60(4).

(5) In relation to a body corporate whose affairs are managed by its members, "director" in subsection (4) means a member of the body corporate.

Origin: CPIA 1996 s.60(5).

40 Reporting of assertions: supplementary

(1) In sections 37 and 39—

"relevant programme" means a programme included in a programme service, within the meaning of the Broadcasting Act 1990;

"written publication" includes a film, a soundtrack and any other record in permanent form but does not include an indictment or other document prepared for use in particular legal proceedings.

Origin: CPIA 1996 s.59(2), s.60(6).

(2) For the purposes of sections 37 and 39 an assertion is published or included in a programme if the material published or included—

(a) names the person about whom the assertion is made or, without naming the person, contains enough to make it likely that members of the public will identify that person as the person about whom it is made, and

(b) reproduces the actual wording of the matter asserted or contains its substance.

Origin: CPIA 1996 s. 59(3), s.60(6).

(3) Nothing in section 37 or 38 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.

Origin: CPIA 1996 s.61(3).

CHAPTER 3

SURCHARGE

41 Court's duty to order payment of surcharge

(1) A court when dealing with a person for one or more offences committed on or after 1 April 2007 must also order the person to pay a surcharge.
This is subject to subsections (2) and (3).

Origin: CJA 2003 s.161A(1); DVCVA 2004 s.14(1), Sch.12 para.7; SI 2007/602 art.2(a).

(2) Subsection (1) does not apply in such cases as may be prescribed by regulations made by the Secretary of State.

Origin: CJA 2003 s.161A(2); DVCVA 2004 s.14(1).

(3) Where a court dealing with an offender considers—
(a) that it would be appropriate to make one or more of—
(i) a compensation order,
(ii) an unlawful profit order, and
(iii) a slavery and trafficking reparation order, but
(b) that the offender has insufficient means to pay both the surcharge and appropriate amounts under such of those orders as it would be appropriate to make,
the court must reduce the surcharge accordingly (if necessary to nil).

Origin: CJA 2003 s.161A(3); DVCVA 2004 s.14(1); MSA 2015 Sch.5 para.25(2).

(4) For the purposes of this section a court does not "deal with" a person if it—
(a) discharges the person absolutely, or
(b) makes an order under the Mental Health Act 1983 in respect of the person.

Origin: CJA 2003 s.161A(4); DVCVA 2004 s.14(1).

(5) In this section—
"slavery and trafficking reparation order" means an order under section 8 of the Modern Slavery Act 2015;
"unlawful profit order" means an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013.

Origin: CJA 2003 s.161A(5); PSHFA 2013 Sch. para.30(3); MSA 2015 Sch.5 para.25(3).

(6) For the purposes of subsection (1), where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.

Origin: DVCVA 2004 Sch.12 para.7(2); PCA.

42 Amount of surcharge

(1) The surcharge payable under section 41 is such amount as the Secretary of State may specify by regulations.

Origin: CJA 2003 s.161B; DVCVA 2004 s.14(1).

(2) Regulations under this section may provide for the amount to depend on—

(a) the offence or offences committed;

(b) how the offender is otherwise dealt with (including, where the offender is fined, the amount of the fine);

(c) the age of the offender.

Origin: CJA 2003 s.161B(2); DVCVA 2004 s.14(2).

CHAPTER 4

CRIMINAL COURTS CHARGE

43 Criminal courts charge duty where court dealing with offender for offence

Where the Crown Court or a magistrates' court deals with an offender for an offence, the criminal courts charge duty applies to the court (see section 45).

Origin: POA 1985 s.21B(1)(a), (2)(a); drafting.

44 Other occasions where criminal courts charge duty arises

(1) For other occasions where the criminal courts charge duty applies to a court, see—

(a) section 52A of the Senior Courts Act 1981 (dismissal of appeal by Crown Court);

(b) section 30B of the Criminal Appeal Act 1968 (dismissal of appeal by Court of Appeal);

(c) section 256AC of the Criminal Justice Act 2003 (breach of supervision requirements imposed on release);

(d) paragraph 10(6) of Schedule 4 (magistrates' court dealing with offender for breach of requirement of community order);

(e) paragraph 11(4) of that Schedule (Crown Court dealing with offender for breach of community order);

(f) paragraph 13(2) of Schedule 10 (magistrates' court or Crown Court dealing with offender for breach of community requirement of suspended sentence order).

Origin: Drafting.

(2) In the Senior Courts Act 1981, after section 52 (costs in Crown Court) insert—

"52A Appeals to Crown Court: criminal courts charge

The criminal courts charge duty (see section 45 of the Sentencing Code) applies to the Crown Court when dismissing an appeal by a person convicted of an offence against conviction or sentence for the offence."

Origin: POA 1985 s.21B(2) (part); CJCA 2015 s.54(1); drafting.

(3) In the Criminal Appeal Act 1968, after section 30A insert—

"30B Criminal courts charge

The criminal courts charge duty (see section 45 of the Sentencing Code) applies to the Court of Appeal—

(a) when dismissing an appeal under this Part of this Act by a person convicted of an offence against the person's conviction or sentence for the offence;

(b) when dismissing an application for leave to bring such an appeal."

Origin: POA 1985 s.21B(3); CJCA 2015 s.54(1); drafting.

(4) In section 256AC of the Criminal Justice Act 2003 (breach of supervision requirements imposed under section 256AA)—

(a) after subsection (10) insert—

"(10A) Where a court deals with a person under this section, the criminal courts charge duty (see section 45 of the Sentencing Code) applies to the court.";

(b) in subsection (11)(b), for "section 21A of the Prosecution of Offences Act 1985" substitute "section 45 of the Sentencing Code".

Origin: POA 1985 s.21B(1)(d); CJCA 2015 s.54(1); drafting.

45 Criminal courts charge duty

(1) Where the criminal courts charge duty applies to a court in relation to an offender, the court must order the offender to pay a charge in respect of relevant court costs, unless—

(a) the offender was under 18 when the offence was committed,

(b) the offence was committed before 13 April 2015, or

(c) the case is, or is of a class, prescribed by the Lord Chancellor by regulations.

Origin: POA 1985 s.21A(1), (2), (3); CJCA 2015 s.54(1), (4); SI 2015/778 Sch.1 para.44; drafting.

(2) In this section—

"court costs" means costs of providing the judiciary and the rest of the system of courts, but does not include defence or prosecution costs;

"relevant court costs" means court costs incurred in connection with—

(a) criminal proceedings, or

(b) proceedings for a relevant failure,

but does not include costs of providing the Supreme Court or judges of that Court;

"relevant failure" means a failure to comply with—

(a) a requirement of a community order,

(b) a community requirement of a suspended sentence order, or

(c) a supervision requirement imposed under section 256AA of the Criminal Justice Act 2003.

Origin: POA 1985 s.21A(5); CJCA 2015 s.54(1); drafting.

(3) In this Chapter—

"criminal courts charge" means the charge in respect of relevant court costs ordered to be paid by a criminal courts charge order (except where otherwise provided);

"criminal courts charge order" means an order under subsection (1).

Origin: Drafting.

(4) For the purposes of subsection (1)(b), where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.

Origin: CJCA 2015 s.54(5); PCA.

46 Court to disregard criminal courts charge duty in dealing with offender

(1) This section applies where the criminal courts charge duty applies to a court in dealing with an offender for—

(a) an offence, or

(b) a failure to comply with a requirement.

(2) In dealing with the offender (other than under the duty) for the offence or failure, the court must not take into account—

(a) the criminal courts charge duty, or

(b) any criminal courts charge order.

Origin: 1985 s.21A(4); CJCA 2015 s.54(1).

47 Amount of criminal courts charge

(1) A charge ordered to be paid by a criminal courts charge order must be of an amount specified by the Lord Chancellor by regulations.

(2) When specifying amounts under this section, the Lord Chancellor must seek to secure that an amount specified in respect of a class of case does not exceed the relevant court costs reasonably attributable to a case of that class.

(3) In this section "relevant court costs" has the same meaning as in section 45.

Origin: POA 1985 s.21C; CJCA 2015 s.54(1).

48 Interest on criminal courts charge

(1) The Lord Chancellor may by regulations provide that a person who is ordered by a criminal courts charge order to pay a charge must pay interest on the charge if or to the extent that it remains unpaid.

(2) The regulations may, in particular—

(a) make provision about the rate of interest,

(b) make provision about periods when interest is or is not payable, and

(c) make provision by reference to a measure or document as amended from time to time.

(3) The regulations may not make provision for a rate of interest that is higher than the rate that the Lord Chancellor considers would maintain the value in real terms of amounts that remain unpaid.

(4) An amount of interest payable under the regulations is to be treated as part of the charge ordered to be paid by the criminal courts charge order.

Origin: POA 1985 s.21D; CJCA 2015 s.54(1).

49 Power of magistrates' court to remit criminal courts charge

(1) A magistrates' court may remit the whole or part of a criminal courts charge, but this is subject to subsections (2) to (4).

(2) It may remit the charge only if—
- (a) it is satisfied that the person has taken all reasonable steps to pay it, having regard to the person's personal circumstances, or
- (b) it is satisfied that collection and enforcement of the charge is impracticable.

(3) It may not remit the charge at a time when the person is detained in prison.

(4) It may not remit the charge unless each of the following has expired—
- (a) a specified period beginning with the day on which a criminal courts charge order was last made in respect of the person;
- (b) a specified period beginning with the day on which the person was last convicted of an offence;
- (c) where relevant, a specified period beginning with the day on which the person was last released from prison.

(5) Where a court remits a criminal courts charge after an order has been made under section 300(2) of the Criminal Justice Act 2003 (power to impose unpaid work requirement etc on fine defaulter) for default in paying the charge (or the charge and other amounts), the court must—
- (a) reduce the total number of hours or days to which the order relates by the same proportion as the amount remitted bears to the total amount in respect of which the order was made, or
- (b) if the total number of hours or days would be reduced to nil under paragraph (a), revoke the order.

(6) In calculating a reduction required by subsection (5), any fraction of an hour or day is to be rounded down to the nearest hour or day.

(7) In this section—

"prison" includes any place where a person serving a sentence of detention for an offence is liable to be detained;

"specified period" means a period of a length specified by the Lord Chancellor by regulations.

Origin: POA 1985 s.21E; CJCA 2015 s.54(1).

CHAPTER 5

DUTIES TO EXPLAIN OR GIVE REASONS

50 Duty to give reasons for and to explain effect of sentence

(1) A court passing sentence on an offender has the duties in subsections (2) and (3).

Origin: CJA 2003 s.174(1); LASPOA 2012 s.64(2).

(2) The court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence.

Origin: CJA 2003 s.174(2); LASPOA 2012 s.64(2).

(3) The court must explain to the offender in ordinary language—

(a) the effect of the sentence,

(b) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence,

(c) any power of the court to vary or review any order that forms part of the sentence, and

(d) the effects of failure to pay a fine, if the sentence consists of or includes a fine.

Origin: CJA 2003 s.174(3); LASPOA 2012 s.64(2).

(4) Criminal Procedure Rules may—

(a) prescribe cases in which either duty does not apply, and

(b) make provision about how an explanation under subsection (3) is to be given.

Origin: CJA 2003 s.174(4); LASPOA 2012 s.64(2).

(5) Subsections (6) to (8) are particular duties of the court in complying with the duty in subsection (2).

Origin: CJA 2003 s.174(5); LASPOA 2012 s.64(2).

(6) The court must identify any sentencing guidelines relevant to the offender's case and—

(a) explain how the court discharged any duty imposed on it by section 56 or 57 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);

(b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.

Origin: CJA 2003 s.174(6); LASPOA 2012 s.64(2).

(7) Where as a result of taking into account any matter mentioned in section 67(2) (guilty pleas), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.

Origin: CJA 2003 s.174(7); LASPOA 2012 s.64(2).

(8) Subsections (9) and (10) apply where the offender is under 18.

Origin: CJA 2003 s.174(8) (part); LASPOA 2012 s.64(2); drafting.

(9) If the court imposes a youth rehabilitation order with supervision and surveillance, or a youth rehabilitation order with fostering, within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, it must state why it is of the opinion mentioned in each of—

(a) paragraph (b) and, if applicable, paragraph (c) of section 1(4) that Act, and

(b) section 132.

Origin: CJA 2003 s.174(8) (part); LASPOA 2012 s.64(2); drafting.

(10) If the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in section 159(2) (discretionary custodial sentence), the court must state why it is of that opinion.

Origin: CJA 2003 s.174(8) (part); LASPOA 2012 s.64(2).

51 Court to give reasons where compensation order not made

(1) This section applies where—

(a) a court is dealing with an offender in respect of an offence, and

(b) a compensation order is available.

Origin: Drafting.

(2) When the court sentences the offender, if it does not make a compensation order, it must give reasons for not doing so.

Origin: PCC(S)A 2000 s.130(3).

52 Travel restriction orders: duty to give reasons where order not made

For the duty of the court, in certain circumstances, to give reasons for a decision not to make a travel restriction order, see section 33 of the Criminal Justice and Police Act 2001 (travel restriction orders in conjunction with sentence of imprisonment for certain drug-trafficking offences).

Origin: Drafting.

53 Offences under Animal Welfare Act 2006: duty to give reasons for not making certain orders

For duties of the court to give reasons in certain circumstances where it does not make an order under the Animal Welfare Act 2006 in a case where the order is available, see—

(a) section 33(6) of that Act (deprivation);

(b) section 34(1) of that Act (disqualification).

Origin: Drafting.

PART 4

EXERCISE OF COURT'S DISCRETION

CHAPTER 1

PURPOSES OF SENTENCING

54 Purposes of sentencing: adults

(1) This section applies where—

(a) a court is dealing with an offender in respect of an offence, and

(b) the offender was 18 or over at the time of conviction.

Origin: CJA 2003 s.142(1) (part), (2)(a).

(2) The court must have regard to the following purposes of sentencing—
  (a) the punishment of offenders,
  (b) the reduction of crime (including its reduction by deterrence),
  (c) the reform and rehabilitation of offenders,
  (d) the protection of the public, and
  (e) the making of reparation by offenders to persons affected by their offences.

Origin: CJA 2003 s.142(1) (part).

(3) Subsection (1) does not apply—
  (a) to an offence in relation to which a mandatory sentence requirement applies (see section 274), or
  (b) in relation to making any of the following under Part 3 of the Mental Health Act 1983—
    (i) a hospital order (with or without a restriction order),
    (ii) an interim hospital order,
    (iii) a hospital direction, or
    (iv) a limitation direction.

Origin: CJA 2003 s.142(2) (part), (2A); drafting.

55 Offenders aged under 18: considerations of court not affected by Code

Nothing in this Code affects the duties of the court—
  (a) to have regard to the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37 of the Crime and Disorder Act 1998);
  (b) under section 44 of the Children and Young Persons Act 1933 (to have regard to welfare and in certain cases to take steps in relation to surroundings and provision of education etc).

Origin: Drafting.

CHAPTER 2

SENTENCING GUIDELINES

56 Sentencing guidelines: general duty of court

(1) Every court—
  (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
  (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.

Origin: CJA 2009 s.125(1); clean sweep.

(2) The duty imposed by subsection (1) is subject to—
  (a) section 87(1) (fine must reflect seriousness of offence);

(b) section 132(2) (restriction on community order);
(c) section 136(2) and (5) (restrictions on choice of requirements of community order);
(d) section 159 (threshold for imposing discretionary custodial sentence);
(e) section 160 (custodial sentence must be for shortest term commensurate with seriousness of offence);
(f) sections 188 and 198 (life sentence for second listed offence for certain dangerous offenders);
(g) section 234 and Schedule 14 (determination of minimum term in relation to mandatory life sentence);
(h) the provisions mentioned in section 274(1)(c) (mandatory minimum sentences).

Origin: CJA 2009 s.125(6); LASPOA 2012 Sch.19 para.23, Sch.26 para.31; CJCA 2015 Sch.5 para.17(2), (3); drafting.

(3) Nothing in this section or section 57 or 58 is to be taken as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with an offender suffering from a mental disorder in the manner it considers to be most appropriate in all the circumstances.

Origin: CJA 2009 s.125(7).

57 Sentencing guidelines: determination of sentence

(1) This section applies where—
(a) a court is deciding what sentence to impose on an offender for an offence, and
(b) offence-specific guidelines have been issued in relation to the offence.

Origin: CJA 2009 s.125(2); clean sweep; PCA.

(2) The principal guidelines duty includes a duty to impose on the offender, in accordance with the offence-specific guidelines, a sentence which is within the offence range.

Origin: CJA 2009 s.125(3)(a).

(3) Subsection (2) is subject to—
(a) section 67 (reduction in sentences for guilty pleas),
(b) sections 68 and 266 (assistance by offenders: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence, and
(c) any rule of law as to the totality of sentences.

Origin: CJA 2009 s.125(5).

(4) If the offence-specific guidelines describe different seriousness categories—
(a) the principal guidelines duty also includes a duty to decide which of the categories most resembles the offender's case in order to identify the sentencing starting point in the offence range, but
(b) nothing in this section imposes on the court a separate duty to impose a sentence which is within the category range.

Origin: CJA 2009 s.125(3) (part).

(5) Subsection (4) does not apply if the court is of the opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles the offender's case.

Origin: CJA 2009 s.125(4).

(6) Subsections (2) and (4) (except as applied by section 58) are subject to any power a court has to impose an extended sentence.

Origin: CJA 2009 s.126(1); LASPOA 2012 Sch.21 para.34(2); PCA.

58 Determination of notional determinate terms etc

Extended sentence: determination of appropriate custodial term

(1) Subsection (2) applies where a court is considering whether to impose an extended sentence for an offence.

Origin: CJA 2009 s.126(2) (part); LASPOA 2012 Sch.21 para.34(3).

(2) In determining the appropriate custodial term for the purposes of section 166(2), 183(2) or 196(2) (extended sentence for certain violent or sexual offences), section 57 applies to the court as it applies to a court in determining the sentence for an offence.

Origin: CJA 2009 s.126(2) (part), (3); ; LASPOA 2012 Sch.21 para.34(3); PCA.

Life sentence for second listed offence: determination of sentence condition

(3) Subsection (4) applies where a court is considering whether to impose a sentence under 188 or 198 (life sentence for second listed offence) for an offence.

Origin: CJA 2009 s.126(2) (part); drafting; PCA.

(4) In determining, for the purpose of deciding whether the sentence condition in section 188(3) or 198(3) is met, the sentence that it would have passed as mentioned in that condition, section 57 applies to the court as it applies to a court in determining the sentence for an offence.

Origin: CJA 2009 s.126(3), (4); PCA.

Tariff for non-fixed life sentence

(5) Subsection (6) applies where a court has imposed a non-fixed life sentence for an offence.

Origin: CJA 2009 s.126(2) (part).

(6) Section 57 applies to the court in determining the notional determinate term in respect of the offence for the purpose of determining the order to be made under section 236 (minimum term order for non-fixed life sentence).

Origin: CJA 2003 s.126(3).

(7) For the purposes of subsection (6), the notional determinate term is the determinate sentence that would have been passed in respect of the offence if the court had not been required by the need to protect the public and the potential danger of the offender to impose a non-fixed life sentence.

Origin: CJA 2009 s.126(4).

(8) In this section "non-fixed life sentence" means—

(a) a sentence of imprisonment for life (other than a sentence fixed by law),

(b) a sentence of detention for life under section 168, or

(c) a sentence of custody for life under section 187.

Origin: C(S)A 1997 s.34(2) (part); CJA 2009 s.126(5); LASPOA 2012 Sch.21 para.34(4).

59 Sentencing guidelines duties: interpretation

(1) In this Chapter—

"mental disorder", in relation to a person, has the same meaning as in the Mental Health Act 1983;

"the principal guidelines duty" means the duty, imposed by section 56(1)(a), of a court, in sentencing an offender, to follow any sentencing guidelines which are relevant to the offender's case;

"offence-specific guidelines" means any sentencing guidelines issued in relation to a particular offence which are structured in the way described in section 121(2) to (5) of the Coroners and Justice Act 2009 (and "the offence-specific guidelines", in relation to an offence, means, if any such guidelines have been issued in relation to the offence, those guidelines);

"the sentencing starting point", in relation to the offence range, has the meaning given by section 121(10) of the Coroners and Justice Act 2009.

Origin: CJA 2009 s.125(8), s.136 (part); drafting.

(2) For the purposes of this Chapter—

(a) references to the following are to be read in accordance with section 121 of the Coroners and Justice Act 2009 (sentencing ranges)—

the offence range;

the category range;

the starting point;

the appropriate starting point;

(b) offence-specific guidelines describe different seriousness categories if they describe different categories of case in accordance with subsection (2) of that section.

Origin: Drafting.

CHAPTER 3

SERIOUSNESS AND DETERMINING SENTENCE

Generally

60 Application of Chapter

This Chapter applies where a court is considering the seriousness of an offence for the purposes of sentencing.

Origin: SOCPA 2005 s.73(6), s.74(15); CTA 2008 s.30(1) (part); drafting.

61 Assessing seriousness

Where a court is considering the seriousness of any offence, it must consider—

(a) the offender's culpability in committing the offence, and

(b) any harm which the offence—

(i) caused,

(ii) was intended to cause, or

(iii) might forseeably have caused.

Origin: CJA 2003 s.143(1) (part).

Aggravating factors

62 Offence committed on bail

In considering the seriousness of an offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

Origin: Origin CJA 2003 s.143(3).

63 Previous convictions

(1) This section applies where a court is considering the seriousness of an offence ("the current offence") committed by an offender who has one or more relevant previous convictions.

Origin: CJA 2003 s.143(2) (part).

(2) The court must treat as an aggravating factor each relevant previous conviction that it considers can reasonably be so treated, having regard in particular to—

(a) the nature of the offence to which the relevant previous conviction relates and its relevance to the current offence, and

(b) the time that has elapsed since the relevant previous conviction.

Origin: CJA 2003 s.143(2) (part).

(3) In subsections (1) and (2) "relevant previous conviction" means—

(a) a previous conviction by a court in the United Kingdom,

(b) a previous conviction of a relevant offence under the law of another member State by a court in that State,

(c) a previous conviction of a service offence (see subsection (4)), or

(d) a finding of guilt in respect of a member State service offence (see subsection (5)).

Origin: CJA 2003 s.143(4); AFA 2006 Sch.16 para.216; CJA 2009 Sch.17 para.6(2); clean sweep; drafting.

(4) In subsection (3)(c) (previous convictions of service offences)—

(a) "conviction" includes anything that under section 376(1) and (2) of the Armed Forces Act 2006 is to be treated as a conviction (which relates to summary hearings and the Summary Appeal Court);

(b) "service offence" means—

(i) a service offence within the meaning of the Armed Forces Act 2006, or

(ii) an SDA offence within the meaning of the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (S.I. 2009/1059);

(c) the previous convictions referred to are to be taken to include a previous finding of guilt in—

(i) proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence); or

(ii) proceedings before a Standing Civilian Court established under section 6 of the Armed Forces Act 1976.

Origin: CJA 2003 s.143(4)(b) (part); AFA 2006 Sch. 16 para.216; SI 2009/1059 Sch.1 para.53(5).

(5) In subsection (3)(d) "member State service offence" means an offence which—

(a) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(b) would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006), if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence,

and, for that purpose—

"Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

"service law", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.

Origin: CJA 2003 s.143(6)(b), (c), (d); CJA 2009 Sch.17 para.6(3); drafting.

(6) For the purposes of this section, an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence.

Origin: CJA 2003 s.143(6)(a); CJA 2009 Sch.17 para.6(3)

64 Hostility

(1) This section applies where a court is considering the seriousness of an offence which was aggravated by—

(a) racial hostility,

(b) religious hostility,

(c) hostility related to disability,

(d) hostility related to sexual orientation, or

(e) hostility related to transgender identity.

This is subject to subsection (3).

Origin: CJA 2003 s.145(1) (part), s.146(1); clean sweep.

(2) The court—

(a) must treat the fact that the offence was aggravated by hostility of any of those types as an aggravating factor, and

(b) must state in open court that the offence was so aggravated.

Origin: CJA 2003 s.145(2), s.146(3); drafting.

(3) So far as it relates to racial and religious hostility, this section does not apply in relation to an offence under sections 29 to 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated offences).

Origin: CJA 2003 s.145(1) (part).

(4) For the purposes of this section, an offence is aggravated by hostility of one of the kinds mentioned in subsection (1) if—

(a) at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

(i) the victim's membership (or presumed membership) of a racial group,

(ii) the victim's membership (or presumed membership) of a religious group,

(iii) a disability (or presumed disability) of the victim,

(iv) the sexual orientation (or presumed sexual orientation) of the victim, or (as the case may be)

(v) the victim being (or being presumed to be) transgender, or

(b) the offence was motivated (wholly or partly) by—

(i) hostility towards members of a racial group based on their membership of that group,

(ii) hostility towards membership of a religious group based on their membership of that group,

(iii) hostility towards persons who have a disability or a particular disability,

(iv) hostility towards persons who are of a particular sexual orientation, or (as the case may be)

(v) hostility towards persons who are transgender.

Origin: CDA 1998 s.28(1); ACSA 2001 s.39(3)(a), (b) (part); CJA 2003 s.145(3), s.146(2); LASPOA 2012 s.65(4), (5); drafting.

(5) For the purposes of paragraphs (a) and (b) of subsection (4), it is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

Origin: CJA 2003 s.145(3), s.146(4); CDA 1998 s.28(3); ACSA 2001 s.39(3)(c).

(6) In this section—

(a) references to a racial group are to a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins;

(b) references to a religious group are to a group of persons defined by reference to religious belief or lack of religious belief;

(c) "membership" in relation to a racial or religious group, includes association with members of that group;

(d) "disability" means any physical or mental impairment;

(e) references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment;

(f) "presumed" means presumed by the offender.

Origin: CDA 1998 s.28(2), (4), (5), ACSA 2001 s.39(3)(b) (part), (4); CJA 2003 s.145(3), s.146(5), (6); LASPOA 2012 s.65(6); PCA; drafting.

65 Terrorist connection

(1) This section applies where a court is considering the seriousness of an offence specified in Schedule 1 (offences where terrorist connection to be considered).

Origin: CTA 2008 s.30(1); clean sweep.

(2) If the offence has a terrorist connection, the court—

(a) must treat that fact as an aggravating factor, and

(b) must state in open court that the offence was so aggravated.

Origin: CTA 2008 s.30(4).

(3) For the purposes of this section, an offence has a terrorist connection if the offence—

(a) is, or takes place in the course of, an act of terrorism, or

(b) is committed for the purposes of terrorism.

For this purpose, "terrorism" has the same meaning as in the Terrorism Act 2000 (see section 1 of that Act).

Origin: CTA 2008 ss.92, 93.

66 Other aggravating factors

Other obligations of the court to treat a matter as an aggravating factor in considering the seriousness of an offence include those under—

(a) section 4A of the Misuse of Drugs Act 1971 (offences relating to drugs: proximity to school or involvement of young courier);

(b) section 29 of the Violent Crime Reduction Act 2006 (using minor to mind weapon);

(c) section 6 of the Psychoactive Substances Act 2016 (offences relating to psychoactive substances: proximity to school, involvement of young courier or commission of offence in custodial institution).

Origin: Drafting.

Mitigating factors

67 Reduction in sentences for guilty pleas

(1) This section applies where a court is determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court.

Origin: CJA 2003 s.144(1) (part).

(2) The court must take into account the following matters—

(a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and

(b) the circumstances in which the indication was given.

Origin: CJA 2003 s.144(1) (part); drafting.

(3) Subsections (4) and (5) apply if a mandatory sentence requirement applies in relation to the offence (see section 274) by virtue of—

(a) section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for threatening in public place with offensive weapons);

(b) section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for threatening with article with blade or point or offensive weapon);

(c) section 226 (minimum of 7 years for third class A drug trafficking offence);

(d) section 227 (minimum of 3 years for third domestic burglary);

(e) section 228 (minimum sentence for repeat offence involving weapon).

Origin: CJA 2003 s.144(3), (5); LASPOA 2012 Sch.26 para.18(3); CJCA 2015 Sch.5 para.12(3), (5); drafting.

(4) - The mandatory sentence requirement does not prevent the court, after taking into account any matter referred to in subsection (2), from imposing a sentence that is less than the sentence which would otherwise be required by that requirement ("the mandatory sentence").

Origin: CJA 2003 s.144(2) (part), (4); LASPOA 2012 Sch.26 para.18(2), (3); CJCA 2015 Sch.5 para.12(2), (4).

(5) - But if the offender was 18 or over at the time of conviction, the court may not impose a sentence that is less than 80 per cent of the mandatory sentence.

Origin: CJA 2003 s.144(2) (part); LASPOA 2012 Sch.26 para.18(2).

68 Reduction in sentence for assistance to prosecution

(1) - This section applies where the Crown Court is determining what sentence to pass in respect of an offence on an offender who—

(a) - pleaded guilty to the offence,

(b) - was convicted in the Crown Court or committed to the Crown Court for sentence, and

(c) - pursuant to a written agreement made with a specified prosecutor, has assisted or offered to assist—

(i) - the investigator,

(ii) or the specified prosecutor or any other prosecutor,

in relation to that or any other offence.

Origin: SOCPA 2005 s.73(1), (2) (part), (9) (part); PCA; Note (E&W only).

(2) - The court may take into account the extent and nature of the assistance given or offered.

Origin: SOCPA 2005 s.73(2) (part); Note (E&W only).

(3) - If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court—

(a) - that it has passed a lesser sentence than it would otherwise have passed, and

(b) what the greater sentence would have been.

This is subject to subsection (4).

Origin: SOCPA 2005 s.73(3); Note (E&W only).

(4) If the court considers that it would not be in the public interest to disclose that the sentence has been discounted by virtue of this section—

(a) subsection (3) does not apply,

(b) the court must give a written statement of the matters specified in subsection (3)(a) and (b) to—

(i) the prosecutor, and

(ii) the offender, and

(c) sections 50(2) and 235(4) (requirement to explain reasons for sentence or other order) do not apply to the extent that the explanation will disclose that a sentence has been discounted by virtue of this section.

Origin: SOCPA 2005 s.73(4), (7); PCA; Note (E&W only).

(5) Nothing in—

(a) any of the provisions listed in section 274(1)(b) or (c) (minimum sentences in certain circumstances), or

(b) section 234 (and Schedule 14) (determination of minimum term in relation to mandatory life sentence),

affects the Crown Court's power under subsection (2).

Origin: SOCPA 2005 s.73(5); PCA; Note (E&W only).

69 Specified prosecutors

(1) In the reduction in sentence provisions, "specified prosecutor" means—

(a) the Director of Public Prosecutions;

(b) the Director of the Serious Fraud Office;

(c) the Financial Conduct Authority;

(d) the Prudential Regulation Authority;

(e) the Bank of England, where the offence is an offence under the Financial Services and Markets Act 2000;

(f) the Secretary of State for Business, Energy and Industrial Strategy, acting personally;

(g) a prosecutor designated for the purposes of the reduction in sentence provisions by a prosecutor mentioned in paragraphs (a) to (f).

Origin: SOCPA 2005 s.71(4) (part), s.73(10), s.74(11)(b); CJA 2009 s.113(3); FSA 2012 Sch.18 para.106(2); SI 2016/992 Sch. para.10; Note (E&W only).

(2) In exercising the power to designate a prosecutor under subsection (1)(g), the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England and the Secretary of State for Business, Energy and Industrial Strategy may each designate only—

(a) one prosecutor (a "chief prosecutor") to act at any one time, and

(b) an alternative prosecutor (a "deputy prosecutor") to act as a specified prosecutor—

(i) when the chief prosecutor is unavailable, or

(ii) during any period when no chief prosecutor is designated.

Origin: SOCPA 2005 s.71(6A); CJA 2009 s.113(4); FSA 2012 Sch.18 para.106(3); SI 2016/992 Sch. para.10.

(3) The provisions listed in column 1 of the following table (powers to delegate) do not apply to the exercise of powers conferred by the reduction in sentence

provisions on the authorities specified in the corresponding entries in column 2—

Provision that normally confers power to delegate	*Body on whom power normally conferred*
Paragraph 8(1) of Schedule 1ZA to the Financial Services and Markets Act 2000	Financial Conduct Authority
Paragraph 17(1) of Schedule 6A to the Bank of England Act 1998	Prudential Regulation Authority
Paragraph 11 of Schedule 1 to the Bank of England Act 1998	Bank of England

Origin: SOCPA 2005 s.71(6B) (part), (6BA), (part); FSA 2012 Sch.18 para.106(4); SI 2017/80 Sch. para.17.

(4) The Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under the reduction in sentence provisions.

Origin: SOCPA 2005 s.75B(1) (part); CJA 2009 s.113(7).

(5) The Attorney General may from time to time revise any guidance issued under subsection (4).

Origin: SOCPA 2005 s.75B(2) (part); CJA 2009 s.113(7).

(6) In this section "the reduction in sentence provisions" means—

(a) section 68;

(b) this section;

(c) sections 265 to 269 (review of sentence in cases of assistance for prosecutor etc).

Origin: Drafting.

Effect of Code on other powers of court in assessing seriousness

70 Effect of Chapter on other powers of court to consider seriousness

Nothing in this Chapter that requires or permits a court to take any matter into account for the purposes of sentencing an offender for an offence is to be taken to prevent a court taking any other matter into account for that purpose.

Origin: CJA 2003 s.143(5); SOCPA 2005 s.73(6) (part); drafting.

71 Basis of opinion provisions not to affect power to mitigate sentences

(1) Nothing in any of the basis of opinion provisions prevents a court from mitigating an offender's sentence by taking into account any matters that, in the opinion of the court, are relevant in mitigation of sentence.

Origin: CJA 2003 s.166(1) (part); drafting

(2) Section 159(2) does not prevent a court, after taking into account such matters, from passing a community sentence even though it is of the opinion that—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it,

was so serious that a community sentence could not normally be justified for the offence.

Origin: CJA 2003 s.166(2).

(3) Nothing in any of the basis of opinion provisions prevents a court—

(a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence, and

(b) in the case of an offender who is convicted of one or more other offences, from mitigating the offender's sentence by applying any rule of law as to the totality of sentences.

Origin: CJA 2003 s.166(3); CJIA 2008 Sch.4 para.79(3) (part).

(4) Subsections (2) and (3) are without prejudice to the generality of subsection (1).

Origin: CJA 2003 s.166(4).

(5) In this section "basis of opinion provision" means any of the following—

(a) section 28 or 31 (pre-sentence reports and other requirements);

(b) section 86, 87 or 88 (fixing of fines);

(c) section 132 (imposing community sentences);

(d) section 159, 160 or 161 (imposing custodial sentences);

(e) paragraph 3 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance), or

(f) paragraph 4 of Schedule 1 to that Act (youth rehabilitation order with fostering).

Origin: CJA 2003 s.166(1) (part); CJIA 2008 Sch.4 para.79(2); clean sweep.

72 Basis of opinion provisions: offenders suffering from a mental disorder

(1) Nothing in any of the basis of opinion provisions is to be taken—

(a) as requiring a court to pass—

(i) a custodial sentence, or

(ii) any particular custodial sentence,

on an offender suffering from a mental disorder, or

(b) as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

Origin: CJA 2003 s.166(5); CJIA 2008 Sch.4 para.79(3) (part).

(2) In this section—

"mental disorder" has the same meaning as in the Mental Health Act 1983 (see section 1 of that Act);

"basis of opinion provision" has the same meaning as in section 71.

Origin: CJA 2003 s.166(6); drafting.

THIRD GROUP OF PARTS

DISPOSALS

PART 5

ABSOLUTE AND CONDITIONAL DISCHARGE

73 Order for absolute discharge

(1) In this Code "order for absolute discharge" means an order discharging an offender absolutely for an offence.

Origin: PCC(S)A 2000 s.12(1) (part).

Availability

(2) An order for absolute discharge is available for a court dealing with an offender for an offence where—

(a) the offender was convicted by or before the court, and

(b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 274).

Origin: PCC(S)A 2000 s.12(1) (part), (1A) (part).

Exercise of power to make order for absolute discharge

(3) Where it is available, the court may make an order for absolute discharge if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—

(a) the nature of the offence, and

(b) the character of the offender.

Origin: PCC(S)A 2000 s.12(1) (part).

Effect on other orders

(4) Nothing in this section is to be taken to preclude a court, on discharging an offender absolutely in respect of an offence, from—

(a) imposing any disqualification on the offender,

(b) making any of the following orders in respect of the offence—

(i) a compensation order (see section 94);

(ii) an order under section 105 (deprivation orders);

(iii) an order under section 148 of the Powers of Criminal Courts (Sentencing) Act 2000 (restitution orders);

(iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,

(c) making an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge), or

(d) making an order for costs against the offender.

Origin: PCC(S)A 2000 s.12(7) (part), (8) (part); CJCA 2015 Sch.12 para.9(2)(b), (3); PSHFA 2013 Sch. para.8.

74 Order for conditional discharge

(1) In this Code "order for conditional discharge" means an order discharging an offender for an offence subject to the condition that the offender commits no offence during the period specified in the order (referred to in this Code as "the period of conditional discharge").

Origin: PCC(S)A 2000 s.12(1) (part), (3) (part).

Availability

(2) An order for conditional discharge is available for a court dealing with an offender for an offence where—

(a) the offender is convicted by or before the court, and

(b) the offence is not one in relation to which a mandatory sentence requirement applies (see section 274).

Origin: PCC(S)A 2000 s.12(1) (part), (1A) (part).

(3) But see the following for circumstances where an order for conditional discharge is not available—

(a) section 66ZB(6) of the Crime and Disorder Act 1998 (effect of youth cautions);

(b) section 252(3) (breach of criminal behaviour order).

Origin: PCC(S)A 2000 s.12(2); LASPOA 2012 Sch.24 para.19; drafting.

Exercise of power to make order for conditional discharge

(4) Where it is available, the court may make an order for conditional discharge if it is of the opinion that it is inexpedient to inflict punishment, having regard to the circumstances, including—

(a) the nature of the offence, and

(b) the character of the offender.

Origin: PCC(S)A 2000 s.12(1) (part).

(5) The period of conditional discharge specified in an order for conditional discharge must be a period of not more than 3 years beginning with the day on which the order is made.

Origin: PCC(S)A 2000 s.12(1)(b) (part), (3) (part); PCA.

(6) On making an order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.

Origin: PCC(S)A 2000 s.12(6).

Effect on other orders

(7) Nothing in this section precludes a court, on making an order for conditional discharge in respect of an offence, from—

(a) imposing any disqualification on the offender,

(b) making any of the following orders in respect of the offence—

(i) a compensation order (see section 94),

(ii) an order under section 105 (deprivation orders), or

(iii) an order under section 148 of the Powers of Criminal Courts (Sentencing) Act 2000 (restitution orders), or

(iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,

(c) making an order under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge), or

(d) making an order for costs against the offender.

Origin: PCC(S)A 2000 s.12(7) (part), (8) (part); CJCA 2015 Sch.12 para.9(2)(b), (3); PSHFA 2013 Sch. para.8.

75 Commission of further offence by person conditionally discharged

Schedule 2 makes provision that applies where a person in respect of whom an order for conditional discharge has been made commits a further offence during the period of conditional discharge.

Origin: Drafting.

76 Effect of discharge

(1) - This section applies where—

(a) - an order for absolute discharge, or

(b) an order for conditional discharge,

is made in respect of an offence.

Origin: Drafting.

(2) - The conviction of that offence is to be deemed not to be a conviction for any purpose other than the purposes of—

(a) - the proceedings in which the order is made, and

(b) - in the case of an order for conditional discharge, any subsequent proceedings which may be taken against the offender under Schedule 2.

This is subject to subsection (3).

Origin: PCC(S)A 2000 s.14(1).

(3) - In the case of an order for conditional discharge, if the offender is sentenced (under Schedule 2) for the offence—

(a) - the order ceases to have effect, and

(b) - if the offender was aged 18 or over at the time of conviction of the offence, subsection (2) ceases to apply to the conviction.

Origin: PCC(S)A 2000 s.12(5), s.14(2).

(4) - Without prejudice to subsections (2) and (3), the offender's conviction is in any event to be disregarded for the purposes of any enactment or instrument which—

(a) - imposes any disqualification or disability upon convicted persons, or

(b) - authorises or requires the imposition of any such disqualification or disability.

Origin: PCC(S)A 2000 s.14(3).

(5) - Subsections (2) to (4) do not affect—

(a) - any right of the offender to rely on the conviction in bar of any subsequent proceedings for the same offence, or

(b) the restoration of any property in consequence of the conviction.

Origin: PCC(S)A 2000 s.14(4) (part).

(6) In subsection (4)—

"enactment" includes an enactment contained in a local Act;

"instrument" means an instrument having effect by virtue of an Act.

Origin: PCC(S)A 2000 s.14(5).

(7) Subsection (2) has effect subject to the following (which concern rights of appeal)—

(a) section 50(1A) of the Criminal Appeal Act 1968, and

(b) section 108(1A) of the Magistrates' Courts Act 1980.

Nothing in this subsection affects any other enactment that excludes the effect of subsection (2) or (4) for particular purposes.

Origin: PCC(S)A 2000 s.14(6).

PART 6

ORDERS RELATING TO CONDUCT

CHAPTER 1

ORDERS RELATING TO OFFENDERS AGED UNDER 18

77 Referral orders

[To be added]

78 Binding over of parent or guardian

[To be added]

CHAPTER 2

OTHER ORDERS

79 Orders under Street Offences Act 1959

See section 1(2A) of the Street Offences Act 1959 for orders available in the case of offences under section 1 of that Act (loitering or soliciting for purposes of prostitution) where no other sentence is imposed.

Origin: Drafting.

PART 7

FINANCIAL ORDERS AND ORDERS RELATING TO PROPERTY

CHAPTER 1

FINES

Availability

80 Availability of fine: magistrates' court

(1) A fine of a particular amount is available for a magistrates' court dealing with an offender for an offence if under the relevant offence provision a person who is convicted of that offence is liable to a fine.

Origin: Drafting.

(2) If under the relevant offence provision the offender is liable to—

(a) a fine of a specified amount,

(b) a fine of not more than a specified amount,

the amount of the fine—

(i) must not be more than that amount, but

(ii) may be less than that amount (unless an Act passed after 31 December 1879 expressly provides to the contrary).

Origin: MCA 1980 s.34(1) (part); drafting.

(3) This is subject to—

(a) section 83 (availability: fines not to be combined with certain other orders);

(b) section 85 (limit on fines imposed by magistrates' courts in respect of young offenders).

Origin: Drafting.

(4) In this section "relevant offence provision", in relation to an offence, means—

(a) the enactment creating the offence or specifying the penalty to which a person convicted of the offence is liable, or

(b) that provision read in accordance with—

(i) section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates' court) and regulations under that section;

(ii) section 86 of that Act (power to increase certain other fines on conviction by magistrates' court) and regulations under that section;

(iii) section 32 of the Magistrates' Courts Act 1980 (penalties on summary conviction for offences triable either way);

(iv) section 81 (power of magistrates' court to fine where only imprisonment etc specified);

(v) section 84 (standard scale of fines).

Origin: Drafting.

81 Power of magistrates' court to fine where only imprisonment etc specified

(1) This section applies where under an enactment a magistrates' court has power to sentence an offender to imprisonment or other detention but not to a fine.
It is immaterial whether the enactment was passed or made before or after the commencement of this Act.

Origin: MCA 1980 s.34(3) (part).

(2) The magistrates' court may impose a fine instead of sentencing the offender to imprisonment or other detention.

Origin: MCA 1980 s.34(3) (part).

(3) In the case of an offence which—
(a) is triable either way, and
(b) was committed before 12 March 2015,
a fine imposed under subsection (2) may not exceed the prescribed sum (within the meaning of section 32 of the Magistrates' Courts Act 1980).

Origin: MCA 1980 s.34(3); LASPOA 2012 s.85(4)(a); SI 2015/504 art.2.

(4) In the case of a fine imposed under subsection (2) for a summary offence—
(a) the amount of the fine may not exceed level 3 on the standard scale, and
(b) the default term must not be longer than the term of imprisonment or detention to which the offender is liable on conviction of the offence.
For this purpose "default term" means the term of imprisonment or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 to which the offender would be subject in default of payment of the fine.

Origin: MCA 1980 s.34(3) (part); CJA 1991 Sch.4 Pt.2; drafting.

(5) In this section "enactment" includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act.

Origin: MCA 1980 s.150.

82 General power of Crown Court to fine offender convicted on indictment

(1) - A fine is available for the Crown Court where it is dealing with an offender for an offence—
(a) - instead of, or
(b) in addition to,
dealing with the offender in any other way which is available to the court.

Origin: CJA 2003 s.163 (part).

(2) - Subsection (1)—
(a) - does not apply where the offence is one for which the sentence—
(i) - is fixed by law, or
(ii) - falls to be imposed under a provision mentioned in subsection (3),
(b) - is subject to any other enactment requiring the offender to be dealt with in a particular way, and
(c) - does not apply if the court is precluded from sentencing the offender by its exercise of some other power.

Origin: CJA 2003 s.163 (part); drafting.

(3) Those provisions are—

(a) section 226(2) or 227(2) (mandatory minimum sentences for certain repeated offences of drug trafficking or burglary committed by offenders aged 18 or over);

(b) a provision mentioned in section 274(1)(b) (required life sentences).

Origin: CJA 2003 s.163 (part); CJIA 2008 Sch.26 para.68; LASPOA 2012 Sch.19 para.14.

(4) Nothing in subsection (1) affects the maximum amount of a fine to which a person is liable for an offence committed before 17 July 1978.

Origin: CLA 1977 s.32(1), Sch.14 para.5; SI 1978/712 art.2(2), Sch..

83 Availability of fine: effect of other orders

For circumstances in which a fine is not available see—

(a) section 37(8) of the Mental Health Act 1983 (hospital order or guardianship order in case where person convicted of offence punishable with imprisonment);

(b) section 19 of the Powers of Criminal Courts (Sentencing) Act 2000 (referral order).

Origin: Drafting.

Magistrates' court

84 The standard scale of fines for summary offences

(1) The standard scale of fines for summary offences, which is known as "the standard scale", as it has effect for Code offences, is as follows—

Level on the scale	*Amount of fine*	
	Offence committed on or after 11 April 1983 and before 1 October 1992	*Offence committed on or after 1 October 1992*
1	£25	£200
2	£50	£500
3	£200	£1,000
4	£500	£2,500
5	£1,000	£5,000

Origin: CJA 1982 s.37(1), (2); CJA 1991 s.17(1) (part), Sch.12 para.6 (part); SI 1982/1857 art.2 Sch.2; SI 1992/333 art.2(2) (part), Sch.2 (part).

(2) In relation to a Code offence, a relevant reference to a particular level on the standard scale is to be read as referring to that level on the scale set out in the column of the table in subsection (1) that applies to offences committed on the date on which the offence was committed.

Origin: CJA 1982 s.37(3) (part): drafting.

(3) In relation to—

(a) a relevant reference in an enactment passed or made before 12 March 2015 to level 5 on the standard scale, and

(b) an offence committed on or after that date,

subsection (2) is subject to section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates' court).

Origin: CJA 1982 s.37(4); SI 2015/504 art.2; SI 2015/664 Sch.5 para.3; drafting.

(4) A reference to a level on the standard scale in an enactment (whenever passed or made) is a "relevant reference" to that level if the enactment—

(a) provides that a person convicted of a summary offence is liable on conviction to a fine or maximum fine by reference to that level, or

(b) confers power by subordinate instrument to make a person liable on conviction of a summary offence (whether or not created by the instrument) to a fine or maximum fine by reference to that level.

In this section, "Code offence" is an offence of which the offender is convicted after the Code comes into force.

Origin: CJA 1982 s.37(3) (part); drafting.

85 Limit on fines imposed by magistrates' courts in respect of young offenders

(1) This section applies where an offender—

(a) was convicted by a magistrates' court,

(b) was under 18 at the time of conviction, and

(c) is before that court to be sentenced.

(2) The court may not impose a fine of more than—

(a) £250, if the offender was under 14 at the time of conviction, or

(b) £1,000, if the offender was 14 or over at the time of conviction.

Origin: PCCSA 2000 s.135; drafting.

Exercise of powers

86 Fixing of fines: duty of court to inquire into individual offender's circumstances

(1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into the offender's financial circumstances.

Origin: CJA 2003 s.164(1).

(2) For the power to make a financial circumstances order, see section 34.

Origin: Drafting.

87 Fixing of fines: exercise of court's powers

(1) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.

Origin: CJA 2003 s.164(2).

(2) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

Origin: CJA 2003 s.164(3).

(3) Subsection (2) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.

Origin: CJA 2003 s.164(4).

(4) In applying subsection (2), a court must not reduce the amount of a fine on account of any surcharge it orders the offender to pay under section 41, except to the extent that the offender has insufficient means to pay both.

Origin: CJA 2003 s.164(4A); DVCVA 2004 s.14(2).

88 Power to determine financial circumstances where offender is absent or fails to provide information

(1) This section applies where an offender—

(a) has been convicted in his or her absence—

(i) in pursuance of section 11 or 12 of the Magistrates' Courts Act 1980 (non-appearance of accused), or

(ii) in proceedings conducted in accordance with section 16A of that Act (trial by single justice on the papers), or

(b) has failed—

(i) to provide a statement of the offender's financial circumstances in response to a request which is an official request for the purposes of section 20A of the Criminal Justice Act 1991 (offence of making false statement as to financial circumstances),

(ii) to comply with an order under section 34(2) (statement as to offender's financial circumstances), or

(iii) otherwise to co-operate with the court in its inquiry into the offender's financial circumstances.

Origin: CJA 2003 s.164(5) (part); CJCA 2015 Sch.11 para.23.

(2) If the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender for the purposes of section 87, it may make such determination as it considers appropriate.

Origin: CJA 2003 s.164(5) (part).

89 Remission of fines following determination under section 88

(1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 88 (offender absent or failing to provide information).

Origin: CJA 2003 s.165(1).

(2) If on subsequently inquiring into the offender's financial circumstances the court is satisfied that, had it had the results of that inquiry when sentencing the offender, it—

(a) would have fixed a smaller amount, or

(b) would not have fined the offender,

it may remit the whole or part of the fine.

Origin: CJA 2003 s.165(2).

(3) Where under this section the court remits the whole or part of a fine after a term of imprisonment, or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000, has been fixed under—

(a) section 91, or

(b) section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default),

it must reduce the term by the corresponding proportion.

Origin: CJA 2003 s.165(3); PCA.

(4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.

Origin: CJA 2003 s.165(4).

(5) Subsection (6) applies where—

(a) under this section the court remits the whole or part of a fine,

(b) the offender was ordered under section 41 to pay a surcharge, and

(c) the amount of the surcharge was set by reference to the amount of the fine.

Origin: CJA 2003 s.165(5) (part); ABCPA 2014 s.179(3).

(6) The court must—

(a) determine how much the surcharge would have been if the fine had not included the amount remitted, and

(b) remit the balance of the surcharge.

Origin: CJA 2003 s.165(5) (part); ABCPA 2014 s.179(3).

Fines: payment

90 Fine imposed by Crown Court: power to allow time for payment or payment by instalments

When the Crown Court imposes a fine on an offender, it may make an order—

(a) allowing time for the payment of the fine, or

(b) directing payment of the fine by instalments of the amounts and on the dates specified in the order.

Origin: PCC(S)A 2000 s.139(1) (part).

91 Fine imposed on offender by Crown Court: duty to make term in default order

(1) This section applies when the Crown Court imposes a fine on an offender.
But it does not apply in relation to a fine imposed by the Crown Court on appeal against a decision of a magistrates' court.

Origin: PCC(S)A 2000 s.139(2) (part), (9) (part).

(2) Subsections (3) to (5) also apply in relation to a fine imposed on an offender—
(a) by the criminal division of the Court of Appeal, or
(b) by the Supreme Court on appeal from that division.

Origin: PCC(S)A 2000 s.139(9) (part); CRA 2005 Sch.9 para.69.

(3) The court must make an order (a "term in default order") fixing a term—
(a) of imprisonment, or
(b) of detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000,
which the offender is to undergo if any sum which the offender is liable to pay is not duly paid or recovered.

Origin: PCC(S)A 2000 s.139(2) (part); drafting.

(4) Column 3 of the following Table sets out the maximum term of imprisonment or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 which may be fixed by a term in default order in relation to a sum that is—
(a) more than the corresponding entry (if any) in column 1, but
(b) not more than the corresponding entry (if any) in column 2.

Amount of sum		*Maximum term*
More than	*Not more than*	
	£200	7 days
£200	£500	14 days
£500	£1,000	28 days
£1,000	£2,500	45 days
£2,500	£5,000	3 months
£5,000	£10,000	6 months
£10,000	£20,000	12 months
£20,000	£50,000	18 months
£50,000	£100,000	2 years
£100,000	£250,000	3 years

Amount of sum		*Maximum term*
More than	*Not more than*	
£250,000	£1,000,000	5 years
£1,000,000		10 years

Origin: PCC(S)A 2000 s.139(4) (part).

(5) The offender may not be committed to prison, or detained, by virtue of a term in default order on the same occasion as the fine is imposed unless—

(a) the offence to which the fine relates is punishable with imprisonment and the offender appears to the court to have sufficient means to pay the sum forthwith,

(b) it appears to the court that the offender is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods,

(c) on that occasion the court sentences the offender to immediate imprisonment, custody for life or detention in a young offender institution for that or another offence, or

(d) the offender is already serving a sentence of custody for life or a term—

(i) of imprisonment,

(ii) of detention in a young offender institution, or

(iii) of detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention in default).

Origin: PCC(S)A 2000 s.139(3) (part); drafting.

(6) Where any person liable for the payment of a fine to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term ("the current term")—

(a) of imprisonment,

(b) of detention in a young offender institution, or

(c) of detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention in default),

the court may order that any term of imprisonment or detention fixed by a term in default order is not to begin to run until after the end of the current term.

Origin: PCC(S)A 2000 s.139(5) (part).

(7) Nothing in any enactment which authorises the Crown Court to deal with an offender in any way in which a magistrates' court might have dealt, or could deal, with the offender restricts the powers conferred by this section.

This is subject to subsection (8).

Origin: PCC(S)A 2000 s.139(7) (part).

(8) Where—

(a) the Crown Court imposes a fine in exercise of powers to deal with an offender in any way in which a magistrates' court might have dealt, or could deal, with the offender, and

(b) section 149(1) of the Customs and Excise Management Act 1979 (maximum periods of imprisonment in default of payment of certain

fines) specifies a period that would have applied to the fine had it been imposed by a magistrates' court,

the term imposed by the Crown Court under subsection (3) in relation to the fine must not exceed that period.

Origin: PCC(S)A 2000 s.139(8).

(9) For the purposes of any reference in this section, however expressed, to the term of imprisonment or other detention—

(a) to which a person has been sentenced, or

(b) which, or part of which, the person has served,

consecutive terms and terms which are wholly or partly concurrent are treated as a single term, unless the context otherwise requires.

Origin: PCC(S)A 2000 s.139(10) (part).

(10) Any reference in this section, however expressed, to a previous sentence is to be read as a reference to a previous sentence passed by a court in Great Britain.

Origin: PCC(S)A 2000 s.139(11) (part).

92 Enforcement of fines imposed on offenders by Crown Court

(1) - A fine imposed on an offender by the Crown Court is to be treated for the purposes of collection, enforcement and remission as having been imposed—

(a) - by a magistrates' court specified in an order made by the Crown Court, or

(b) - if no such order is made, by the magistrates' court by which the offender was sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998,

and as having been so imposed on conviction by the magistrates' court in question.

This is subject to subsection (5).

Origin: PCC(S)A 2000 s.140(1) (part); CJA 2003 Sch.3 para.74(4)(b).

(2) - Subsection (3) applies where a magistrates' court issues a warrant of commitment on a default in the payment of a fine imposed by the Crown Court on an offender.

Origin: PCC(S)A 2000 s.140(2) (part).

(3) - The term of imprisonment, or detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000, specified in the warrant of commitment as the term which the offender is liable to serve is to be—

(a) - the term fixed by the Crown Court under section 91(3), or

(b) - if that term has been reduced under section 79(2) of the Magistrates' Courts Act 1980 (part payment) or section 85(2) of that Act (remission), that term as so reduced,

even if that term exceeds the period applicable to the case under section 149(1) of the Customs and Excise Management Act 1979 (maximum periods of imprisonment in default of payment of certain fines).

Origin: PCC(S)A 2000 s.140(3) (part).

(4) - Subsections (1) to (3) apply in relation to a fine imposed on an offender—

(a) - by the criminal division of the Court of Appeal, or

(b) by the Supreme Court on appeal from that division,

as they apply in relation to a fine imposed by the Crown Court.

References in those subsections to the Crown Court (except the reference in subsection (1)(b)) are to be read accordingly.

Origin: PCC(S)A 2000 s.140(4) (part); CRA 2005 Sch.9 para.69.

(5) A magistrates' court must not, under section 85(1) or 120 of the Magistrates' Courts Act 1980 as applied by subsection (1), remit the whole or any part of a fine imposed by—

(a) the Crown Court,

(b) the criminal division of the Court of Appeal, or

(c) the Supreme Court on appeal from that division,

without the consent of the Crown Court.

Origin: PCC(S)A 2000 s.140(5) (part); CRA 2005 Sch.9 para.69.

(6) Where payment of a fine is enforceable by a magistrates' court by virtue of this section, the fine is to be treated for the purposes of section 38 of the Courts Act 2003 (application of receipts of designated officers) as having been imposed by a magistrates' court.

Origin: PCC(S)A 2000 s.140(6) (part); PCA.

93 Power of Crown Court to allow time for payment, or payment by instalments, of costs and compensation

Where the Crown Court makes an order mentioned in Part 1 of Schedule 9 to the Administration of Justice Act 1970 (orders against accused for the payment of costs or compensation), the court may—

(a) allow time for the payment of the sum due under the order;

(b) direct payment of that sum by instalments of the amounts and on the dates specified in the order.

Origin: PCC(S)A 2000 s.141.

CHAPTER 2

COMPENSATION ORDERS

Compensation orders

94 Compensation orders

In this Code "compensation order" means an order made in respect of an offender for an offence that requires the offender—

(a) to pay compensation for any personal injury, loss or damage resulting from—

(i) the offence, or

(ii) any other offence which is taken into consideration by the court in determining the sentence for the offence, or

(b) to make payments for—

(i) funeral expenses, or

(ii) bereavement,

in respect of a death resulting from any such offence.

Origin: PCC(S)A 2000 s.130(1) (part); drafting.

Making a compensation order

95 Compensation orders: availability

(1) A compensation order is available for a court by or before which an offender is convicted of an offence.

This is subject to section 97 (road accidents).

Origin: PCC(S)A 2000 s.130(1) (part).

(2) Where a compensation order is available, the court may make such an order whether or not it also deals with the offender for the offence in any other way.

Origin: PCC(S)A 2000 s.130(1) (part); PCA.

96 Compensation orders: exercise of court's powers

(1) The amount to be paid under a compensation order must be specified in the order.

Origin: Drafting.

(2) That amount must be the amount that the court considers appropriate, having regard to any evidence and any representations that are made by or on behalf of the offender or the prosecution.

But see also sections 97 to 100.

Origin: PCC(S)A 2000 s.130(4); drafting.

(3) In determining—

(a) whether to make a compensation order against an offender, or

(b) the amount to be paid under such an order,

the court must have regard to the offender's means, so far as they appear or are known to the court.

Origin: PCC(S)A 2000 s.130(11).

(4) Where the court considers—

(a) that it would be appropriate both to impose a fine and to make a compensation order, but

(b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court must give preference to compensation (though it may impose a fine as well).

Origin: PCC(S)A 2000 s.130(12).

Particular cases

97 Road accidents

(1) A compensation order may not be made in respect of funeral expenses or bereavement in respect of a death due to a road accident.

Origin: PCC(S)A 2000 s.130(1) (part).

(2) A compensation order may be made in respect of injury, loss or damage due to a road accident only if it is in respect of—

(a) loss suffered by a person's dependants in consequence of the person's death,

(b) damage which is treated by section 98 as resulting from an offence under the Theft Act 1968 or Fraud Act 2006, or

(c) uninsured harm.

Origin: PCC(S)A 2000 s.130(6) (part); Fraud Act 2006 Sch.1 para.29.

(3) In subsection (2), "uninsured harm" means injury, loss or damage as respects which—

(a) the offender was uninsured in relation to the use of the vehicle in question, and

(b) compensation is not payable under any arrangements to which the Secretary of State is a party.

An offender is not uninsured in relation to the use of a vehicle for this purpose if that use of it is exempted from insurance by section 144 of the Road Traffic Act 1988.

Origin: PCC(S)A 2000 s.130(6) (part), (8).

(4) Where a compensation order is made in respect of injury, loss or damage due to a road accident, the amount to be paid may include an amount representing all or part of any loss of, or reduction in, preferential rates of insurance attributable to the accident.

Origin: PCC(S)A 2000 s.130(7).

(5) In this Chapter, "road accident" means an accident arising out of the presence of a motor vehicle on a road.

Origin: PCC(S)A 2000 s.130(1) (part).

98 Damage to property and clean-up costs resulting from certain offences

(1) Subsection (2) applies in the case of an offence under the Theft Act 1968 or Fraud Act 2006, where the property in question is recovered.

Origin: PCC(S)A 2000 s.130(5) (part); Fraud Act 2006 Sch.1 para.29.

(2) Any damage to the property occurring while it was out of the owner's possession is to be treated for the purposes of section 94 as having resulted from the offence.

This applies regardless of how the damage was caused and who caused it.

Origin: PCC(S)A 2000 s.130(5) (part).

(3) - Section 29 of the Ancient Monuments and Archaeological Areas Act 1979 makes provision about the person in whose favour a compensation order relating to certain offences involving damage to monuments is to be made.

Origin: Drafting.

(4) - Section 33B of the Environmental Protection Act 1990 (clean-up costs) provides for certain costs connected with certain offences relating to waste to be loss or damage resulting from those offences for the purposes of section 94.

Origin: Drafting.

99 Funeral expenses and bereavement: cases other than road accidents

(1) - A compensation order in respect of funeral expenses may be made for the benefit of anyone who incurred the expenses.

Origin: PCC(S)A 2000 s.130(9).

(2) - A compensation order in respect of bereavement may be made only for the benefit of a person for whose benefit a claim for damages for bereavement could be made under section 1A of the Fatal Accidents Act 1976.

Origin: PCC(S)A 2000 s.130(10) (part).

(3) - The amount to be paid in respect of bereavement under a compensation order must not exceed the amount for the time being specified in section 1A(3) of that Act.

Origin: PCC(S)A 2000 s.130(10) (part).

Limits on compensation orders made by magistrates' court in respect of young offenders

100 Limit on amount payable under compensation order of magistrates' court in case of young offender

(1) - This section applies where—

(a) - a magistrates' court is dealing with an offender for one or more offences (each, a "main offence") of which the offender was convicted when under 18, and

(b) - the court makes a compensation order in respect of—

(i) - a main offence, or

(ii) - any offence taken into consideration by the court in determining sentence for a main offence (a "TIC offence").

Origin: PCC(S)A 2000 s.131(A1); CCA 2013 Sch.16 para.8(2), (4).

(2) - The compensation in respect of a main offence must not exceed £5,000.

Origin: PCC(S)A 2000 s.131(1); CCA 2013 Sch.16 para.8(3).

(3) - The total compensation in respect of main offences and TIC offences must not exceed £5,000 multiplied by the number of main offences.

Origin: PCC(S)A 2000 s.131(2); drafting.

(4) For this purpose, "the compensation" in respect of a main offence or a TIC offence means the amounts to be paid under any compensation order or compensation orders made in respect of that offence.

Origin: Drafting; PCA.

(5) This section is subject to section 33B(6) of the Environmental Protection Act 1990 (clean-up costs relating to certain offences relating to waste).

Origin: Drafting.

Supplementary

101 Compensation orders: suspension of entitlement and appeals etc

(1) A person in whose favour a compensation order is made is not entitled to receive the amount due to the person until there is no further possibility of the order being varied or set aside on appeal (disregarding any power to grant leave to appeal out of time).

Origin: PCC(S)A 2000 s.132(1); PCA.

(2) Criminal Procedure Rules may make provision regarding the way in which the appropriate court is to deal with money paid in satisfaction of a compensation order where the entitlement of the person in whose favour it was made is suspended under subsection (1).

Origin: PCC(S)A 2000 s.132(2) (part); SI 2004/2035 Sch. para.42; PCA; drafting.

(3) The Court of Appeal may by order annul or vary any compensation order made by the Crown Court, even if the conviction is not quashed.

Origin: PCC(S)A 2000 s.132(3) (part).

(4) Where a compensation order is annulled or varied under subsection (3)—

(a) the compensation order—

(i) if annulled, is not to take effect;

(ii) if varied, is to take effect as varied;

(b) the Court of Appeal must also vary any order previously made under section 41 (court's duty to order payment of surcharge) so as to secure that the offender's liability under that order is the same as it would have been if the offender were being dealt with by the Crown Court.

Origin: PCC(S)A 2000 s.132(3) (part), (4A) (part); DVCVA 2004 Sch.10 para.49.

(5) Where a compensation order has been made against an offender in respect of an offence taken into consideration by the court in determining sentence for one or more other offences (each, a "main offence")—

(a) the order ceases to have effect if the offender successfully appeals against conviction of the main offence or, if more than one, all the main offences;

(b) the offender may appeal against the order as if it were part of the sentence imposed in respect of the main offence or, if more than one, any of the main offences.

Origin: PCC(S)A 2000 s.132(5); drafting.

Reviews and appeals

102 Review of compensation orders

(1) - This section applies where—

(a) - a compensation order has been made against an offender,

(b) - there is no further possibility of the compensation order being varied or set aside on appeal (disregarding any power to grant leave to appeal out of time), and

(c) - the offender has not paid into court the whole of the amount required to be paid under the order.

Origin: PCC(S)A s.133(1) (part), (2); PCA. -

(2) - The appropriate court may, on the application of the offender—

(a) - discharge the order, or

(b) reduce the amount which remains to be paid.

This is subject to subsection (3).

Origin: PCC(S)A 2000 s.133(1) (part). -

(3) - The appropriate court may exercise that power only—

(a) - if it appears to the court that the injury, loss or damage in respect of which the compensation order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order,

(b) - if, in the case of a compensation order in respect of the loss of any property, it appears to the court that the property has been recovered by the person in whose favour the order was made, or

(c) if—

(i) it appears to the court that the offender's means are insufficient or have been reduced (see subsections (5) and (6)), and

(ii) where the compensation order was made by the Crown Court, the appropriate court has obtained the consent of the Crown Court.

Origin: PCC(S)A 2000 s.133(3) (part), (4); drafting. -

(4) - Subsections (5) to (7) apply for the purposes of subsection (3)(c).

Origin: Drafting.

(5) - The offender's means are "insufficient" if they are not sufficient to satisfy in full—

(a) - the compensation order, and

(b) - every order of any of the following kinds made against the offender in the same proceedings—

(i) - a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002;

(ii) - an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013;

(iii) - a slavery and trafficking reparation order under section 8 of the Modern Slavery Act 2015.

Origin: PCC(S)A 2000 s.133(3) (part); MSA 2015 Sch.5 para.14; drafting.

(6) The offender's means "have been reduced" if they—

(a) have unexpectedly been substantially reduced since the compensation order was made, and

(b) seem unlikely to increase for a considerable period.

Origin: PCC(S)A 2000 s.133(3) (part); drafting.

(7) If the compensation order was made on appeal it is to be treated—

(a) if made on an appeal from a magistrates' court, as if made by that magistrates' court;

(b) if made on an appeal—

(i) from the Crown Court, or

(ii) from the criminal division of the Court of Appeal,

as if made by the Crown Court.

Origin: PCC(S)A s.133(5).

103 Effect of compensation order on subsequent award of damages in civil proceedings

(1) This section has effect where—

(a) a compensation order has been made in favour of any person in respect of any injury, loss or damage, and

(b) a claim by the person in civil proceedings for damages in respect of the injury, loss or damage subsequently falls to be determined.

Origin: PCC(S)A 2000 s.134(1).

(2) The damages in the civil proceedings must be assessed without regard to the order.

Origin: PCC(S)A 2000 s.134(2) (part).

(3) But the plaintiff may recover only an amount equal to the aggregate of—

(a) any amount by which the damages assessed exceed the compensation, and

(b) a sum equal to any portion of the compensation which the person fails to recover ("unrecovered compensation").

Origin: PCC(S)A 2000 s.134(2) (part).

(4) The plaintiff may not enforce the judgment, so far as it relates to unrecovered compensation, without the leave of the court.

Origin: PCC(S)A 2000 s.134(2) (part).

Interpretation

104 Compensation orders: interpretation

(1) In this Chapter—

"appropriate court", in relation to a compensation order, means the magistrates' court which, by virtue of section 41(1) of the Administration of Justice Act 1970, for the time being has functions in relation to collection and enforcement of the order;

"compensation order" has the meaning given by section 94; -
"court" does not include the Court Martial; -
"road accident" has the meaning given by section 97. -

Origin: PCC(S)A 2000 PCC(S)A s.132(2) (part), s.133(1), s.163(1); drafting.

(2) - For the purposes of this Chapter a compensation order is made in respect of an offence if it relates to personal injury, loss, damage or death resulting from that offence.
For this purpose "offence" includes an offence taken into consideration by a court when sentencing an offender for an offence of which the offender has been convicted.

Origin: Drafting.

CHAPTER 3

FORFEITURE, DEPRIVATION OF PROPERTY ETC

105 Deprivation orders

In this Code "deprivation order" means an order under this Chapter which—
(a) - is made in respect of an offender for an offence, and
(b) - deprives the offender of any rights in the property to which it relates.

Origin: PCC(S)A 2000 s.143(3) (part); drafting.

106 Deprivation orders: availability

(1) - A deprivation order relating to any property to which subsection (2) applies is available for the court by or before which an offender has been convicted of an offence.

Origin: PCC(S)A 2000 s.143(1) (part), (2) (part); drafting.

(2) - This subsection applies to property which—
(a) - has been lawfully seized from the offender, or
(b) - was in the offender's possession or under the offender's control when—
(i) the offender was apprehended for the offence, or
(ii) a summons in respect of it was issued,
if subsection (3) or (5) applies.

Origin: PCC(S)A 2000 s.143(1) (part), (2) (part); drafting.

(3) - This subsection applies if the court is satisfied that the property—
(a) - has been used for the purpose of committing, or facilitating the commission of, any offence, or
(b) - was intended by the offender to be used for that purpose.

Origin: PCC(S)A 2000 s.143(1) (part); drafting.

(4) - For the purposes of subsection (3), facilitating the commission of an offence - includes taking any steps after it has been committed for the purpose of— -
(a) - disposing of any property to which the offence relates, or

(b) avoiding apprehension or detection.

Origin: PCC(S)A 2000 s.143(8); drafting.

(5) This subsection applies if—

(a) the offence mentioned in subsection (1), or

(b) an offence which the court has taken into consideration in determining the offender's sentence,

consists of unlawful possession of the property.

Origin: PCC(S)A 2000 s.143(2) (part); drafting.

(6) Subsection (1) is subject to any restriction on forfeiture in any enactment contained in an Act passed on or after 29 July 1988.

Origin: PCC(S)A 2000 s.143(4) (part); drafting.

107 Vehicle to be treated as used for purpose of certain offences

(1) This section applies where a person commits an offence listed in subsection (2) by—

(a) driving, attempting to drive, or being in charge of, a vehicle,

(b) failing to comply with a requirement made under section 7 or 7A of the Road Traffic Act 1988 (failure to provide specimen for analysis or laboratory test or to give permission for such a test) in the course of an investigation into whether the offender had committed an offence while driving, attempting to drive, or being in charge of, a vehicle, or

(c) failing, as the driver of a vehicle, to comply with subsection (2) or (3) of section 170 of the Road Traffic Act 1988 (duty to stop and give information or report accident).

Origin: PCC(S)A 2000 s.143(6) (part); PRA 2002 s.56(6).

(2) Those offences are—

(a) an offence under the Road Traffic Act 1988 which is punishable with imprisonment;

(b) an offence of manslaughter;

(c) an offence under section 35 of the Offences Against the Person Act 1861 (wanton and furious driving).

Origin: PCC(S)A 2000 s.143(7).

(3) The vehicle is to be regarded for the purposes of section 106 (and section 110(3)(b)) as used for the purpose of committing the offence (and for the purpose of committing any offence of aiding, abetting, counselling or procuring the commission of the offence).

Origin: PCC(S)A 2000 s.143(6) (part).

108 Exercise of power to make deprivation order

(1) In considering whether to make a deprivation order in respect of any property, a court must have regard to—

(a) the value of the property, and

(b) the likely financial and other effects on the offender of making the order (taken together with any other order that the court contemplates making).

Origin: PCC(S)A 2000 s.143(5).

(2) Where a deprivation order is available for an offence, the court may make such an order whether or not it deals with the offender in any other way for the offence.

Origin: PCC(S)A 2000 s.143(4) (part).

109 Deprivation order: property to be taken into possession of police or Secretary of State

(1) Where the court makes a deprivation order in respect of an offender for an offence, this section applies to the property to which the order relates.

Origin: Drafting.

(2) If the court considers that the offence—

(a) related to immigration or asylum, or

(b) was committed for a purpose in connection with immigration or asylum,

it may order that the property is to be taken into the possession of the Secretary of State.

Origin: UKBA 2007 s.25(1) (part), (2) (part), (3)(a).

(3) Property that is taken into the possession of the Secretary of State by virtue of subsection (2) is to be treated for the purposes of section 26 of the UK Borders Act 2007 (disposal of property) as property that has come into the possession of the Secretary of State as mentioned in subsection (1)(b) of that section.

Origin: Drafting.

(4) Unless the court makes an order under subsection (2), the property is to be taken into the possession of the police (if it is not already in their possession).

Origin: PCC(S)A 2000 s.143(3) (part).

110 Property to which a deprivation order applies: orders by magistrates' court

(1) This section applies where property to which a deprivation order relates is in the possession of the police by virtue of section 109(4).

Origin: PCC(S)A 2000 s.144(1) (part).

(2) A magistrates' court may, on the application of a police officer or a claimant of the property—

(a) order the delivery of the property to the person appearing to the court to be its owner, or

(b) if its owner cannot be ascertained, make any other order about the property.

This is subject to subsection (3).

Origin: P(P)A 1897 s.1(1) (part); PCC(S)A 2000 s.144(1) (part); drafting.

(3) If the application is made by a claimant of the property, the court may make an order under subsection (2) only if—

(a) the application is made before the end of the period of 6 months beginning with the day after the deprivation order is made, and

(b) the claimant satisfies the court—

(i) that the claimant did not consent to the offender's possession of the property, or

(ii) if the deprivation order was made by virtue of section 106(3) (property used for purposes of offence), that the claimant did not know, and had no reason to suspect, that the property was likely to be used for a purpose mentioned in section 106(3).

Origin: PCC(S)A 2000 s.144(1) (part).

(4) Any right of a person to take legal proceedings against a person in possession of property by virtue of an order under subsection (2)—

(a) ceases at the end of the 6 month period mentioned in subsection (3)(a), but

(b) is not otherwise affected by the order.

Origin: P(P)A 1897 s.1(2); PCC(S)A s.144(1); drafting.

111 Regulations about unclaimed property to which deprivation order applies

(1) The property about which regulations under section 2 of the Police (Property) Act 1897 (disposal of unclaimed property in possession of the police) may be made includes property which is in the possession of the police by virtue of section 109(4) and in respect of which—

(a) no application under section 110 was made by a claimant of the property during the 6 month period mentioned in subsection (3)(a) of that section, or

(b) no such application has succeeded.

Origin: P(P)A 1897 s.2(1); PCC(S)A 2000 s.144(1) (part), (2); drafting.

(2) Where section 2 of the Police (Property) Act 1897 applies by virtue of this section the restrictions in subsection (2A)(a) and (3) of that section (restrictions about dealing with property within a year) do not apply.

Origin: PCC(S)A 2000 s.144(4).

(3) Regulations made by virtue of this section may not provide for the local policing body to become the owner of property which is the subject of an order under section 112 (court order as to application of property subject to deprivation order).

Origin: P(P)A 1897 s.2(2B); PCC(S)A 2000 s.144(3), (5); PRSRA 2011 Sch.16 para.62(3); PCA.

112 Application of proceeds of property subject to deprivation order

(1) This section applies where a court makes a deprivation order in respect of any property and—

(a) the offence was one which resulted in a person suffering personal injury, loss or damage, or

(b) any such offence is taken into consideration by the court in determining sentence.

Origin: PCC(S)A s.145(1) (part); drafting.

(2) The court may also make an order that any proceeds which—

(a) arise out of the disposal of the property, and

(b) do not exceed a sum specified by the court,

are to be paid to the person.

Origin: PCC(S)A s.145(1) (part); drafting.

(3) The court may make an order under this section only if it is satisfied that, but for the inadequacy of the offender's means, it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the amount specified under subsection (2)(b).

Origin: PCC(S)A s.145(2).

(4) An order under this section has no effect—

(a) before the end of the 6 month period mentioned in section 110(3)(a), or

(b) if a successful application under—

(i) section 110, or

(ii) section 1(1) of the Police (Property) Act 1897,

has been made.

Origin: PCC(S)A s.145(3); drafting.

113 Forfeiture etc

(1) For circumstances in which the court may be required to order forfeiture of certain material, see—

Power to make order	*Description of order*
section 25 or 29I of the Public Order Act 1986	power to order forfeiture of written material or recordings to which certain offences under Part 3 or 3A of that Act apply (racial hatred and hatred against persons on religious grounds or grounds of sexual orientation)
section 1(4) of the Obscene Publications Act 1964	duty to order forfeiture of articles seized under section 3 of the Obscene Publications Act 1959 in case where person convicted under section 2 of that Act

(2) For provision about other forfeiture orders and deprivation orders etc that are - available for courts dealing with offenders for particular offences, see— -

Power to make order	*Description of order*
section 11 of the Modern Slavery Act 2015	forfeiture of vehicle, ship or aircraft on conviction of offence under section 2 of the Modern Slavery Act 2015 (human trafficking)
section 4 of the Prevention of Social Housing Fraud Act 2013	unlawful profit order on conviction of offences under section 1 or 2 of that Act and associated offences
sections 33, 35, 37, 38 and 40 of the Animal Welfare Act 2006	power with respect to deprivation and destruction of animals and equipment on conviction of certain offences under that Act
section 23 of the Terrorism Act 2000	forfeiture of money and property on conviction of certain offences under that Act (terrorist property offences)
section 23A of the Terrorism Act 2000	forfeiture of money and property on conviction of— (a) certain offences under that Act or the Terrorism Act 2006, or (b) offences specified in Schedule 1 to this Act which have a terrorist connection
section 120A of the Terrorism Act 2000	supplementary power to forfeit items on conviction of certain offences under that Act (weapons training and possessing things and collecting information for the purposes of terrorism)
section 6 of the Knives Act 1997	offences under sections 1 and 2 of that Act: forfeiture of knives and publications
sections 4 and 4A of the Dangerous Dogs Act 1991	power or duty to order destruction of dog, or make contingent destruction order, on conviction of certain offences under that Act
section 6 of the Crossbows Act 1987	offence under that Act: forfeiture or disposal of crossbow or any part
section 7 of the Forgery and Counterfeiting Act 1981	order for forfeiture of objects relating to offences under Part 1 of that Act (forgery and kindred offences)
section 25C of the Immigration Act 1971	forfeiture of ship, vehicle or aircraft connected with offence under section 25, 25A or 25B of that Act (assisting unlawful immigration to member State or entry to the UK in certain circumstances)
section 27 of the Misuse of Drugs Act 1971	forfeiture order in case of certain offences under— (a) that Act, or (b) certain provisions of the Proceeds of Crime Act 2002

Power to make order	*Description of order*
section 52 of the Firearms Act 1968	forfeiture and disposal of firearm in certain cases including— (a) offences under that Act, (b) offence for which custodial sentence is imposed, (c) certain offences under the Violent Crime Reduction Act 2006, and (d) other circumstances where conditions are imposed on offender with respect to firearms
section 3 of the Children and Young Persons (Harmful Publications) Act 1955	forfeiture of copies of work to which the Act applies and other articles on conviction under section 2 of that Act
section 1(2) of the Prevention of Crime Act 1953	offence under section 1(1) of that Act (carrying offensive weapon without reasonable excuse or lawful authority)
section 3 of the Incitement to Disaffection Act 1934	power to order destruction etc of documents connected with offence under that Act

(3) - Nothing in this section affects the power of the court to make an order under - this Chapter in respect of an offence. -

Origin: Drafting.

CHAPTER 4

RESTITUTION ORDERS

114 Restitution orders

[To be added]

115 Confiscation orders under other Acts

For provision about confiscation orders, see— -
(a) - the Proceeds of Crime Act 2002, or
(b) - in relation to an offence committed before 24 March 2003—
(i) - the Drug Trafficking Act 1994;
(ii) - Part 6 of the Criminal Justice Act 1988.

Origin: Drafting. -

PART 8

DISQUALIFICATION

CHAPTER 1

DRIVING DISQUALIFICATION ORDERS

116 Driving disqualification order

In this Code "driving disqualification order" means an order made under this Chapter in respect of an offender that the offender is disqualified, for the period specified in the order, for holding or obtaining a driving licence.

Origin: PCC(S)A 2000 s.146(1) (part), s.147(3) (part), (4) (part).

117 Driving disqualification: availability for any offence

(1) - A driving disqualification order is available for the court by or before which an offender is convicted of an offence if— -

(a) - the offence was committed on or after 1 January 1998, and

(b) - the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court (and the notice has not been withdrawn).

Origin: PCC(S)A 2000 s.146(1) (part); (3).

(2) - Where a driving disqualification order is available by virtue of this section, the court may make a driving disqualification order whether or not it also it deals with the offender for the offence in any other way.

Origin: PCC(S)A 2000 s.146(1) (part), (2); drafting.

118 Driving disqualification order: availability where vehicle used for purposes of crime

(1) - A driving disqualification order is available also where—

(a) - an offender has been convicted of an offence punishable on indictment with imprisonment for a term of 2 years or more,

(b) - the offender is before the Crown Court, having been—

(i) - convicted of the offence before that court, or

(ii) - committed to that court for sentence under section 13 (committal for sentence on summary trial of offence triable either way: adults) in respect of the offence, and

(c) - the Crown Court is satisfied that a motor vehicle was used (by the offender or by anyone else) for the purpose of committing, or facilitating the commission of, the offence.

Origin: PCC(S)A 2000 s.147(1), (3). -

(2) - For the purposes of subsection (1), facilitating the commission of an offence includes taking any steps after it has been committed for the purpose of— -

(a) - disposing of any property to which the offence relates, or

(b) - avoiding apprehension or detection.

Origin: PCC(S)A 2000 s.147(6).

(3) A driving disqualification order is available also where—

(a) an offender is convicted by or before a court of—

(i) common assault, or

(ii) any other offence involving an assault (including an offence of aiding, abetting, counselling or procuring, or an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) related to, an offence), and

(b) the court is satisfied that the assault was committed by driving a motor vehicle.

Origin: PCC(S)A 2000 s.147(2), (4); SCA 2007 s.63(1), Sch.6 para.39.

119 Disqualification period

Where a court makes a driving disqualification order against an offender in respect of an offence, the disqualification period must be such period as the court considers appropriate.

But this is subject to sections 121 and 122.

Origin: PCC(S)A s.146(1) (part), s.147(3) (part), (4) (part).

120 Requirement to produce licences where driving disqualification order made

A court which makes a driving disqualification order in respect of an offender must require the offender to produce any (and, if more than one, all) of the following held by the offender—

(a) a driving licence;

(b) a Northern Ireland licence (within the meaning of Part 3 of the Road Traffic Act 1988);

(c) a Community licence (within the meaning of Part 3 of the Road Traffic Act 1988).

Origin: PCC(S)A 2000 s.146(4), s.147(5); C(IC)A 2003 Sch.5 paras.73, 74.

121 Extension of disqualification where custodial sentence also imposed

(1) This section applies where a court—

(a) imposes a custodial sentence on an offender for an offence, and

(b) makes a driving disqualification order in respect of the offender for the same offence.

Origin: PCC(S)A 2000 s.147A(1); CJA 2009 Sch.16 para.5(1); IP1; drafting.

(2) But this section does not apply where the custodial sentence is—

(a) a suspended sentence, or

(b) a life sentence in relation to which the court makes a whole life order under section 234(2)(b).

Origin: PCC(S)A 2000 s.147(7); CJA 2009 Sch.16 para.5(1).

(3) The disqualification period must be—

(a) the discretionary disqualification period, and

(b) the appropriate extension period.

Origin: PCC(S)A 2000 s.147A(2); CJA 2009 Sch.16 para.5(1).

(4) - The discretionary disqualification period is the period which the court would, in the absence of this section, have specified in the driving disqualification order.

Origin: PCC(S)A 2000 s.147A(3); CJA 2009 Sch.16 para.5(1).

(5) - The appropriate extension period for a sentence specified in column 2 is equal to the period calculated in accordance with column 3—

	Sentence	*Length of appropriate extension period*
1	a detention and training order under section 163 (offenders under 18: detention and training orders)	half the term of the detention and training order
2	an extended sentence of detention under section 164 (persons under 18)	two-thirds of the term imposed pursuant to section 164(a) (the appropriate custodial term)
3	a sentence under section 180 (special custodial sentence for certain offenders of particular concern: adults aged 18 to 20)	half the term imposed pursuant to section 180(2)(a) (the appropriate custodial term)
4	an extended sentence of detention in a young offender institution	two-thirds of the term imposed pursuant to section 181(a) (the appropriate custodial term)
5	a sentence under section 193 (special custodial sentence for certain offenders of particular concern: adults aged 21 and over)	half the term imposed pursuant to section 193(2)(a) (the appropriate custodial term)
6	an extended sentence of imprisonment	two-thirds of the term imposed pursuant to section 194(a) (the appropriate custodial term)
7	a life sentence in relation to which a minimum term order is made under section 234(2)(a)	the term specified in the minimum term order
8	any other case	half the custodial sentence imposed.

Origin: PCC(S)A 2000 s.147A(4); CJA 2009 Sch.16 para.5(1); LASPOA 2012 Sch.21 para.15(2), (3); CJCA 2015 Sch.1 para.13.

(6) - Any period determined under subsection (5) which includes a fraction of a day must be rounded up to the nearest number of whole days.

Origin: PCC(S)A 2000 s.147A(5); CJA 2009 Sch.16 para.5(1).

122 Effect of custodial sentence in other cases

(1) This section applies where a court makes a driving disqualification order against an offender in respect of an offence, and—

(a) it imposes a custodial sentence (other than a suspended sentence) on the offender for another offence, or

(b) a custodial sentence previously imposed on the offender has not expired.

Origin: PCC(S)A 2000 s.147B(1); CJA 2009 Sch.16 para.5(1).

(2) In determining the disqualification period, the court must, if and to the extent that it is appropriate to do so, have regard to the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

But the court may not take into account for this purpose any custodial sentence that it imposes on the offender for the offence.

Origin: PCC(S)A 2000 s.147B(2), (3), (4); CJA 2009 Sch.16 para.5(1).

123 Driving disqualification orders: interpretation

In this Chapter—

"disqualification period", in relation to a driving disqualification order made in respect of an offender, means the period specified in the order as the period for which the offender is disqualified for holding or obtaining a driving licence;

"driving licence" means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988.

Origin: PCC(S)A 2000 s.146(5), s.147(7).

124 Driving disqualification etc under other Acts

See Part 3 of the Road Traffic Offenders Act 1988 for sentences available on conviction of certain road traffic offences, and, in particular—

(a) section 34 of that Act (disqualification);

(b) section 44 of that Act (endorsement of driving record).

Origin: Drafting.

CHAPTER 2

DISQUALIFICATION ETC UNDER OTHER ACTS

125 Offences relating to animals

(1) For orders relating to disqualification and licensing in the case of offences under the Animal Welfare Act 2006, see the following provisions of that Act—

(a) section 34(1) (disqualification);

(b) section 42 (orders with respect to licences).

(2) See section 4 of the Dangerous Dogs Act 1991 for orders relating to disqualification in the case of offences under that Act.

Origin: Drafting.

126 Company directors

See sections 2 and 5 of the Company Directors Disqualification Act 1986 (company director disqualification orders) for provision about orders available in relation to certain offences relating to companies, building societies and other bodies.

Origin: Drafting.

PART 9

COMMUNITY SENTENCES

CHAPTER 1

YOUTH REHABILITATION ORDERS

127 Youth rehabilitation orders

[To be added]

CHAPTER 2

COMMUNITY ORDERS

What a community order is

128 Community order

(1) In this Code "community order" means an order imposing one or more community order requirements.

Origin: CJA 2003 s.177(1) (part).

(2) The community order requirements are listed in column 1 of the community order requirements table (see section 129).

Origin: CJA 2003 s.177(1) (part).

(3) Provision about each requirement is made by the provisions of Schedule 3 mentioned in the corresponding entry in column 2 of that table.

Origin: Drafting.

129 Community order requirements table

The community order requirements table referred to in sections 128 and 134 is—

Requirement	*Further provision in Schedule 3*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
unpaid work requirement	Part 1		paragraph 3 of Schedule 3, paragraph 6(1) of Schedule 5
rehabilitation activity requirement	Part 2		paragraph 6(1) of Schedule 5
programme requirement	Part 3		paragraph 6(1) of Schedule 5
prohibited activity requirement	Part 4		paragraph 8 of Schedule 3
curfew requirement	Part 5		paragraph 10 of Schedule 3
exclusion requirement	Part 6		paragraph 12 of Schedule 3
residence requirement	Part 7		paragraph 14 of Schedule 3
foreign travel prohibition requirement	Part 8		
mental health treatment requirement	Part 9		paragraph 17 of Schedule 3, paragraph 6(1) of Schedule 5
drug rehabilitation requirement	Part 10		paragraph 20 of Schedule 3, paragraph 6(1) of Schedule 5
alcohol treatment requirement	Part 11		paragraph 24 of Schedule 3, paragraph 6(1) of Schedule 5

Requirement	*Further provision in Schedule 3*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
alcohol abstinence and monitoring requirement	Part 12	section 135(1), (2) or (3), paragraph 5(a) of Schedule 5	paragraph 26 of Schedule 3
attendance centre requirement	Part 13	section 135(4), paragraph 5(b) of Schedule 5	paragraph 29 of Schedule 3
electronic compliance monitoring requirement	Part 14	section 135(5)	paragraphs 35 and 34 of Schedule 3, paragraph 6(1) of Schedule 5
electronic whereabouts monitoring requirement	Part 14	section 135(6)	paragraphs 36 and 34 of Schedule 3

Origin: CJA 2003 s.177(1)(a), (aa), (c), (d), (e), (f), (g), (ga), (h), (i), (j), (ja), (l), (m), (2)(a), (d), (e), (f), (g), (h), (i); LASPOA 2012 s.72(1), s.76(2), (3), (9)(a); ORA 2014 s.15(2); CCA 2013 Sch.16 para.12(2)(b), (3)(b); drafting.

Availability

130 Availability of community order

(1) A community order is available for a court by or before which an offender is convicted of an offence if—

(a) the offender was aged 18 or over at the time of the conviction, and

(b) the offence is punishable with imprisonment.

Origin: CJA 2003 s. 150A(1)(a), s.177(1) (part); CJIA 2008 s.6(2), s.11(1), Sch.4 para.82; SI 2005/950 art.2; SI 2007/391 art.2; SI 2009/616 art.2; drafting.

(2) Subsection (1) is subject to—

(a) subsection (3),

(b) section 131 (restriction on making both community order and suspended sentence order), and

(c) section 37(8) of the Mental Health Act 1983 (community order not to be made in combination with hospital order or guardianship order in respect of same offence).

Origin: Drafting.

(3) A community order is not available in respect of an offence in relation to which a mandatory sentence requirement applies (see section 274).

Origin: CJA 2003 s.150 (part); VCRA 2006 Sch.1 para.9(3); LASPOA 2012 Sch.19 para.10; CJCA 2015 Sch.5 para.13.

(4) For the purposes of determining whether a community order is available for a sentencing court, the offence is to be regarded as punishable with imprisonment only if it is punishable with imprisonment by the sentencing court (or would be if the offender were aged 21 or over).

Origin: CJA 2003 s.150A(2); CJIA 2003 s.11(1); drafting.

131 Restriction on making both community order and suspended sentence order

A court may not make a community order in respect of an offence if it makes a suspended sentence order in respect of—

(a) the offence,

(b) any other offence of which the offender is convicted by or before it, or

(c) any other offence for which it deals with the offender.

Origin: CJA 2003 s.189(5).

Exercise of power to make community order

132 Exercise of power to impose community order: general considerations

(1) This section applies where a community order is available.

Origin: Drafting.

(2) The court must not make a community order in the offender's case unless it is of the opinion that—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it,

was serious enough to warrant the making of such an order.

Origin: CJA 2003 s.148(1) (part); drafting.

(3) In forming that opinion, the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.

Origin: CJA 2003 s.156(1) (part).

(4) The pre-sentence report requirements (see section 28) apply to the court in relation to forming that opinion.

Origin: CJA 2003 s.156(3)(b) (part).

(5) The fact that a court may, by virtue of subsection (2), make a community order in relation to an offence does not require it to do so.

Origin: CJA 2003 s.148(5)(a) (part); CJIA 2008 s.10.

133 Community order: effect of remand in custody

(1) In determining the restrictions on liberty to be imposed by a community order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with—

(a) the offence, or

(b) any other offence the charge for which was founded on the same facts or evidence.

Origin: CJA 2003 s.149(1); CJIA 2008 Sch.4 para.72.

(2) For this purpose a person is remanded in custody if—

(a) remanded in or committed to custody by order of a court,

(b) remanded to youth detention accommodation (see subsection (3)), or

(c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

Origin: CJA 2003 s.149(2), 242(2), (3); LASPOA 2012 Sch.12 para.51(a).

(3) The reference in subsection (2)(b) to being remanded to youth detention accommodation—

(a) has the same meaning as in Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail): see, in particular, section 91 of that Act, but

(b) also includes a reference to being remanded or committed before 3 December 2012 to local authority accommodation under section 23 of the Children and Young Persons Act 1969 and—

(i) kept in secure accommodation (within the meaning of that section), or

(ii) detained in a secure training centre pursuant to arrangements under subsection (7A) of that section.

Origin: SI 2012/2906 art.2(j), 7(2)(h), (3); drafting; PCA.

Available requirements

134 Community orders: available requirements

(1) A court may not make a community order which imposes a community order requirement that is not an available requirement.

Origin: Drafting.

(2) A community order requirement is an available requirement unless a provision mentioned in column 3 of the entry for that requirement in the community order requirements table (see section 129) provides otherwise.

Origin: CJA 2003 s.177(2); drafting.

135 Community order: availability of particular requirements

Alcohol abstinence and monitoring requirement

(1) An alcohol abstinence and monitoring requirement is not an available requirement unless it is available by virtue of piloting regulations (see Schedule 16 [to be added]).

Origin: LASPOA 2012 s.77(4).

(2) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 3 (prescribed arrangements for monitoring).

Origin: CJA 2003 s.212A(6) (part); LASPOA 2012 s.76(1).

(3) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 3 (alcohol level to be kept below specified level) is not an available requirement unless regulations are in force under 25(7)(b) of that Schedule (prescribed alcohol level).

Origin: CJA 2003 s.212A(4) (part); LASPOA 2012 s.76(1).

Attendance centre requirement

(4) An attendance centre requirement is not an available requirement unless the offender was aged under 25 at the time of conviction of the offence.

Origin: CJA 2003 s.177(1)(l); PCA.

Electronic compliance monitoring requirement

(5) An electronic compliance monitoring requirement is not an available requirement in relation to a community order unless the community order imposes at least one other available requirement, other than—

(a) an alcohol abstinence and monitoring requirement;

(b) an electronic whereabouts monitoring requirement.

Origin: CJA 2003 s.177(3), (4); CCA 2013 Sch.16 para.12(4).

Electronic whereabouts monitoring requirement

(6) An electronic whereabouts monitoring requirement is available only—

(a) in relation to—

(i) a local justice area specified in the Crime and Courts Act 2013 (Commencement No. 15, Transitional and Savings Provisions) Order 2016 (S.I. 2016/962), or

(ii) an area specified in another order made under section 61(2) of the Crime and Courts Act 2013 bringing into force Part 4 of Schedule 16 to that Act in relation to that area;

(b) in relation to any such area, only for so long as such an order provides that that Part of that Schedule is in force in relation to it,

and, accordingly, does not apply where an order is made or amended under Part 1 or 2 of Schedule 5 (transfer to Scotland or Northern Ireland).

Origin: Drafting.

Exercise of power to impose requirements

136 Community order: exercise of power to impose particular requirements

(1) This section applies where a court makes a community order.

Origin: Drafting.

Suitability of requirements

(2) The particular requirement or requirements forming part of the community order must be such as, in the opinion of the court is, or taken together are, the most suitable for the offender.

Origin: CJA 2003 s.148(2)(a).

(3) In forming that opinion the court may take into account any information about the offender which is before it.

Origin: CJA 2003 s.156(2).

(4) The pre-sentence report requirements (see section 28) apply to the court in relation to forming any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order.

Origin: CJA 2003 s.156(3)(b) (part).

Considerations of seriousness and punishment etc

(5) The restrictions on liberty imposed by the order must be such as are in the opinion of the court commensurate with the seriousness of—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it.

Origin: CJA 2003 s.148(2)(b).

(6) In forming that opinion, the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.

Origin: CJA 2003 s.156(1) (part).

(7) The pre-sentence report requirements (see section 28) apply to the court in relation to forming that opinion.

Origin: CJA 2003 s.156(3)(b) (part); CJIA 2008 Sch.4 para.77(2)(a).

(8) The order must include at least one requirement imposed for the purpose of punishment.

Origin: CJA 2003 s.177(2A) (part); CCA 2013 Sch.16 para.2.

(9) Subsection (8) does not apply where—

(a) the court also imposes a fine, or

(b) there are exceptional circumstances relating to the offence or to the offender which—

(i) would make it unjust in all the circumstances for the court to impose a requirement for the purpose of punishment in the particular case, and

(ii) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.

Origin: CJA 2003 s.177(2A) (part), (2B); CCA 2013 Sch.16 para.2.

Compatibility with other matters

(10) If the order imposes two or more different community order requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.

Origin: CJA 2003 s.177(6).

(11) The court must ensure, so far as practicable, that any community order requirement imposed by the order is such as to avoid any conflict with the offender's religious beliefs.

Origin: CJA 2003 s.217(1)(a) (part).

(12) The court must also ensure, so far as practicable, that any community order requirement imposed by the order is such as to avoid—

(a) any conflict with the requirements of—

(i) any other community order or any youth rehabilitation order, or

(ii) any suspended sentence order,

to which the offender may be subject, and

(b) any interference with the times, if any, at which the offender normally—

(i) works, or

(ii) attends any educational establishment.

Origin: CJA 2003 s.217(1)(a) (part), (b); CJIA 2008 Sch.4 para.91; PCA.

137 Duty to impose an electronic compliance monitoring requirement in particular cases

(1) - A community order which imposes—

(a) - a curfew requirement, or

(b) an exclusion requirement,

must also impose an electronic compliance monitoring requirement unless the court considers it inappropriate to do so in the particular circumstances of the case.

Origin: CJA 2003 s.177(3) (part). -

(2) - This is subject to—

(a) - paragraph 34 of Schedule 3 (consent of person whose co-operation is required), and

(b) - paragraph 35(1) of that Schedule (availability of arrangements in local area).

Origin: CJA 2003 s.177(3) (part).

Making a community order

138 Community order to specify end date etc

(1) - A community order must specify a date (the "end date") by which all the requirements in it must have been complied with.

Origin: CJA 2003 s.177(5) (part); LASPOA 2012 s.66(1)(a).

(2) The end date must not be more than 3 years after the date of the order.

Origin: CJA 2003 s.177(5) (part).

(3) If a community order imposes two or more different community order requirements—

(a) the order may also specify, for each of the requirements, a date by which the requirement must have been complied with, and

(b) if it does so, the last of those dates must be the same as the end date.

Origin: CJA 2003 s.177(5A); LASPOA 2012 s.66(2).

(4) Section 149 sets out the effect of the end date.

Origin: Drafting.

139 Community order to specify offender's home local justice area

(1) A community order must specify the area which is the offender's home local justice area.

(2) That area must be the local justice area in which the offender resides or will reside.

Origin: CJA 2003 s.216(1) (part); SI 2005/886 Sch. para.103.

140 Power for Crown Court to direct magistrates' court supervision

(1) A community order made—

(a) by the Crown Court, or

(b) on appeal,

may include a direction that any breach of a requirement of the order is to be dealt with by a magistrates' court.

Origin: CJA 2003 Sch.8 paras.4, 7(1)(b).

(2) For the purposes of this section, breach of a requirement means any failure to comply with the requirement.

Origin: drafting.

141 Power to provide for court review of community orders

(1) The Secretary of State may by regulations—

(a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,

(b) enable a court to amend a community order so as to include or remove a provision for review by a court, and

(c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.

Origin: CJA 2003 s.178(1).

(2) Regulations under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 208 and 209 in relation to suspended sentence orders.

Origin: CJA 2003 s.178(2).

(3) Regulations under this section may repeal or amend any provision of this Code.

Origin: CJA 2003 s.178(3).

142 Provision of copies of community order and related documents

(1) This section applies when a court makes a community order.

Origin: Drafting; PCA.

(2) The proper officer of the court must provide copies of the order—

(a) to the offender,

(b) to the responsible officer,

(c) to an officer of a provider of probation services that is a public sector provider who is acting at the court, and

(d) if the court does not act in the offender's home local justice area, to a provider of probation services that is a public sector provider and is operating in that area.

Origin: CJA 2003 s.219(1) (part); ORA 2014 Sch.4 para.12(2); PCA.

(3) If the order imposes any requirement specified in column 1 of the following table, the proper officer of the court must also provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

The requirement	*The person to whom a copy must be provided*
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
A residence requirement relating to residence in an institution	The person in charge of the institution
A mental health treatment requirement	The person specified under paragraph 16(4)(d) of Schedule 3 or the person in charge of the institution or place specified under paragraph 16(4)(b) or (c) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(4)(b) or (c) of Schedule 3

The requirement	*The person to whom a copy must be provided*
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 3 or the person in charge of the institution or place specified under paragraph 23(4)(c) or (d) of that Schedule.
An electronic monitoring requirement	Any person who by virtue of paragraph 32(1) of Schedule 3 will be responsible for the electronic monitoring
	Any person by virtue of whose consent the requirement is included in the order.

Origin: CJA s.219(2) (part), Sch.14 (part); PCA.

(4) If the court does not act in the offender's home local justice area, the proper officer must provide to the magistrates' court acting in that area—
  (a) a copy of the order, and
  (b) such documents and information relating to the case as the proper officer considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

Origin: CJA 2003 s.219(3) (part), SI 2005/886 Sch. para.105(b) (part); PCA.

(5) In this section, "proper officer" means—
  (a) in relation to a magistrates' court, the designated officer for the court, and
  (b) in relation to the Crown Court, the appropriate officer.

Origin: CJA 2003 s.219(5); PCA.

(6) In subsection (2) "public sector provider" means—
  (a) a probation trust or other public body, or
  (b) the Secretary of State.

Origin: CJA 2003 s.219(4), ORA 2014 Sch.4 para.12(3).

Obligations of responsible officer and offender

143 The responsible officer

(1) For the purposes of this Part, "the responsible officer", in relation to an offender to whom a community order relates, means the person who is for the time being responsible for discharging the functions conferred by this Code on the responsible officer in accordance with arrangements made by the Secretary of State.

(2) The responsible officer must be—
  (a) an officer of a provider of probation services, or

(b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the community order.

Origin: CJA 2003 s.197 (part); ORA 2014 s.14(1).

144 Obligations of responsible officer

(1) This section applies where a community order is in force.

Origin: CJA 2003 s.198(1) (part); PCA.

Functions of the responsible officer

(2) The responsible officer must—

(a) make any arrangements that are necessary in connection with the requirements imposed by the order, and

(b) promote the offender's compliance with those requirements.

Origin: CJA 2003 s.198(1) (part).

(3) This is subject to paragraph 16(7) of Schedule 3 (in-patient treatment under mental health treatment requirement).

Origin: drafting.

Exercise of functions by responsible officer

(4) The responsible officer must ensure, as far as practicable, that any instruction given or requirement imposed by the responsible officer is such as to avoid any conflict with the offender's religious beliefs.

Origin: CJA 2003 s.217(1)(a) (part), (2) (part).

(5) The responsible officer must also ensure, as far as practicable, that any instruction given or requirement imposed by the responsible officer is such as to avoid—

(a) any conflict with the requirements of—

(i) any other community order or any youth rehabilitation order, or

(ii) any suspended sentence order,

to which the offender may be subject, and

(b) any interference with the times, if any, at which the offender normally—

(i) works, or

(ii) attends any educational establishment.

Origin: CJA 2003 s.217(1)(a) (part), (b), (2) (part); PCA; drafting.

145 Duty of offender to keep in touch with responsible officer

(1) This section applies where a community order is in force.

Origin: CJA 2003 s.220(1) (part).

(2) The offender must keep in touch with the responsible officer in accordance with any instructions the responsible officer may give the offender from time to time.

Origin: CJA 2003 s.220(1)(a) (part); clean sweep; drafting.

(3) This obligation has effect as a community order requirement of the community order.

Origin: CJA 2003 s. 220(2); ORA 2014 s.18(2); drafting.

146 Duty of offender to obtain permission before changing residence

(1) This section applies where a community order—
(a) is in force, and
(b) does not include a residence requirement imposed under paragraph 13 of Schedule 3.

Origin: CJA 2003 s.220A(1) (part), (6); ORA 2014 s.18(2); clean sweep.

(2) The offender must not change residence except with permission given in accordance with this section by—
(a) the responsible officer, or
(b) a court.

Origin: CJA 2003 s.220A(1) (part); ORA 2014 s.18(2).

(3) This obligation has effect as a community order requirement of the community order.

Origin: CJA 2003 s.220A(5) (part); ORA 2014 s.18(2).

(4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.
For this purpose "appropriate court" has the same meaning as in Schedule 4 (see paragraph 1 of that Schedule).

Origin: CJA 2003 s.220A(2) (part), (8) (part); ORA 2014 s.18(2).

(5) A court may also give permission in any proceedings before it under Schedule 4 (breach or amendment of orders etc).

Origin: CJA 2003 s.220A(3) (part); ORA 2014 s.18(2).

(6) The grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
(a) is likely to prevent the offender complying with a requirement imposed by the relevant order, or
(b) would hinder the offender's rehabilitation.

Origin: CJA 2003 s.220A(4) (part); ORA 2014 s.18(2).

(7) The responsible officer must refuse an application for permission if—
(a) the offender's present residence is in England or Wales, and
(b) the offender's proposed residence is outside England and Wales.

Origin: CJA 2003 s.220A(4A) (part); PCA.

(8) For cases in which a community order has to be amended because of permission given under this section, see paragraph 16 of Schedule 4 (amendment to reflect change in local justice area).

Origin: CJA 2003 s.220A(7) (part); ORA 2014 s.18(2).

Breach, amendment etc of community order

147 Breach, revocation or amendment of community order

Schedule 4 makes provision about—

(a) failures to comply with the requirements of community orders;

(b) revocation of community orders;

(c) amendment of community orders.

Origin: CJA 2003 s.179.

Transferring order to Scotland or Northern Ireland

148 Transfer of community orders to Scotland or Northern Ireland

Schedule 5 makes provision about transfers of community orders to Scotland or Northern Ireland.

Origin: CJA 2003 s.180.

Community orders: supplementary

149 When a community order is in force etc

(1) A community order is in force for the period—

(a) beginning when the order is made, and

(b) ending—

(i) with the end date (see section 138), or

(ii) if later, when the offender has completed any unpaid work requirement imposed by the order.

(2) But a community order ceases to be in force when it is revoked.

(3) An unpaid work requirement is completed when the offender has worked under it for the number of hours specified in the order.

Origin: CJA 2003 s.177(4A), (5B), s.200(3); LASPOA 2012 s.66(2); PCA; drafting.

PART 10

CUSTODIAL SENTENCES

CHAPTER 1

CUSTODY: GENERAL PROVISIONS

Introductory 5

150 Overview of Part

(1) This Chapter applies generally for the purposes of determining whether a custodial sentence should be passed and, if so, what its term should be.
In particular—
(a) section 151 defines "custodial sentence";
(b) sections 152 to 157 make provision about when a custodial sentence is not available or subject to restrictions;
(c) section 158 permits a magistrates' court to impose imprisonment for less than the term specified;
(d) sections 159 to 161 make provision about how a court should decide whether to whether to impose a custodial sentence and the term of such a sentence.

(2) Chapter 2 is about the kinds of custodial sentence that are available for an offender aged under 18—
(a) detention and training orders (section 163);
(b) extended sentences of detention (sections 164 to 167);
(c) other sentences of detention under section 168, including life sentences (sections 168 to 173);
(d) detention at Her Majesty's pleasure for murder etc where the offender is under 18 at the time of the offence (section 174).

(3) Chapter 3 is about the kinds of custodial sentence that are available for an offender aged 18, 19 or 20—
(a) sentences of detention in a young offender institution, including—
(i) suspended sentences,
(ii) special sentences for offenders of particular concern, and
(iii) extended sentences,
(sections 177 to 186);
(b) sentences of custody for life (sections 187 to 191);

(4) Chapter 4 is about imprisonment in the case of an adult aged at least 21 at the time of conviction.

(5) Chapter 5 is about suspended sentences.

(6) Chapter 6 is about dangerous offenders.

(7) Chapter 7 is about mandatory minimum sentences.

(8) Chapter 8 is about life sentences and in particular about when minimum term orders and whole life orders may or must be passed.

(9) Chapter 9 is about certain powers and duties of a sentencing court that are relevant to an offender's release from custody.

Origin: Drafting.

151 Meaning of "custodial sentence"

(1) In this Code "custodial sentence" means—

(a) a detention and training order (under section 163);
(b) a sentence of detention under section 164 (extended term: offenders aged under 18);
(c) a sentence of detention under section 168 or 174;
(d) a sentence of detention in a young offender institution (under section 177 or otherwise);
(e) a sentence of custody for life under section 187 or 190;
(f) a sentence of imprisonment.

Origin: PCC(S)A 2000 s.76(1); CJA 2003 s.305(1), Sch.32 para.108; LASPOA 2012 Sch.21 para.10.

(2) In subsection (1) "sentence of imprisonment" does not include a committal for contempt of court or any kindred offence.

Origin: PCC(S)A 2000 s.76(2); CJA 2003 s.305(1).

Availability of custodial sentence

152 Availability of custodial sentence

For restrictions on when certain custodial sentences are available see—

(a) sections 153 to 157;
(b) section 37(8) of the Mental Health Act 1983 (hospital order or guardianship order in case where person convicted of offence punishable with imprisonment).

Origin: Drafting.

General limits on powers to impose imprisonment

153 2 year limit on imprisonment for statutory offence if no maximum specified

Where—

(a) a person is convicted on indictment of an offence under any enactment which is punishable with imprisonment, and
(b) no enactment—
  (i) limits the sentence to a specified term, or
  (ii) expresses it to extend to imprisonment for life,

the person is liable to imprisonment for not more than 2 years.

Origin: PCC(S)A 2000 s.77.

154 General limit on magistrates' court's power to impose imprisonment or detention in a young offender institution

(1) A magistrates' court does not have power to impose—
  (a) imprisonment, or
  (b) detention in a young offender institution,
for more than 6 months in respect of any one offence.

Origin: PCC(S)A 2000 s.78(1).

(2) Unless expressly excluded, subsection (1) applies even if the offence in question is one for which a person would otherwise be liable on summary conviction to imprisonment or detention in a young offender institution for more than 6 months.

Origin: PCC(S)A 2000 s.78(2).

(3) Nothing in subsection (1) affects section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment).

Origin: PCC(S)A 2000 s.78(3).

(4) Subsection (1) does not limit any power of a magistrates' court to impose a term of imprisonment for—
  (a) non-payment of a fine, or
  (b) want of sufficient goods to satisfy a fine.

Origin: PCC(S)A 2000 s.78(4); TCEA 2007 Sch.13 para.132(2).

(5) In subsection (4)—
  (a) "fine"—
    (i) includes a pecuniary penalty, but
    (ii) does not include a pecuniary forfeiture or pecuniary compensation.
  (b) the reference to want of sufficient goods to satisfy a fine is a reference to circumstances where—
    (i) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the fine from a person, but
    (ii) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (as defined by paragraph 50(3) of that Schedule).

Origin: PCC(S)A 2000 s.78(4A), (5); TCEA 2007 Sch.13 para.132(3).

(6) In this section "impose imprisonment" means—
  (a) pass a sentence of imprisonment, or
  (b) fix a term of imprisonment for—
    (i) failure to pay any sum of money, or
    (ii) want of sufficient distress to satisfy any sum of money (see section 273(4)), or
    (iii) failure to do or abstain from doing anything required to be done or left undone.

Origin: PCC(S)A 2000 s.78(6).

(7) Section 132 of the Magistrates' Courts Act 1980 (5 day minimum term) provides for the minimum term of imprisonment that a magistrates' court may impose.

Origin: PCC(S)A 2000 s.78(7).

155 Restriction on consecutive sentences for released prisoners

(1) A court sentencing a person to a relevant custodial term may not order or direct that the term is to commence on the expiry of any current custodial sentence from which the offender has been released under—

(a) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall), or

(b) Part 2 of the Criminal Justice Act 1991 (early release of prisoners).

Origin: CJA 2003 s.265(1); CJIA 2008 s.20(4)(a).

(2) In this section "relevant custodial term" means—

(a) a sentence of detention under—

(i) section 164 (extended sentence), or

(ii) section 168 (sentence of detention),

(b) a sentence of detention in a young offender institution, or

(c) a sentence of imprisonment.

Origin: CJA 2003 s.237(3) (part), s.265(2); LASPOA 2012 s.117(3), (9)(a), Sch.20 paras.2(3), 13; CJCA 2015 Sch.1 paras.15(4), 24 (part).

(3) In this section, "current custodial sentence" means a sentence that has not yet expired which is—

(a) a relevant custodial term,

(b) a sentence of detention under section 91 or 96 of the Powers of Criminal Courts (Sentencing) Act 2000,

(c) a sentence of detention under section 226A, 226B, 227, 228 or 236A of the Criminal Justice Act 2003 (including one passed as a result of section 219A, 221A, 220, 222 or 224A of the Armed Forces Act 2006),

(d) a sentence of imprisonment passed by a service court, or

(e) a sentence of detention under section 209 of the Armed Forces Act 2006.

Origin: CJA 2003 s.237(1B), (3) (part), s.265(2); AFA 2006 Sch.16 para.219; LASPOA 2012 s.117(3), (9), Sch.20 paras.2(3), 13, Sch.22 para.21; CJCA 2015 Sch.1 paras.15(3), (4), 24.

156 Custodial sentence: restrictions in certain cases where offender not legally represented

(1) - This section applies where—

(a) - a magistrates' court is dealing with an offender on summary conviction, or

(b) - the Crown Court is dealing with an offender—

(i) - on committal for sentence, or

(ii) - on conviction on indictment.

Origin: PCC(S)A 2000 s.83(1) (part), (2) (part).

Offenders aged under 21

(2) The court may not—

(a) make a detention and training order,

(b) pass a sentence of detention under section 164, 168 or 174 (offenders under 18),

(c) pass a sentence of detention in a young offender institution,

(d) pass a sentence of custody for life (under section 187 (discretionary life sentence: offender aged at least 18 but under 21), or

(e) pass a sentence of custody for life under section 190 (mandatory life sentence: offender aged at least 18 but under 21),

unless the offender is legally represented in that court, or has failed, or is ineligible on financial grounds, to benefit from relevant representation (see subsections (7) and (8)).

Origin: PCC(S)A 2000 s.83(2) (part), (3) (part); PCA.

Offenders aged 21 or over

(3) The court may not pass a sentence of imprisonment unless—

(a) the offender—

(i) is legally represented in that court, or

(ii) has failed, or is ineligible on financial grounds, to benefit from relevant representation (see subsections (7) and (8)), or

(b) the offender has previously been sentenced to imprisonment by a court in any part of the United Kingdom.

Origin: PCC(S)A 2000 s.83(1) (part).

(4) For the purposes of subsection (3) a previous sentence of imprisonment which has been suspended and which has not taken effect under—

(a) paragraph 8 of Schedule 10,

(b) paragraph 8 of Schedule 12 to the Criminal Justice Act 2003,

(c) section 119 of the Powers of Criminal Courts (Sentencing) Act 2000, or

(d) section 19 of the Treatment of Offenders Act (Northern Ireland) 1968

is to be disregarded.

Origin: PCC(S)A 2000 s.83(5); PCA.

(5) For those purposes, "sentence of imprisonment" does not include a committal for contempt of court or any kindred offence (and "sentenced to imprisonment" is to be read accordingly).

Origin: PCC(S)A 2000 s.83(6); PCA.

When a person is legally represented

(6) For the purposes of this section an offender is legally represented in a court if the offender has the assistance of counsel or a solicitor to represent him or her in the proceedings in that court at some time after being found guilty and before being sentenced.

Origin: PCC(S)A 2000 s.83(4).

Relevant representation: failure or ineligibility to benefit

(7) For the purposes of subsections (2) and (3), "relevant representation", in relation to proceedings in a court, means representation under Part 1 of the

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid) for the purposes of the proceedings.

Origin: PCC(S)A 2000 s.83(3) (part).

(8) For those purposes an offender has failed, or is ineligible on financial grounds, to benefit from relevant representation if—

(a) the offender did not apply for relevant representation, having—

(i) been informed of the right to apply for it, and

(ii) had the opportunity to do so,

(b) the offender's application for relevant representation was refused on financial grounds, or

(c) relevant representation was made available to the offender but withdrawn—

(i) because of the offender's conduct, or

(ii) on financial grounds.

Relevant representation is refused or withdrawn on financial grounds if it appears that the offender's financial resources are such that the offender is not eligible for such representation.

Origin: PCC(S)A 2000 s.83(3); CDSA 2006 s.4(2)(c), (3)(a), (b); LASPOA Sch.5 para.53; drafting.

157 Restriction on imposing imprisonment on persons under 21

Sentence of imprisonment

(1) - No court may pass a sentence of imprisonment on an offender for an offence if the offender is under 21 when convicted of the offence.

Origin: PCC(S)A 2000 s.89(1)(a).

Committal to prison

(2) - No court may commit a person who is under 21 to prison for any reason, except as provided by subsection (3).

Origin: PCC(S)A 2000 s.89(1)(b).

(3) - Subsection (2) does not prevent the committal to prison of a person aged under 21 who is—

(a) - remanded in custody,

(b) - committed in custody for sentence, or

(c) - sent in custody for trial under section 51 or 51A of the Crime and Disorder Act 1998.

Origin: PCC(S)A 2000 s.89(2); CJA 2003 Sch.3 para.74(3)(b). -

Power for magistrates' court to imprison for less than specified term

158 Power of magistrates' court to imprison for less than specified term

(1) - Where a magistrates' court has power to sentence an offender to imprisonment for a period specified by an enactment (whether passed before or after this Act), the court may sentence the offender to imprisonment for less than that period.

Origin: MCA 1980 s.34(1) (part).

(2) This is subject to—

(a) section 132 of the Magistrates' Courts Act 1980 (5 day minimum term);

(b) express provision to the contrary in an Act passed after 31 December 1879.

Origin: MCA 1980 s.34(1) (part); drafting.

Exercise of powers to impose discretionary custodial sentences

159 Threshold for imposing discretionary custodial sentence

(1) Subsection (2) applies where a person is convicted of an offence which is punishable with a custodial sentence.
This is subject to subsection (3).

Origin: CJA 2003 s.152(1) (part); CJCA 2015 Sch.5 para.14; clean sweep.

(2) The court must not pass a custodial sentence unless it is of the opinion that—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it,

was so serious that neither a fine alone nor a community sentence can be justified for the offence.

Origin: CJA 2003 s.152(2).

Threshold generally not applicable where mandatory sentence requirement applies

(3) This section does not apply if the offence is one in relation to which a mandatory sentence requirement applies (see section 274), except as provided in sections 188(3) and 198(3) (pre-condition for life sentence for second listed offence).

Origin: CJA 2003 s.152(1) (part), (1A); drafting.

Exceptions to subsection (2) relating to community sentences

(4) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if the offender fails to express willingness to comply with a requirement—

(a) which the court proposes to include in a community order, but

(b) which may be included only if the offender expresses willingness to comply with it.

Origin: CJA 2003 s.152(3) (part).

(5) Subsection (2) is also subject to—

(a) paragraph 22(5)(b) of Schedule 3 (power to deal with offender who does not express willingness to comply with amended drug rehabilitation requirement);

(b) paragraph 10(9) of Schedule 4 (power of magistrates' court to impose custodial sentence following wilful and persistent breach of community order);

(c) paragraph 11(7) of that Schedule (corresponding power of Crown Court);

(d) paragraph 18(10)(b) of that Schedule (power to deal with offender who does not express willingness to comply with amended treatment requirement).

Origin: Drafting.

Procedure for forming opinion

(6) In forming the opinion mentioned in subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated or offence or offences, including any aggravating or mitigating factors.

Origin: CJA 2003 s.156(1) (part).

(7) The pre-sentence report requirements (see section 28) apply to the court in relation to forming that opinion.

Origin: CJA 2003 s.156(3)(a) (part), (9) (part).

(8) See also—

(a) section 71(2) (effect of mitigation);

(b) section 161 (additional requirements for offender suffering from mental disorder).

Origin: Drafting.

160 Length of discretionary custodial sentences: general provision

(1) Subsection (2) applies where a court passes a custodial sentence in respect of an offence.

This is subject to subsections (3) to (5).

Origin: CJA 2003 s.153(1) (part).

(2) The custodial sentence must be for the shortest term (not exceeding the permitted maximum) that in the opinion of the court is commensurate with the seriousness of—

(a) the offence, or

(b) the combination of the offence and one or more offences associated with it.

Origin: CJA 2003 s.153(2) (part).

Application of subsection (2) to mandatory sentences and extended sentences

(3) Subsection (2) does not apply where the sentence is—

(a) fixed by law, or

(b) a required life sentence,

except as provided in sections 188(3) and 198(3) (pre-condition for life sentence for second listed offence).

Origin: CJA 2003 s.153(1) (part); LASPOA 2012 Sch.19 para.12.

(4) Subsection (2) is subject to the provisions listed in section 274(c) (minimum sentences).

Origin: CJA 2003 s.153(2) (part), (3); CJCA 2015 Sch.5 para.15.

(5) Subsection (2) does not apply where the custodial sentence is an extended sentence, except as provided in sections 166(2), 183(2) and 196(2) (determination of appropriate custodial term).

Origin: CJA 2003 s.153(2) (part); CJCA 2015 Sch.5 para.15; drafting.

Procedure for forming opinion

(6) In forming the opinion mentioned in subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.

Origin: CJA 2003 s.156(1) (part), (9) (part), (10) (part).

(7) The pre-sentence report requirements (see section 28) apply to the court in relation to forming that opinion, except where the sentence is an extended sentence.

Origin: CJA 2003 s.156(3)(a) (part), (9) (part); drafting.

(8) See section 161 for additional requirements in the case of an offender suffering from a mental disorder.

Origin: Drafting.

161 Additional requirements in case of offender suffering from mental disorder

(1) This section applies where—

(a) the offender is or appears to be suffering from a mental disorder, and

(b) the court passes a custodial sentence other than one fixed by law ("the sentence").

Origin: CJA 2003 s.157(1) (part); drafting.

(2) Before passing the sentence, the court must obtain and consider a medical report unless, in the circumstances of the case, it considers that it is unnecessary to obtain a medical report.

Origin: CJA 2003 s.157(1) (part), (2).

(3) Before passing the sentence, the court must consider—

(a) any information before it which relates to the offender's mental condition (whether given in a medical report, a pre-sentence report or otherwise), and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

Origin: CJA 2003 s.157(3).

(4) If the court did not obtain a medical report where required to do so by this section, the sentence is not invalidated by the fact that it did not do so.

Origin: CJA 2003 s.157(4) (part); drafting.

(5) Any court, on an appeal against the sentence, must—

(a) obtain a medical report if none was obtained by the court below, and

(b) consider any such report obtained by it or by that court.

Origin: CJA 2003 s.157(4) (part).

(6) - In this section — -

"medical report" means a report as to an offender's mental condition - made or submitted orally or in writing by a registered medical - practitioner who is approved for the purposes of section 12 of the Mental Health Act 1983 —

(a) - by the Secretary of State, or

(b) by another person by virtue of section 12ZA or 12ZB of that Act,

as having special experience in the diagnosis or treatment of mental disorder;

"mental disorder" has the same meaning as in the Mental Health Act 1983.

Origin: CJA 2003 s.157(5), (6); HSCA 2012 s.38(5)(d).

(7) - Nothing in this section is to be taken to limit the generality of —

(a) - the pre-sentence report requirements (see section 28), or

(b) - any requirement for a court to take into account all information that is available to it about the circumstances of any offence, including any aggravating or mitigating factors.

Origin: CJA 2003 s.157(7); drafting.

Deportation

162 Deportation recommendations

See section 6 of the Immigration Act 1971 for provision about recommendations for deportation by a court dealing with an offender for an offence punishable with imprisonment where —

(a) - the offender is not a British citizen, and

(b) - was aged 17 or over when convicted.

Origin: Drafting.

CHAPTER 2

OFFENDERS AGED UNDER 18

Detention and training orders

163 Detention and training orders

[To be added]

Extended sentences

164 Extended sentence for certain violent or sexual offences

An extended sentence of detention under this section is a sentence of detention the term of which is equal to the aggregate of —

(a) - the appropriate custodial term (see section 166), and

(b) a further period (the "extension period") for which the offender is to be subject to a licence.

Origin: CJA 2003 s.226B(3); LASPOA 2012 s.124.

165 Extended sentence of detention: availability

(1) An extended sentence of detention under section 164 is available where a court is dealing with an offender in respect of an offence (whenever committed) if—

(a) the offence is a specified offence (see section 221(1)) and falls within Schedule 6,

(b) the offender is under 18 when convicted,

(c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 223),

(d) the court is not required by section 173(2) to impose a sentence of detention for life under section 168, and

(e) if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term would be at least 4 years.

Origin: CJA 2003 s.226B(1) (part), (2); LASPOA 2012 s.124; drafting.

(2) The pre-sentence report requirements (see section 28) apply to the court in relation to forming the opinion referred to in subsection (1)(c).

Origin: CJA 2003 s.156(3)(a) (part); LASPOA 2012 Sch.21 para.22(2).

166 Term of extended sentence of detention under section 164

(1) This section applies where a court is determining—

(a) the appropriate custodial term, and

(b) the extension period,

of an extended sentence of detention under section 164 to be imposed on an offender in respect of an offence.

Origin: Drafting

(2) The appropriate custodial term is the term of detention that would be imposed in respect of the offence in compliance with section 160(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.

Origin: CJA 2003 s.226B(4); LASPOA 2012 s.124.

(3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.

This is subject to subsections (4) and (5).

Origin: CJA 2003 s.226B(5); LASPOA 2012 s.124; ORA 2014 s.8(3)(a).

(4) The extension period must—

(a) be at least 1 year, and

(b) not exceed—

(i) 5 years in the case of a specified violent offence, or

(ii) - 8 years in the case of a specified sexual offence.

Origin: CJA 2003 s.226B(5A), (6); LASPOA 2012 s.124; ORA 2014 s.8(3)(b).

(5) - The term of the extended sentence of detention under section 164 must not exceed the maximum term of imprisonment that would be permitted for the offence in the case of a person aged 21 or over.

Origin: CJA 2003 s.226B(7); LASPOA 2012 s.124, Sch.21 para.36(3).

167 Extended sentence under section 164 where offender subject to detention and training order

(1) - This section applies where the court imposes an extended sentence of detention under section 164 in the case of an offender who is subject to a detention and training order.

(2) - If the offender has not at any time been released under the detention and training order, the court may order that the extended sentence of detention is to take effect at the time when the offender would otherwise be released under the detention and training order.

(3) - Otherwise, the extended sentence of detention takes effect at the beginning of - the day on which it is passed. -

(4) - For the purposes of this section, an offender is released under a detention and training order when released by virtue of subsection (2), (3), (4) or (5) of section 102 of the Powers of Criminal Courts (Sentencing) Act 2000.

Origin: PCC(S)A 2000 s.106A(2) (part); CJA 2003 Sch.32 para.113.

Detention for specified period or life

168 Sentence of detention

A sentence of detention under this section is a sentence requiring the offender to be detained for the period specified in the sentence.

Origin: Drafting.

169 Sentence of detention under section 168: availability

(1) - A sentence of detention under section 168 is available where a person aged - under 18 is convicted on indictment of an offence within Schedule 6. -

Origin: PCC(S)A 2000 s.91(1) (part), (1A) (part), (1B) (part); CJA 2003 s.289(2); VCRA 2006 Sch.1 para.7(1); drafting.

(2) - For circumstances in which a court is required to impose a sentence of - detention under section 168, see— -

(a) - section 51A(2) of the Firearms Act 1968;

(b) - section 29(6) of the Violent Crime Reduction Act 2006;

(c) - section 173.

Origin: Drafting.

170 Power to detain for specified period: offender convicted of certain serious offences

(1) Subsection (2) applies where a sentence of detention under section 168 is available by virtue of section 169(1).

Origin: PCC(S)A 2000 s.91(1A)(a) (part), (1B)(a) (part), (1C)(a) (part), (3) (part).

(2) The court may impose such a sentence if it is of the opinion that neither a youth rehabilitation order nor a detention and training order is suitable.

Origin: PCC(S)A 2000 s.91(1) (part), (3) (part); CJA 2003 Sch.32 para.110(2); CJIA 2008 Sch.4 para.56.

(3) This is subject (in particular) to section 159 (threshold for imposing discretionary custodial sentence).

Origin: PCC(S)A 2000 s.91(4); CJA 2003 Sch.32 para.110(3).

171 Maximum sentence

(1) This section applies where the court imposes a sentence of detention under section 168 by virtue of—

(a) section 170,

(b) section 51A(2) of the Firearms Act 1968, or

(c) section 29(6) of the Violent Crime Reduction Act 2006.

Origin: PCC(S)A 2000 s.91(3), (5); CJA 2003 s.289(3); VCRA 2006 Sch.1 para.7(3); PCA.

(2) The period of detention specified in the sentence must not exceed—

(a) the maximum term of imprisonment with which the offence is punishable in the case of a person aged 21 or over, or

(b) life, if the offence is punishable with imprisonment for life in the case of a person aged 21 or over.

Origin: PCC(S)A 2000 s.91(3), (5); CJA 2003 s.289(3); VCRA 2006 Sch.1 para.7(3); PCA.

(3) This is subject (in particular) to section 160 (length of discretionary custodial sentences: general provision).

Origin: PCC(S)A 2000 s.91(4); CJA 2003 Sch.32 para.110(3).

172 Sentence of detention passed on offender subject to detention and training order

(1) This section applies where a court imposes a sentence of detention under section 168 in the case of an offender who is subject to a detention and training order.

(2) If the offender has not at any time been released under the detention and training order, the court may order that the sentence of detention is to take effect at the time when the offender would otherwise be released under the detention and training order.

(3) Otherwise, the sentence of detention takes effect at the beginning of the day on which it is passed.

(4) For the purposes of this section, an offender is released under a detention and training order when released by virtue of subsection (2), (3), (4) or (5) of section 102 of the Powers of Criminal Courts (Sentencing) Act 2000.

Origin: PCC(S)A 2000 s.106A(2) (part); CJA 2003 Sch.32 para.113.

173 Required sentence of detention for life for offence carrying life sentence

(1) This section applies where—

(a) a person aged under 18 is convicted of a Schedule 13 offence which was committed on or after 4 April 2005,

(b) the court considers that the seriousness of—

(i) the offence, or

(ii) the offence and one or more offences associated with it,

is such as to justify the imposition of a sentence of detention for life, and

(c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 221(1) and 223).

Origin: CJA 2003 s.226(1) (part), (2) (part); SI 2005/950 art.2(1) Sch.1 para.18.

(2) The court must impose a sentence of detention for life under section 168.

Origin: CJA 2003 s.226(1) (part), (2) (part).

(3) The pre-sentence report requirements (see section 28) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

Origin: CJA 2003 s.156(3)(a) (part).

(4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Origin: CJA 2003 s.226(5).

174 Offenders who commit murder etc when under 18: duty to detain at Her Majesty's pleasure

(1) This section applies where—

(a) a court is dealing with a person convicted of—

(i) murder, or

(ii) any other offence the sentence for which is fixed by law as life imprisonment, and

(b) the person appears to the court to have been aged under 18 at the time the offence was committed.

Origin: PCC(S)A 2000 s.90 (part); CJCSA 2000 s.60(2).

(2) The court must sentence the offender to be detained during Her Majesty's pleasure.

Origin: PCC(S)A 2000 s.90 (part).

(3) Subsection (2) applies notwithstanding anything in this or any other Act.

Origin: PCC(S)A 2000 s.90 (part).

Detention under this Chapter

175 Detention under section 168 or 174

(1) Detention under section 168 or 174 is to be in such place and under such conditions—

(a) as the Secretary of State may direct, or

(b) as the Secretary of State may arrange with any person,

except in the case of a sentence of detention under section 168 imposed by virtue of section 173 (required sentence of detention for life).

Origin: PCC(S)A 2000 s.92(1) (part).

(2) A person detained pursuant to directions or arrangements made by the Secretary of State under this section is in legal custody.

Origin: PCC(S)A 2000 s.92(2).

176 Detention in pursuance of extended sentence or required life sentence

(1) This section applies to detention—

(a) under section 164 (extended sentence of detention), or

(b) in pursuance of a sentence of detention under section 168 imposed by virtue of section 173 (required sentence of detention for life).

(2) Detention to which this section applies is to be in a place and under conditions determined by, or by a person authorised for the purpose by, the Secretary of State.

Origin: CJA 2003 s.235 (part).

CHAPTER 3

ADULTS AGED UNDER 21

Detention in a young offender institution

177 Detention in a young offender institution for offender at least 18 but under 21

(1) A sentence of detention in a young offender institution is available where—

(a) the offender was aged at least 18 but under 21 at the time of conviction,

(b) the offence is punishable with imprisonment in the case of a person aged 21 or over, and

(c) the court is not required to pass a sentence of—

(i) detention at Her Majesty's pleasure under section 174, or

(ii) custody for life under section 187 or 190,

Origin: PCC(S)A 2000 s.96 (part).

(2) For circumstances in which a court is required to impose a sentence of detention in a young offender institution see the provisions mentioned in section 274(1)(c) (mandatory minimum sentences).

Origin: Drafting.

178 Term of detention in a young offender institution

(1) The maximum term of detention in a young offender institution that a court may impose for an offence is the same as the maximum term of imprisonment that it may impose for that offence in the case of a person aged 21 or over.

Origin: PCC(S)A 2000 s.97(1); drafting.

(2) The minimum term of a sentence of detention in a young offender institution is 21 days.

Origin: PCC(S)A 2000 s.97(2); drafting.

(3) For further provision about the term of a sentence of detention in a young offender institution, see—

(a) section 180 (special sentence for certain offenders of particular concern);

(b) section 183 (extended sentence).

Origin: Drafting.

Suspended sentence of detention in a young offender institution

179 Suspended sentence order for offender under 21: availability

(1) This section applies where, in dealing with an offender for an offence, the court imposes a sentence of detention in a young offender institution.

Origin: SI 2005/643 art.3(2)(a); drafting.

(2) A suspended sentence order (see section 200) is available in relation to that sentence if the term of the sentence of detention in a young offender institution is not more than 2 years.

Origin: CJA 2003 s.189(1) (part); LASPOA 2012 s.68(1), Sch.9 para.20(a); clean sweep change.

(3) But a suspended sentence order is not available in relation to that sentence if—

(a) the sentence of detention in a young offender institution is one of two or more sentences imposed on the same occasion which are to be served consecutively, and

(b) the terms of those sentences are in aggregate more than 2 years.

Origin: CJA 2003 s.189(2); LASPOA 2012 s.68(2).

(4) For provision about suspended sentences see Chapter 5.

Origin: Drafting.

Special custodial sentence for certain offenders of particular concern

180 Required special sentence for certain offenders of particular concern

(1) This section applies where a court imposes a sentence of detention in a young offender institution for an offence where—

(a) the offence is listed in Schedule 7,

(b) the offender—

(i) was aged 18 or over when the offence was committed, and
(ii) is aged under 21 at the time of conviction, and

(c) the court does not impose either of the following for the offence (or for an offence associated with it)—
(i) an extended sentence under section 181, or
(ii) a sentence of custody for life under section 187.

Origin: CJA 2003 s.236A(1) (part), (5), (8); CJCA 2015 Sch.1 para.2, 10(2); SI 2015/778 art.3, Sch.1 para.2; drafting.

(2) The term of the sentence must be equal to the aggregate of—
(a) the appropriate custodial term, and
(b) a further period of 1 year for which the offender is to be subject to a licence,

and must not exceed the maximum term permitted for the offence.

Origin: CJA 2003 s.236A(2), (4), (8); CJCA 2015 Sch.1 para.2, 10(2).

(3) For the purposes of subsection (2), the "appropriate custodial term" is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Origin: CJA 2003 s.236A(3); CJCA 2015 Sch.1 para.2.

Extended sentence of detention in a young offender institution

181 Extended sentence of detention in a young offender institution for certain violent or sexual offences

An extended sentence of detention in a young offender institution is a sentence of detention in a young offender institution the term of which is equal to the aggregate of—
(a) the appropriate custodial term (see section 183), and
(b) a further period (the "extension period") for which the offender is to be subject to a licence.

Origin: CJA 2003 s.226A(5), (12)(b); LASPOA 2012 s.124, Sch.21 para.36(2).

182 Extended sentence of detention in a young offender institution: availability

(1) An extended sentence of detention in a young offender institution is available in respect of an offence (whenever committed) where—
(a) the offence is a specified offence (see section 221(1)),
(b) the offender is aged at least 18 but under 21 when convicted of the offence,
(c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 223),
(d) the court is not required by section 188 or 189 to impose a sentence of custody for life, and
(e) the earlier offence condition or the 4 year term condition is met.

Origin: CJA 2003 s.226A(1) (part), (4), (12); LASPOA 2012 s.124, Sch.21 para.36(2).

(2) The pre-sentence report requirements (see section 28) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

Origin: CJA 2003 s.156(3)(a) (part); LASPOA 2012 Sch.21 para.22.

(3) The earlier offence condition is that, at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 8.

Origin: CJA 2003 s.226A(2); LASPOA 2012 s.124.

(4) The 4 year term condition is that, if the court were to impose an extended sentence, the term that it would specify as the appropriate custodial term would be at least 4 years.

Origin: CJA 2003 s.226A(3), (12)(b); LASPOA 2012 s.124, Sch.21 para.36(2).

183 Term of extended sentence of detention in a young offender institution

(1) This section applies where a court dealing with an offender for an offence imposes, or is considering whether to impose, an extended sentence of detention in a young offender institution under section 181.

Origin: Drafting.

(2) The appropriate custodial term is the term of detention in a young offender institution that would be imposed in respect of the offence in compliance with section 160(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.

Origin: CJA 2003 s.226A(6), (12)(b); LASPOA 2012 s.124, Sch.12 para.36(2).

(3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
This is subject to subsections (4) and (5).

Origin: CJA 2003 s.226A(7); LASPOA 2012 s.124; ORA 2014 s.8(2)(a).

(4) The extension period must—
(a) be at least 1 year, and
(b) not exceed—
(i) 5 years if the offence was a specified violent offence, or
(ii) 8 years if the offence was a specified sexual offence.

Origin: CJA 2003 s.226A(7A), (8); LASPOA 2012 s.124; ORA 2014 s.8(2)(b).

(5) The term of the extended sentence must not exceed the maximum term of imprisonment permitted for the offence in the case of a person aged 21 or over.

Origin: CJA 2003 s.226A(9), (12)(b); LASPOA 2012 s.124, Sch.21 para.36(2); drafting.

Detention in a young offender institution: consecutive sentences etc

184 Detention in a young offender institution: consecutive sentences

(1) Where—

(a) an offender is convicted of more than one offence for which a sentence of detention in a young offender institution is available, or

(b) an offender who is serving a sentence of detention in a young offender institution is convicted of one or more further offences for which a sentence of detention in a young offender institution is available,

the court has the same power to pass consecutive sentences of detention in a young offender institution as if they were sentences of imprisonment.

Origin: PCC(S)A 2000 s.97(4).

(2) Where an offender who—

(a) is serving a sentence of detention in a young offender institution, and

(b) is aged 21 or over,

is convicted of one or more further offences for which the offender is liable to imprisonment, the court has the power to pass one or more sentences of imprisonment to run consecutively upon the sentence of detention in a young offender institution.

This is subject to section 155 (restriction on consecutive sentences for released prisoners).

Origin: PCC(S)A 2000 s.97(5); PCA.

185 Sentence of detention in a young offender institution where offender subject to detention and training order

(1) This section applies where the court imposes a sentence of detention in a young offender institution in the case of an offender who is subject to a detention and training order.

(2) If the offender has not at any time been released under the detention and training order, the court may order that the sentence of detention in a young offender institution is to take effect at the time when the offender would otherwise be released under the detention and training order.

(3) Otherwise, the sentence of detention in a young offender institution takes effect at the beginning of the day on which it is passed.

(4) For the purposes of this section, an offender is released under a detention and training order when released by virtue of subsection (2), (3), (4) or (5) of section 102 of the Powers of Criminal Courts (Sentencing) Act 2000.

Origin: PCC(S)A 2000 s.106(1); drafting.

Detention in a young offender institution: further provision

186 Detention in a young offender institution: place of detention

(1) An offender sentenced to detention in a young offender institution is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.

This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).

Origin: PCC(S)A 2000 s.98(1).

(2) - The Secretary of State may from time to time direct that an offender sentenced to detention in a young offender institution is to be detained in a prison instead of a young offender institution.

Origin: PCC(S)A 2000 s.98(2).

Custody for life

187 Offences other than murder

(1) This section applies where a person aged at least 18 but under 21 is convicted of an offence—

(a) for which the sentence is not fixed by law, but

(b) which is punishable in the case a person aged 21 or over with imprisonment for life.

(2) If the court considers that a sentence for life would be appropriate, it is to sentence the offender to custody for life.

Sections 159 and 160 (in particular) apply for this purpose.

Origin: PCC(S)A 2000 s.94(1).

188 Custody for life for second listed offence

(1) - This section applies where a court is dealing with an offender for an offence ("the index offence") where—

(a) - the index offence is listed in Part 1 of Schedule 9,

(b) - the offender is aged 18 or over but under 21 at the time of conviction, and

(c) - the sentence condition and the previous offence condition are met.

Origin: CJA 2003 s.224A(1) (part); LASPOA 2012 s.122(1); CJCA 2015 s.3(9); SI 2012/2906 art.2(e).

(2) - The court must impose a sentence of custody for life under section 187 unless the court is of the opinion that there are particular circumstances which—

(a) - relate to—

(i) - the offence,

(ii) - the previous offence referred to in subsection (4), or

(iii) the offender, and -

(b) - would make it unjust to do so in all the circumstances.

Origin: CJA 2003 s.224A(2) (part); LASPOA 2012 s.122(1), Sch.19 para.24(2)(a).

(3) - The sentence condition is that, but for this section, the court would impose a sentence of detention in a young offender institution for 10 years or more, disregarding any extension period that it would impose under section 181.

Sections 159(2) and 160(2) apply for this purpose.

Origin: CJA 2003 s.224A(3); LASPOA 2012 s.122(1), Sch.19 para.24(2)(b).

(4) - The previous offence condition is that—

(a) - at the time the index offence was committed, the offender had been convicted of an offence ("the previous offence") listed in Schedule 9, and

(b) a relevant life sentence or a relevant sentence of detention for a determinate period was imposed on the offender for the previous offence.

Origin: CJA 2003 s.224A(4); LASPOA 2012 s.122(1).

(5) An offence listed in Part 1 of Schedule 9 is to be disregarded if the date specified in that Schedule in relation to it is after the date on which the index offence was committed.

Origin: CJCA 2015 s.3(9); drafting.

(6) A life sentence is relevant for the purposes of subsection (4)(b) if—

(a) the offender was not eligible for release during the first 5 years of the sentence, or

(b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.

Origin: CJA 2003 s.224A(5); LASPOA 2012 s.122(1).

(7) An extended sentence imposed under the Criminal Justice Act 2003 or this Act (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (4)(b) if the appropriate custodial term imposed was 10 years or more.

Origin: CJA 2003 s.224A(6); LASPOA 2012 s.122(1).

(8) Any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

Origin: CJA 2003 s.224A(7); LASPOA 2012 s.122(1).

(9) Any other sentence of detention for a determinate period is relevant for the purposes of subsection (4)(b) if it was for a period of 10 years or more.

Origin: CJA 2003 s.224A(8); LASPOA 2012 s.122(1).

(10) An extended sentence or other sentence of detention is also relevant if it would have been relevant under subsection (8) or (9) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.

Origin: CJA 2003 s.224A(9); LASPOA 2012 s.122(1).

(11) For the purposes of subsections (4) to (10)—

"extended sentence" means—

(a) a sentence imposed under—

(i) section 164 or 181, or

(ii) section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003,

(including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or

(b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

"life sentence" means—

(a) means any of the following imposed for an offence, whenever committed—

(i) a sentence of detention for life or during Her Majesty's pleasure under section 168 or 174 of this Code or section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000;

(ii) a sentence of custody for life under section 187 or 190 of this Code or section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000;

(iii) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);

(iv) a sentence of detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006);

(v) a sentence of detention for life under section 209 of the Armed Forces Act 2006;

(vi) a sentence under section 218 of that Act (detention at Her Majesty's pleasure), or

(b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

"relevant pre-sentence period", in relation to the previous offence referred to in subsection (4), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

"sentence of detention" includes any sentence of a period in custody (however expressed).

Origin: C(S)A 1997 s.34(2); PCC(S)A 2000 Sch.9 para.183(2); CJA 2003 s.224A(10); Sch.18 para.3; AFA 2006 Sch.16 para.142(2)(a), (b), (c); LASPOA 2012 s.117(10)(b), s.122(1).

(12) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Origin: CJA 2003 s.224A(11) (part); LASPOA 2012 s.122(1).

(13) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (4)(a) and (5) to have been committed on the last of those days.

Origin: CJA 2003 s.224A(12); CJCA 2015 s.5(1).

189 Required sentence of custody for life for offence carrying life sentence

(1) This section applies where a court is dealing with an offender for an offence where—

(a) the offender is aged 18 or over but under 21 at the time of conviction,

(b) the offence is a Schedule 13 offence (see section 222),

(c) the offence was committed on or after 4 April 2005, and

(d) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 221(1) and 223).

Origin: CJA 2003 s.225(1) (part); SI 2005/950 art.2(1), Sch.1 para.18; drafting.

(2) The pre-sentence report requirements (see section 28) apply to the court in relation to forming the opinion mentioned in subsection (1)(d).

Origin: CJA 2003 s.156(3)(a) (part).

(3) If the court considers that the seriousness of—

(a) the offence, or

(b) the offence and one or more offences associated with it,

is such as to justify the imposition of a sentence of custody for life, the court must impose a sentence of custody for life under section 187.

Origin: CJA 2003 s.225(2) (part); SI 2005/643 art.3(4)(a).

(4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Origin: CJA 2003 s.225(5) (part).

190 Duty to impose custody for life for offence of murder

(1) Where a person aged under 21 is convicted of—

(a) murder, or

(b) any other offence the sentence for which is fixed by law as life imprisonment,

the court must sentence the offender to custody for life.

(2) Subsection (1) does not apply where the offender is liable to be detained under section 174 (detention at Her Majesty's pleasure for offender under 18).

Origin: PCC(S)A 2000 s.93; drafting.

191 Custody for life: place of detention

(1) An offender sentenced to custody for life is to be detained in a young offender institution unless a direction under subsection (2) is in force in relation to the offender.

This is subject to section 22(2)(b) of the Prison Act 1952 (removal to hospital etc).

(2) The Secretary of State may from time to time direct that an offender sentenced to custody for life is to be detained in a prison instead of a young offender institution.

Origin: PCC(S)A 2000 s.95.

CHAPTER 4

ADULTS AGED 21 AND OVER

Suspended sentences of imprisonment

192 Suspended sentence order for person aged 21 or over: availability

(1) This section applies where, in dealing with an offender for an offence, a court passes a sentence of imprisonment.

Origin: CJA 2003 s.189(1) (part); LASPOA 2012 s.68(1).

(2) A suspended sentence order (see section 200) is available in relation to that sentence if the term of the sentence of imprisonment is—

(a) at least 14 days, but

(b) not more than 2 years.

Origin: CJA 2003 s.189(1) (part); LASPOA 2012 s.68(1); clean sweep.

(3) But a suspended sentence order is not available in relation to that sentence if—

(a) the sentence of imprisonment is one of two or more sentences imposed on the same occasion which are to be served consecutively, and

(b) the terms of those sentences are in aggregate more than 2 years.

Origin: CJA 2003 s.189(2); LASPOA 2012 s.68(2).

(4) For provision about suspended sentences see Chapter 5.

Origin: Drafting.

Special custodial sentence for certain offenders of particular concern

193 Required special custodial sentence for certain offenders of particular concern

(1) This section applies where the court imposes a sentence of imprisonment for an offence where—

(a) the offence is listed in Schedule 7,

(b) the person—

(i) was aged 18 or over when the offence was committed, and

(ii) is aged 21 or over at the time of conviction, and

(c) the court does not impose either of the following for the offence (or for an offence associated with it)—

(i) an extended sentence under section 194, or

(ii) a sentence of imprisonment for life.

Origin: CJA 2003 s.236A(1) (part), (2) (part), (5); CJCA 2015 Sch.1 para.2; SI 2015/778 art.3, Sch.1 para.2; drafting.

(2) The term of the sentence must be equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period of 1 year for which the offender is to be subject to a licence,

and must not exceed the maximum term permitted for the offence.

Origin: CJA 2003 s.236A(2), (4); CJCA 2015 Sch.1 para.2.

(3) For the purposes of subsection (2), the "appropriate custodial term" is the term that, in the opinion of the court, ensures that the sentence is appropriate.

Origin: CJA 2003 s.236A(3); CJCA 2015 Sch.1 para.2.

Extended sentences

194 Extended sentence of imprisonment for certain violent or sexual offences: persons 21 or over

An extended sentence of imprisonment is a sentence of imprisonment the term of which is equal to the aggregate of—

(a) the appropriate custodial term (see section 196), and

(b) a further period (the "extension period") for which the offender is to be subject to a licence.

Origin: CJA 2003 s.226A(5); LASPOA 2012 s.124.

195 Extended sentence of imprisonment: availability

(1) An extended sentence of imprisonment is available in respect of an offence (whenever committed) where—

(a) the offence ("the index offence") is a specified offence (see section 221(1)),

(b) the offender is aged 21 or over when convicted of the index offence,

(c) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see section 223),

(d) the court is not required by section 198 or 199 to impose a sentence of imprisonment for life, and

(e) the earlier offence condition or the 4 year term condition is met.

Origin: CJA 2003 s.226A(1), (12); LASPOA 2012 s.124, Sch.21 para.36(2).

(2) The pre-sentence report requirements (see section 28) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

Origin: CJA 2003 s.156(3)(a) (part); LASPOA 2012 Sch.21 para.22.

(3) The earlier offence condition is that, at the time the index offence was committed, the offender had been convicted of an offence listed in Schedule 8.

Origin: CJA 2003 s.226A(2); LASPOA 2012 s.124.

(4) The 4 year term condition is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term (see section 196) would be at least 4 years.

Origin: CJA 2003 s.226A(3); LASPOA 2012 s.124; drafting.

196 Term of extended sentence of imprisonment

(1) This section applies where the court dealing with an offender for the index offence imposes, or is considering whether to impose, an extended sentence of imprisonment under section 194.

Origin: Drafting.

(2) The appropriate custodial term is the term of imprisonment that would be imposed in respect of the index offence in compliance with section 160(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence of imprisonment.

Origin: CJA 2003 s.226A(6); LASPOA 2012 s.124.

(3) The extension period must be a period of such length as the court considers necessary for the purpose of protecting members of the public from serious harm occasioned by the commission by the offender of further specified offences.
This is subject to subsections (4) and (5).

Origin: CJA 2003 s.226A(7); LASPOA 2012 s.124; ORA 2014 s.8(2)(a).

(4) The extension period must—
- (a) be at least 1 year, and
- (b) not exceed—
  - (i) 5 years if the index offence was a specified violent offence, or
  - (ii) 8 years if the index offence was a specified sexual offence.

Origin: CJA 2003 s.226A(7A), (8); LASPOA 2012 s.124; ORA 2014 s.8(2)(b).

(5) The term of the extended sentence of imprisonment must not exceed the maximum term permitted for the index offence.

Origin: CJA 2003 s.226A(9); LASPOA 2012 s.124.

197 Extended sentences for offences committed before 4 April 2005

In section 195(1)(a) and section 196(4)(b), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that—
- (a) was abolished before 4 April 2005, and
- (b) would have constituted such an offence if committed on the day on which the offender was convicted of the index offence.

Origin: CJA 2003 s.226A(10); LASPOA 2012 s.124; drafting.

Life sentences

198 Life sentence for second listed offence

(1) This section applies where a court is dealing with an offender for an offence ("the index offence") where—
- (a) the index offence is listed in Part 1 of Schedule 9,
- (b) the offender is aged 21 or over at the time of conviction, and
- (c) the sentence condition and the previous offence condition are met.

Origin: CJA 2003 s.224A(1); LASPOA 2012 s.122(1); CJCA 2015 s.3(9); SI 2012/2906 art.3(e).

(2) The court must impose a sentence of imprisonment for life unless the court is of the opinion that there are particular circumstances which—

(a) relate to—

(i) the offence,

(ii) the previous offence referred to in subsection (4), or

(iii) the offender, and

(b) would make it unjust to do so in all the circumstances.

Origin: CJA 2003 s.224A(2); LASPOA 2012 s.122(1), Sch.19 para.24(2)(a).

(3) The sentence condition is that, but for this section, the court would impose a sentence of imprisonment for 10 years or more, disregarding any extension period it would impose under section 194.

Sections 159(2) and 160(2) apply for this purpose.

Origin: CJA 2003 s.224A(3); LASPOA 2012 s.122(1), Sch.19 para.24(2)(a).

(4) The previous offence condition is that—

(a) at the time the offence was committed, the offender had been convicted of an offence ("the previous offence") listed in Schedule 9, and

(b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.

Origin: CJA 2003 s.224A(4); LASPOA 2012 s.122(1).

(5) An offence listed in Part 1 of Schedule 9 is to be disregarded if the date specified in that Schedule in relation to it is after the date on which the index offence was committed.

Origin: CJCA 2015 s.3(9); drafting.

(6) A life sentence is relevant for the purposes of subsection (4)(b) if—

(a) the offender was not eligible for release during the first 5 years of the sentence, or

(b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.

Origin: CJA 2003 s.224A(5); LASPOA 2012 s.122(1).

(7) An extended sentence imposed under the Criminal Justice Act 2003 or this Act (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (4)(b) if the appropriate custodial term imposed was 10 years or more.

Origin: CJA 2003 s.224A(6); LASPOA 2012 s.122(1).

(8) Any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

Origin: CJA 2003 s.224A(7); LASPOA 2012 s.122(1).

(9) Any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (4)(b) if it was for a period of 10 years or more.

Origin: CJA 2003 s.224A(8); LASPOA 2012 s.122(1).

(10) An extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (8) or (9) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.

Origin: CJA 2003 s.224A(9); LASPOA 2012 s.122(1).

(11) For the purposes of subsections (4) to (10)—

"extended sentence" means—

(a) a sentence imposed under—

(i) section 164, 181 or 194,

(ii) section 226A, 226B, 227 or 228 of the Criminal Justice Act 2003, or

(iii) section 85 of the Powers of Criminal Courts (Sentencing) Act 2000,

(including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or

(b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

"life sentence" means—

(a) means any of the following imposed for an offence, whenever committed—

(i) a sentence of imprisonment for life;

(ii) a sentence of detention for life or during Her Majesty's pleasure under section 168 or 174 of this Code or section 90 or 91 of the Powers of Criminal Courts (Sentencing) Act 2000;

(iii) a sentence of custody for life under section 187 or 190 of this Code or section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000;

(iv) a sentence of imprisonment or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one passed as a result of section 219 of the Armed Forces Act 2006);

(v) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one passed as a result of section 221 of the Armed Forces Act 2006);

(vi) a sentence of detention for life under section 209 of the Armed Forces Act 2006;

(vii) a sentence under section 218 of that Act (detention at Her Majesty's pleasure), or

(b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);

"relevant pre-sentence period", in relation to the previous offence referred to in subsection (4), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;

"sentence of imprisonment or detention" includes any sentence of a period in custody (however expressed).

Origin: C(S)A 1997 s.34(2); PCC(S)A 2000 Sch.9 para.183(2); CJA 2003 s.224A(10); Sch.18 para.3; AFA 2006 Sch.16 para.142(2)(a), (b), (c); LASPOA 2012 s.117(10)(b), s.122(1).

(12) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Origin: CJA 2003 s.224A(11); LASPOA 2012 s.122(1).

(13) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsections (4)(a) and (5) to have been committed on the last of those days.

Origin: CJA 2003 s.224A(12); CJCA 2015 s.5(1).

199 Required life sentence for offence carrying life sentence

(1) This section applies where a court is dealing with an offender for an offence where—

(a) the offender is aged 21 or over at the time of conviction,

(b) the offence is a Schedule 13 offence (see section 222),

(c) the offence was committed on or after 4 April 2005, and

(d) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 221(1) and 223).

Origin: CJA 2003 s.225(1) (part); SI 2005/950 art.2(1), Sch. para.18; drafting.

(2) The pre-sentence report requirements (see section 28) apply to the court in relation to forming the opinion mentioned in subsection (1)(d).

Origin: CJA 2003 s.156(3)(a) (part).

(3) If the court considers that the seriousness of—

(a) the offence, or

(b) the offence and one or more offences associated with it,

is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life.

Origin: CJA 2003 s.225(2) (part).

(4) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

Origin: CJA 2003 s.225(5) (part).

CHAPTER 5

SUSPENDED SENTENCES

What a suspended sentence order is

200 Suspended sentence order

(1) A suspended sentence order is an order providing that a sentence of imprisonment or detention in a young offender institution in respect of an offence is not to take effect unless—

(a) an activation event occurs, and

(b) a court having power to do so subsequently orders under paragraph 13 of Schedule 10 that the sentence is to take effect.

Origin: CJA 2003 s.189(1) (part), (1B) (part); LASPOA 2012 s.68(1), Sch.9 para.20; drafting.

(2) A suspended sentence order may also specify one or more available community requirements with which the offender must comply during the supervision period.

Origin: CJA 2003 s.189(1A); LASPOA 2012 s.68(1).

(3) An activation event occurs if the offender—

(a) commits another offence in the United Kingdom during the operational period (whether or not punishable with imprisonment), or

(b) during the supervision period, contravenes any community requirement imposed by the order.

Origin: CJA 2003 s.189(1) (part); (1B) (part); LASPOA 2012 s.68(1); drafting.

(4) The community requirements are listed in column 1 of the community requirements table (see section 201).

Origin: CJA 2003 s.189(1A) (part); LASPOA 2012 s.68(1); drafting.

(5) Provision about each requirement is made by the provisions of Schedule 3 mentioned in the corresponding entry in column 2 of that table.

Origin: Drafting.

(6) In this Code—

"suspended sentence order" has the meaning given by subsection (1);

"suspended sentence" means a sentence to which a suspended sentence order relates.

Origin: CJA 2003 s.189(7) (part).

(7) In this Code—

(a) references to a community requirement of, or imposed by, a suspended sentence order are to a requirement specified in the order under subsection (2).

(b) "operational period" and "supervision period" mean the periods specified as such in the order (see section 202).

Origin: CJA 2003 s.189(7) (part); LASPOA 2012 s.68(5); drafting.

201 Suspended sentence order: community requirements table

The community requirements table referred to in sections 200 and 204 is—

Requirement	*Further provision in Schedule 3*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
unpaid work requirement	Part 1		paragraph 3 of Schedule 3
rehabilitation activity requirement	Part 2		
programme requirement	Part 3		
prohibited activity requirement	Part 4		paragraph 8 of Schedule 3
curfew requirement	Part 5		paragraph 10 of Schedule 3
exclusion requirement	Part 6		paragraph 12 of Schedule 3
residence requirement	Part 7		paragraph 14 of Schedule 3
foreign travel prohibition requirement	Part 8		
mental health treatment requirement	Part 9		paragraph 17 of Schedule 3,
drug rehabilitation requirement	Part 10		paragraph 20 of Schedule 3
alcohol treatment requirement	Part 11		paragraph 24 of Schedule 3
alcohol abstinence and monitoring requirement	Part 12	section 205(1), (2) or (3); paragraph 11(b) or 12 of Schedule 11 (transfer to Scotland or Northern Ireland)	paragraph 26 of Schedule 3

Requirement	*Further provision in Schedule 3*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
attendance centre requirement	Part 13	section 205(4), paragraph 11(a) of Schedule 11 (transfer to Scotland)	paragraph 29 of Schedule 3
electronic compliance monitoring requirement	Part 14	section 205(5)	paragraph 34 of Schedule 3
electronic whereabouts monitoring requirement	Part 14	section 205(6)	paragraphs 36 and 34 of Schedule 3

Origin: CJA 2003 s.190(1)(a), (aa), (c), (d), (e), (f), (g), (ga), (h), (i), (j), (ja), (l), (m), (2)(a), (d), (e), (f), (g), (h), (i); LASPOA 2012 s.72(3), s.76(4), (5), (9)(a); CCA 2013 Sch.16 para.13(2)(b), (3)(b); ORA 2014 s.15(2); clean sweep; drafting.

202 Operational period and supervision period

(1) A suspended sentence order must specify the operational period (see section 200(3)(a)).

Origin: CJA 2003 s.189(1)(a) (part); LASPOA 2012 s.68(1); drafting.

(2) The operational period must be a period, beginning with the day on which the order is made, of—

(a) at least 6 months, and

(b) not more than 2 years.

Origin: CJA 2003 s.189(3) (part); LASPOA 2012 s.68(3).

(3) If a suspended sentence order imposes any community requirement or requirements, the order must specify the supervision period (see section 200(2)).

Origin: CJA 2003 s.189(1A) (part); LASPOA 2012 s.68(1); drafting.

(4) The supervision period must be a period, beginning with the day on which the order is made, of—

(a) at least 6 months, and

(b) not more than—

(i) 2 years, or

(ii) if less, the operational period.

Origin: CJA 2003 s.189(3) (part), (4); LASPOA 2012 s.68(3), (4).

203 Suspended sentence to be treated generally as sentence of imprisonment etc

(1) A suspended sentence which has not taken effect under paragraph 13 of Schedule 10 is to be treated as—

(a) a sentence of imprisonment, or

(b) as the case may be, a sentence of detention in a young offender institution,

for the purposes of all enactments and instruments made under enactments.

Origin: CJA 2003 s.189(6) (part); SI 2005/643 art.3(2)(b).

(2) Subsection (1) is subject to any provision to the contrary contained in—

(a) the Criminal Justice Act 1967,

(b) any enactment passed or instrument made under any enactment after 31 December 1967.

Origin: CJA 2003 s.189(6) (part).

Available community requirements

204 Suspended sentence order: available community requirements

(1) A suspended sentence order may not impose a community requirement that is not an available requirement.

Origin: Drafting.

(2) A community requirement is an available requirement in relation to a suspended sentence order unless a provision mentioned in column 3 of the entry for that requirement in the table in section 201 provides otherwise.

Origin: CJA 2003 s.190(2); drafting.

205 Suspended sentence order: availability of particular requirements

Alcohol abstinence and monitoring requirement

(1) An alcohol abstinence and monitoring requirement is not an available requirement unless it is available by virtue of piloting regulations (see Schedule 16).

Origin: LASPOA 2012 s.77(4).

(2) An alcohol abstinence and monitoring requirement is not available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 3 (prescribed arrangements for monitoring).

Origin: CJA 2003 s.212A(6) (part); LASPOA 2012 s.76(1).

(3) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 3 (alcohol level to be kept below specified level) is not an available requirement unless regulations are in force under 25(7)(b) of that Schedule (prescribed alcohol level).

Origin: CJA 2003 s.212A(4) (part); LASPOA 2012 s.76(1).

Attendance centre requirement

(4) An attendance centre requirement is not an available requirement unless the offender is aged under 25 at the time of conviction of the offence.

Origin: CJA 2003 s.190(1)(l); PCA.

Electronic compliance monitoring requirement

(5) An electronic compliance monitoring requirement is not an available requirement in relation to a community order unless the community order imposes at least one other available requirement, other than—

(a) an alcohol abstinence and monitoring requirement;

(b) an electronic whereabouts monitoring requirement.

Origin: CJA 2003 s.190(3), (4); CCA 2013 Sch.16 para.13(4); drafting.

Electronic whereabouts monitoring requirement

(6) An electronic whereabouts monitoring requirement is available only—

(a) in relation to—

(i) a local justice area specified in the Crime and Courts Act 2013 (Commencement No. 15, Transitional and Savings Provisions) Order 2016 (S.I. 2016/962), or

(ii) an area specified in another order made under section 61(2) of the Crime and Courts Act 2013 bringing into force Part 4 of Schedule 16 to that Act in relation to that area;

(b) in relation to any such area, only for so long as such an order provides that that Part of that Schedule is in force in relation to it,

and, accordingly, does not apply where an order is made or amended under Part 2 or 3 of Schedule 11 (transfer to Scotland or Northern Ireland).

Origin: Drafting.

Exercise of power to impose community requirements

206 Suspended sentence order: exercise of power to impose requirements

(1) This section applies where a court makes a suspended sentence order which imposes community requirements.

Origin: Drafting.

(2) If the suspended sentence order imposes two or more different community requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.

Origin: CJA 2003 s.190(5).

(3) The court must ensure, so far as practicable, that any community requirement imposed by the order is such as to avoid any conflict with the offender's religious beliefs.

Origin: CJA 2003 s.217(1)(a) (part).

(4) The court must also ensure, so far as practicable, that any community requirement imposed by a suspended sentence order is such as to avoid—

(a) any conflict with—

(i) the requirements of any community order or youth rehabilitation order, or
(ii) any community requirement of any other suspended sentence order,

to which the offender may be subject, and

(b) any interference with the times, if any, at which the offender normally—
(i) works, or
(ii) attends any educational establishment.

Origin: CJA 2003 s.217(1)(a) (part), (b) (part); CJIA 2008 Sch.4 para.91; PCA.

207 Duty to impose an electronic compliance monitoring requirement in particular cases

(1) A suspended sentence order which imposes—
(a) a curfew requirement, or
(b) an exclusion requirement,

must also impose an electronic compliance monitoring requirement unless the court considers it inappropriate to do so in the particular circumstances of the case.

Origin: CJA 2003 s.190(3) (part).

(2) This is subject to—
(a) paragraph 35(1) of Schedule 3 (availability of arrangements in local area);
(b) paragraph 34 of that Schedule (consent of person whose co-operation is required).

Origin: CJA 2003 s.190(3) (part); drafting.

Provision for review of suspended sentence order with community requirements

208 Power to provide for review of suspended sentence order

(1) A suspended sentence order which imposes one or more community requirements may make provision for the order to be reviewed periodically ("provision for review").
This is subject to subsection (3).

Origin: CJA 2003 s.191(1) (part); LASPOA 2012 Sch.9 para.5.

(2) Where an order contains provision for review, it must—
(a) specify the intervals at which the order is to be reviewed,
(b) provide for each review to be made, subject to section 210, at a hearing held for the purpose by the responsible court (a "review hearing"),
(c) require the offender to attend each review hearing, and
(d) provide for a progress report to be made to the responsible court before each review.

For the purposes of paragraph (d), a progress report is a report by an officer of a provider of probation services on the offender's progress in complying with the community requirements of the order.

Origin: CJA 2003 s.191(1) (part); ORA 2014 Sch.4 para.2.

(3) If the suspended sentence order—

(a) imposes a drug rehabilitation requirement, and

(b) contains provision for review under this section,

the provision for review must not include provision relating to that requirement (but see paragraph 22 of Schedule 3 for separate provision about review of such a requirement).

Origin: CJA 2003 s.191(2); PCA; drafting.

(4) In this section "the responsible court" in relation to a suspended sentence order means—

(a) if a court is specified in the order in accordance with subsection (5), that court;

(b) otherwise, the court by which the order is made.

Origin: CJA 2003 s.191(3).

(5) Where—

(a) a suspended sentence order is made by a magistrates' court, and

(b) the offender's home local justice area is not the area in which the court acts,

the order may specify that the responsible court is to be a magistrates' court which acts in the offender's home local justice area.

Origin: CJA 2003 s.191(4); PCA.

(6) A suspended sentence order made on an appeal from—

(a) the Crown Court, or

(b) the criminal division of the Court of Appeal,

is to be taken for the purposes of subsection (4)(b) to have been made by the Crown Court.

Origin: CJA 2003 s.191(5).

209 Review hearings: power to amend community requirements etc

(1) - This section applies where a review hearing is held on a review of a suspended sentence order by virtue of section 208.

Origin: CJA 2003 s.192(1) (part).

(2) - The court may, after considering the progress report, amend—

(a) - the community requirements of the suspended sentence order, or

(b) - any provision of the order which relates to those requirements.

Origin: CJA 2003 s.192(1); ORA 2014 Sch.4 para.3(2)(b). -

(3) - But the court—

(a) - may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses willingness to comply with that requirement,

(b) - may not amend—

(i) - a mental health treatment requirement,

(ii) - a drug rehabilitation requirement, or

(iii) an alcohol treatment requirement,

unless the offender expresses willingness to comply with the requirement as amended,

(c) may amend the supervision period only if the period as amended complies with section 202(4),

(d) may not amend the operational period, and

(e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.

Origin: CJA 2003 s.192(2).

(4) For the purposes of subsection (3)(a)—

(a) a community requirement of a kind within any entry in the table in section 201 is of the same kind as any other community requirement within that entry, and

(b) an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

Origin: CJA 2003 s.192(3).

(5) If the court is of the opinion that the offender has without reasonable excuse breached a community requirement of the order, the court may adjourn the hearing so that it can deal with the case under paragraph 13 of Schedule 10 (powers of court to deal with offender on breach of requirement or subsequent conviction).

Origin: CJA 2003 s.192(6).

(6) In this section—

"review hearing" has the meaning given by section 208(2)(b);

"progress report" in relation to a review has the meaning given by section 208(2).

Origin: CJA 2003 s.192(1); ORA 2014 Sch.4 para.3(2)(b).

210 Suspended sentence order: alteration of periodic review arrangements

(1) Subsections (2) and (3) apply where the court—

(a) considers the progress report relating to a review (the "current review"), and

(b) forms the opinion that the offender's progress in complying with the community requirements of the order is satisfactory.

Origin: CJA 2003 s.192(4) (part).

(2) If the court forms that opinion before a review hearing is held at the current review—

(a) it may order that no review hearing is to be held at the current review, and

(b) it may amend the suspended sentence order so as to provide for each subsequent review to be held without a review hearing.

Origin: CJA 2003 s.192(4) (part); ORA 2014 Sch.4 para.3(3).

(3) If a review hearing is held at the current review, the court may at the hearing amend the suspended sentence order so as to provide for each subsequent review to be held without a review hearing.

Origin: CJA 2003 s.192(4) (part); ORA 2014 Sch.4 para.3(3).

(4) If at a review held without a review hearing the court—

(a) considers the progress report, and

(b) forms the opinion that the offender's progress under the order is no longer satisfactory,

it may require the offender to attend a hearing of the court at a specified time and place.

Origin: CJA 2003 s.192(5).

(5) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 208(2)(a).

Origin: CJA 2003 s.192(7).

(6) The functions of a court under this section that are exercisable in relation to a review without a hearing may be exercised—

(a) in the case of the Crown Court, by a judge of the court, and

(b) in the case of a magistrates' court, by a justice of the peace.

Origin: CJA 2003 s.192(8).

(7) In this section—

"review hearing" has the meaning given by section 208(2)(b);

"progress report" has the meaning given by section 208(2).

Origin: CJA 2003 s.192(1); ORA 2014 Sch.4 para.3(2)(b).

Making a suspended sentence order with community requirements

211 Suspended sentence order with community requirement to specify offender's home local justice area

(1) A suspended sentence order which imposes any community requirement must specify the area which is the offender's home local justice area.

(2) That area must be the local justice area in which the offender resides or will reside.

Origin: CJA 2003 s.196(1A), 216(1) (part); LASPOA 2012 Sch.9 para.7(3); SI 2005/886 Sch. para.103; clean sweep.

212 Power to direct magistrates' court supervision of order imposing community requirement

(1) A suspended sentence order which imposes any community requirement and is made—

(a) by the Crown Court, or

(b) on appeal,

may include a direction that any breach of a community requirement of the order is to be dealt with by a magistrates' court.

Origin: CJA 2003 Sch.12 para.3, 6(1)(b).

(2) For the purposes of this section, breach of a requirement means any failure to comply with the requirement.

Origin: drafting.

213 Provision of copies of suspended sentence order which imposes community requirements and related documents

(1) This section applies on the making by a court of a suspended sentence order which imposes one or more community requirements.

Origin: CJA 2003 s.196(1A), 219(A1), (1) (part); LASPOA 2012 Sch.9 para.7(3); ORA 2014 Sch.4 para.12(2); PCA.

(2) The proper officer of the court must provide copies of the order—

(a) to the offender,

(b) to the responsible officer,

(c) to an officer of a provider of probation services that is a public sector provider who is acting at the court, and

(d) if the court does not act in the offender's home local justice area, to a provider of probation services that is a public sector provider and is operating in that area.

Origin: CJA 2003 s.219(1) (part); ORA 2014 Sch.4 para.12(2); PCA.

(3) If the order imposes any requirement specified in column 1 of the following table the proper officer of the court must also forthwith provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

The requirement	*The person to whom a copy must be provided*
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.
A residence requirement relating to residence in an institution.	The person in charge of the institution.
A mental health treatment requirement.	The person specified under paragraph 16(4)(d) of Schedule 3 or the person in charge of the institution or place specified under paragraph 16(4)(b) or (c) of that Schedule.
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(1)(a) or (b) of Schedule 3.

The requirement	*The person to whom a copy must be provided*
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 3 or the person in charge of the institution or place specified under paragraph 23(4)(c) or 23(4)(d)(i) of that Schedule.
An electronic monitoring requirement	Any person who by virtue of paragraph 32(1) of Schedule 3 will be responsible for the electronic monitoring.
	Any person by virtue of whose consent the requirement is included in the order.

Origin: CJA s.219(2) (part), Sch.14; PCA; clean sweep.

(4) If the court does not act in the offender's home local justice area, the proper officer of the court must provide to the magistrates' court acting in that area—

(a) a copy of the order, and

(b) such documents and information relating to the case as the proper officer considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

Origin: CJA 2003 s.219(3) (part), SI 2005/886 Sch. para.105(b); PCA.

(5) In this section "proper officer" means—

(a) in relation to a magistrates' court, the designated officer for the court, and

(b) in relation to the Crown Court, the appropriate officer.

Origin: PCA.

(6) In subsection (1) "public sector provider" means—

(a) a probation trust or other public body, or

(b) the Secretary of State.

Origin: CJA 2003 s.219(4), ORA 2014 Sch.4 para.12(3).

Suspended sentence order with community requirement: obligations of responsible officer and offender

214 Responsible officer

(1) This section applies for the purposes of this Chapter in relation to a suspended sentence order made in respect of an offender which imposes one or more community requirements.

(2) "The responsible officer", in relation to the offender, means the person who for the time being is responsible for discharging the functions conferred by this

Chapter on the responsible officer in accordance with arrangements made by the Secretary of State.

(3) The responsible officer must be—

(a) an officer of a provider of probation services, or

(b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the order.

Origin: CJA 2003 s.196(1A), s.197 (part); LASPOA 2012 Sch.9 para.7(3); ORA 2014 s.14(1).

215 Obligations of responsible officer

(1) This section applies during while a suspended sentence order which imposes any community requirement is in force.

Origin: CJA 2003 s.198(1) (part); PCA.

Functions of the responsible officer

(2) The responsible officer must—

(a) make any arrangements that are necessary in connection with the requirements imposed by the order, and

(b) promote the offender's compliance with those requirements.

Origin: CJA 2003 s.198(1) (part).

(3) This is subject to paragraph 16(7) of Schedule 3 (in-patient treatment under mental health treatment requirement).

Origin: drafting.

Exercise of functions by responsible officer

(4) The responsible officer must ensure, as far as practicable, that any instruction given or requirement imposed by the responsible officer is such as to avoid any conflict with the offender's religious beliefs.

Origin: CJA 2003 s.217(1)(a) (part), (2) (part).

(5) The responsible officer must also ensure, as far as practicable, that any instruction given or requirement imposed by the responsible officer is such as to avoid—

(a) any conflict with the requirements of—

(i) any community order or any youth rehabilitation order, or

(ii) any community requirement of any other suspended sentence order,

to which the offender may be subject, and

(b) any interference with the times, if any, at which the offender normally—

(i) works, or

(ii) attends any educational establishment.

Origin: CJA 2003 s.217(1)(a) (part), (b), (2) (part); CJIA 2008 Sch.4 para.91; PCA; drafting.

216 Duty of offender to keep in touch with responsible officer

(1) This section applies while a suspended sentence order which imposes one or more community requirements is in force.

Origin: CJA 2003 s.220(1) (part).

(2) The offender must keep in touch with the responsible officer in accordance with such instructions as the responsible officer may give the offender from time to time.

Origin: CJA 2003 s.220(1) (part).

(3) That obligation is enforceable as a community requirement imposed by the suspended sentence order.

Origin: CJA 2003 s. 220(2); clean sweep.

217 Duty to obtain permission before changing residence

(1) This section applies while a suspended sentence order which imposes one or more community requirements is in force.
But it does not apply if the order includes a residence requirement (see paragraph 13 of Schedule 3).

Origin: CJA 2003 s.220A(1) (part), (6); ORA 2014 s.18(2); clean sweep.

(2) The offender must not change residence without permission given in accordance with this section by—
- (a) the responsible officer, or
- (b) a court.

Origin: CJA 2003 s.220A(1) (part); ORA 2014 s.18(2).

(3) The obligation imposed by subsection (2) has effect as a community requirement imposed by the suspended sentence order.

Origin: CJA 2003 s.220A(5) (part); ORA 2014 s.18(2); drafting ("community requirement").

(4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.

Origin: CJA 2003 s.220A(2) (part); ORA 2014 s.18(2).

(5) A court may also give permission in any proceedings before it under Schedule 10 (breach or amendment of orders etc).

Origin: CJA 2003 s.220A(3) (part); ORA 2014 s.18(2).

(6) The grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
- (a) is likely to prevent the offender complying with a requirement imposed by the suspended sentence order, or
- (b) would hinder the offender's rehabilitation.

Origin: CJA 2003 s.220A(4); ORA 2014 s.18(2).

(7) The responsible officer must refuse an application for permission if—

(a) the offender's present residence is in England or Wales, and
(b) the offender's proposed residence is outside England and Wales.

Origin: CJA 2003 s.220A(4A); PCA.

(8) For cases in which a suspended sentence order has to be amended because of permission given under this section, see paragraph 23 of Schedule 10 (amendment to reflect change in local justice area).

Origin: CJA 2003 s.220A(7) (part); ORA 2014 s.18(2).

(9) In this section "the appropriate court" has the same meaning as in Schedule 10.

Origin: CJA 2003 s.220A(8); ORA 2014 s.18(2).

Activation of sentence, amendment and revocation of order etc

218 Breach, revocation or amendment of suspended sentence order, and effect of further conviction

Schedule 10 makes provision about—
(a) the effect of any further conviction where an offender is subject to a suspended sentence order, and
(b) breach, revocation or amendment of the community requirements of suspended sentence orders.

Origin: CJA 2003 s.193.

Transferring order with community requirements to Scotland or Northern Ireland

219 Transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements

Schedule 11 makes provision about the transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements.

Origin: CJA 2003 s.194.

Interpretation

220 Suspended sentences: interpretation

(1) In this Chapter—
"the operational period", in relation to a suspended sentence, means the period specified under section 202(1);
"sentence of imprisonment" does not include a committal for contempt of court or any kindred offence;
"the supervision period", in relation to a suspended sentence, means the period (if any) specified under section 202(3).

Origin: CJA 2003 s.195; LASPOA 2012 Sch.9 para.6(2), (3); drafting.

(2) For the purposes of this Chapter, a suspended sentence order is "in force" during the operational period.

Origin: Drafting.

CHAPTER 6

DANGEROUS OFFENDERS

Interpretation

221 Extended sentences: meaning of "specified offence" etc

(1) An offence is a "specified offence" for the purposes of this Code if it is a specified violent offence or a specified sexual offence.

Origin: CJA 2003 s.224(1).

(2) In this Part—

"serious harm" means death or serious personal injury, whether physical or psychological;

"specified violent offence" means an offence specified in Part 1 of Schedule 12;

"specified sexual offence" means an offence specified in Part 2 of that Schedule.

Origin: CJA 2003 s.224(3).

222 Life sentences: meaning of "Schedule 13 offence"

(1) In this Part "Schedule 13 offence" means an offence listed in Schedule 13 (certain specified offences carrying maximum sentence on indictment of imprisonment for life).

Origin: CJA 2003 s.224(1) (part), (2); LASPOA 2012 Sch.19 para.16; SI 2005/643 art.3(3); drafting.

(2) For the purposes of Schedule 13, an offence found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, must be taken to have been committed on the last of those days.

Origin: CJA 2009 Sch.22 para.37(2); CJCA 2015 s.2(11).

The assessment of dangerousness

223 The assessment of dangerousness

(1) This section applies where it falls to a court to assess under any of the following provisions (which apply where an offender has committed a specified offence, however described) whether there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences—

(a) section 165, 182 or 195, (extended sentence for certain violent or sexual offences);

(b) section 173, 189 or 199 (required life sentence for Schedule 13 offence).

Origin: CJA 2003 s.229(1); drafting.

(2) In making that assessment, the court—

(a) must take into account all the information that is available to it about the nature and circumstances of the offence,

(b) may take into account any information that is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,

(c) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (b) forms part, and

(d) may take into account any information about the offender which is before it.

Origin: CJA 2003 s.229(2); CJIA 2008 s.17(2)(b), (c); PCA.

(3) The reference in subsection (2)(b) to a conviction by a court includes a reference to—

(a) a conviction of an offence in any service disciplinary proceedings, and

(b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction).

Origin: CJA 2003 s.229(2A); CJIA 2008 s.17(3); CJA 2009 Sch.21 para.95(2).

(4) For the purposes of subsection (3)(a) "service disciplinary proceedings" means—

(a) any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence), and

(b) any proceedings before a Standing Civilian Court;

and "conviction" includes the recording of a finding that a charge in respect of the offence has been proved.

Origin: CJA 2003 s.229(2B); CJA 2009 Sch.21 para.95(3).

Supplementary

224 Appeals where previous convictions set aside or previous sentences modified

(1) Subsection (3) applies where—

(a) a sentence has been imposed on a person under section 188 or 198 (life sentence for second listed offence),

(b) a previous conviction of that person has been subsequently set aside on appeal, and

(c) without that conviction, the previous offence condition in section 188(4) or 198(4) would not have been met.

Origin: CJA 2003 s.231(A1); LASPOA 2012 Sch.19 para.20(2).

(2) Subsection (3) also applies where—

(a) a sentence has been imposed on a person under section 181 or 194 (extended sentences for adults),

(b) the earlier offence condition was met but the 4 year term condition was not, and

(c) any previous conviction of that person's without which the earlier offence condition would not have been met has been subsequently set aside on appeal.

For this purpose, references to the earlier offence condition and the 4 year term condition are to be read in accordance with 182 or 195 (as the case may be).

Origin: CJA 2003 s.231(1); LASPOA 2012 Sch.19 para.20(3).

(3) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside.

Origin: CJA 2003 s.231(2).

(4) Subsection (5) applies where—

(a) a sentence has been imposed on a person under section 188 or 198,

(b) a previous sentence imposed on that person has been subsequently modified on appeal, and

(c) taking account of that modification, the previous offence condition in section 188(4) or 198(4) would not have been met.

Origin: CJA 2003 s.231(3); LASPOA 2012 Sch.19 para.20(4).

(5) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence mentioned in subsection (4)(a) may be given at any time within 28 days from the date on which the previous sentence was modified.

Origin: CJA 2003 s.231(4); LASPOA 2012 Sch.19 para.20(4).

225 Certificates of conviction

Where—

(a) a person is convicted in England and Wales of an offence listed in Schedule 8 or 9,

(b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that day, and

(c) that court subsequently certifies that fact,

that certificate is evidence, for the purposes of section 182, 188, 195 or 198 (extended sentences for adults and life sentences for second listed offence), that the person was convicted of such an offence on that day.

Origin: CJA 2003 s.232A (part); LASPOA 2012 Sch.19 para.21; CJCA 2015 s.5(2).

CHAPTER 7

MINIMUM SENTENCES FOR PARTICULAR OFFENCES

226 Minimum sentence of 7 years for third class A drug trafficking offence

(1) This section applies where—

(a) an offender is convicted of a class A drug trafficking offence ("the index offence") committed on or after 1 October 1997,

(b) at the time when the index offence was committed, the offender—

(i) was aged 18 or over, and
(ii) had 2 other relevant drug convictions, and

(c) one of the offences to which those other relevant drug convictions related was committed after the offender had been convicted of the other.

Origin: PCC(S)A 2000 s.110(1); CJA 2009 Sch.17 para. 10(2)(a).

(2) The court must impose an appropriate custodial sentence for a term of at least 7 years except where the court is of the opinion that there are particular circumstances which—

(a) relate to any of the offences or to the offender, and
(b) would make it unjust to do so in all the circumstances.

Origin: PCC(S)A 2000 s.110(2).

(3) For the purposes of subsection (1) "relevant drug conviction" means—

(a) a conviction in any part of the United Kingdom of a class A drug trafficking offence,
(b) a conviction in another member State of an offence committed on or after 16 August 2010 which would, if committed in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence,
(c) a conviction of an offence under section 42 of the Armed Forces Act 2006, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a class A drug trafficking offence,
(d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a class A drug trafficking offence, or
(e) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted a class A drug trafficking offence if committed in England and Wales at the time of conviction.

Origin: PCC(S)A 2000 s.110(2A), s.114(1), (1A), (1B) (part); AFA 2006 Sch.16 para.166; CJA 2009 Sch.17 para.10(2)(b), (5)(a); SI 2010/1858 art.3.

(4) Where—

(a) a person is charged with a class A drug trafficking offence (which, apart from this subsection, would be triable either way), and
(b) the circumstances are such that, if convicted of the offence, the person could be sentenced for it under subsection (2),

the offence is to be triable only on indictment.

Origin: PCC(S)A 2000 s.110(4).

(5) In this section "class A drug trafficking offence" means a drug trafficking offence committed in respect of a class A drug; and for this purpose—

"class A drug" has the same meaning as in the Misuse of Drugs Act 1971;

"drug trafficking offence" means an offence which is specified in—

(a) paragraph 1 of Schedule 2 to the Proceeds of Crime Act 2002 (drug trafficking offences), or
(b) so far as it relates to that paragraph, paragraph 10 of that Schedule.

Origin: PCC(S)A 2000 s.110(5); POCA 2002 Sch.11 para.37(2).

(6) In this section "an appropriate custodial sentence" means—

(a) in relation to an offender who is 21 or over when convicted of the index offence, a sentence of imprisonment;

(b) in relation to an offender who is under 21 when convicted of the index offence, a sentence of detention in a young offender institution under section 177 (and includes, if the index offence is an offence for which a person aged 21 or over would be liable to imprisonment for life, a sentence of custody for life under section 187).

Origin: PCC(S)A 2000 s.110(6); PCA.

227 Minimum of 3 years for third domestic burglary

(1) This section applies where—

(a) an offender is convicted of a domestic burglary ("the index offence") committed on or after 1 December 1999,

(b) at the time when the index offence was committed—

(i) the offender was aged 18 or over, and

(ii) had 2 other relevant domestic burglary convictions, and

(c) one of the burglaries to which those other relevant domestic burglary convictions relate was committed after the person had been convicted of the other.

Origin: PCC(S)A 2000 s.111(1); CJA 2009 Sch.17 para.10(3)(a)(i).

(2) The court must impose an appropriate custodial sentence for a term of at least 3 years except where the court is of the opinion that there are particular circumstances which—

(a) relate to any of the offences or to the offender, and

(b) would make it unjust to do so in all the circumstances.

Origin: PCC(S)A 2000 s.111(2).

(3) For the purposes of subsection (1), "relevant domestic burglary conviction" means—

(a) a conviction in England and Wales of a domestic burglary committed on or after 1 December 1999, or

(b) a conviction in any other part of the United Kingdom or any other member State of an offence committed on or after 16 August 2010 which would, if committed in England and Wales at the time of the conviction, have constituted domestic burglary,

(c) a conviction of an offence under section 42 of the Armed Forces Act 2006 committed on or after 1 December 1999 in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is an offence of domestic burglary,

(d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Disciplinary Act 1957 committed on or after 1 December 1999 in respect of which the corresponding civil offence (within the meaning of the Act in question) is an offence of domestic burglary, or

(e) a conviction of a member State service offence committed on or after 16 August 2010 which would have constituted an offence of domestic burglary if committed in England and Wales at the time of conviction.

Origin: PCC(S)A 2000 s.111(2A), s.114(1), (1A), (1B) (part); AFA 2006 Sch.16 para.166; CJA 2009 Sch.17 para.10(3)(b), (5)(a); SI 2009/1059 Sch.1 para.45(3); SI 2010/1858 art.3.

(4) Where—

(a) a person is charged with a domestic burglary which, apart from this subsection, would be triable either way, and

(b) the circumstances are such that, if convicted of the burglary, the person could be sentenced for it under subsection (2),

the burglary is to be triable only on indictment.

Origin: PCC(S)A 2000 s.111(4).

(5) In this section "domestic burglary" means a burglary committed in respect of a building or part of a building which is a dwelling.

Origin: PCC(S)A 2000 s.111(5).

(6) In this section "an appropriate custodial sentence" means—

(a) in relation to a person who is 21 or over when convicted of the index offence, a sentence of imprisonment;

(b) in relation to a person who is under 21 when convicted of the index offence, a sentence of detention in a young offender institution under section 177.

Origin: PCC(S)A 2000 s.111(6); PCA.

228 Minimum sentence for repeat offence involving weapon

(1) This section applies where—

(a) an offender is convicted of an offence under—

(i) section 1(1) of the Prevention of Crime Act 1953 (carrying offensive weapon without lawful authority or reasonable excuse);

(ii) section 139(1) of the Criminal Justice Act 1988 (having article with blade or point in public place);

(iii) section 139A(1) or (2) of that Act (having article with blade or point or offensive weapon on school premises),

(b) the offence was committed on or after 17 July 2015, and

(c) when the offence was committed, the offender—

(i) was aged at least 16, and

(ii) had at least one relevant conviction.

Origin: PCA 1953 s.1(2A); CJA 1988 s.139(6A), s.139A(5A); CJCA 2015 s.28(2), (5), (6); SI 2015/1463 art.2(a).

(2) The court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—

(a) relate to the offence, to the previous offence or to the offender, and

(b) would make it unjust to do so in all the circumstances.

Origin: PCA 1953 s.1(2B); CJA 1988 s.139(6B), s.139A(5B); CJCA 2015 s.28(2), (5), (6).

(3) In considering whether it is of that opinion in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).

Origin: PCA 1953 s.1(2D); CJA 1988 s.139(6D), s.139A(5D); CJCA 2015 s.28(2), (5), (6).

(4) In subsection (2) "appropriate custodial sentence" means—

(a) in the case of a person aged under 18 when convicted, a detention and training order of at least 4 months;

(b) in the case of a person aged 18 or over but under 21 when convicted, a sentence of detention in a young offender institution for a term of at least 6 months;

(c) in the case of a person aged 21 or over when convicted, a sentence of imprisonment for a term of at least 6 months.

Origin: PCA 1953 s.1(2C), (2G); CJA 1988 s.139(6C), (6G), s.139A(5C), (5G); CJCA 2015 s.28(2), (5), (6).

(5) In this section, "relevant conviction" means—

(a) a conviction of a relevant offence, whenever committed,

(b) a conviction in another part of the United Kingdom or another member State of a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of the conviction,

(c) a conviction of an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,

(d) a conviction of an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, or

(e) a conviction of a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.

Origin: PCA 1953 s.1ZA(1); CJA 1988 s.139AZA(1); CJCA 2015 s.28(3), (7).

(6) In this section, "relevant offence" means an offence under—

(a) section 1 or 1A of the Prevention of Crime Act 1953 (offences involving offensive weapons), or

(b) section 139, 139A or 139AA of the Criminal Justice Act 1988 (offences involving article with blade or point or offensive weapon).

Origin: PCA 1953 s.1ZA(1)(a) (part); CJA 1988 s.139AZA(1)(a) (part); CJCA 2015 s.28(3), (7).

229 Appeals where previous convictions set aside

(1) This section applies where—

(a) a sentence has been imposed on an offender under subsection (2) of—

(i) section 226,

(ii) section 227, or

(iii) section 228, and

(b) any of the offender's previous convictions without which that section would not have applied has been subsequently set aside on appeal.

Origin: PCA 1953 s.1(2E) (part); CJA 1988 s.139(6E) (part), s.139A(5E) (part); PCC(S)A 2000 s.112(1); CJCA 2015 s.28(2), (5), (6).

(2) Notice of appeal against the sentence may be given at any time within 28 days from the date on which the previous conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968).

Origin: PCA 1953 s.1(2E) (part); CJA 1988 s.139(6E) (part), s.139A(5E) (part); PCC(S)A 2000 s.112(2); CJCA 2015 s.28(2), (5), (6).

230 Certificates of conviction for purposes of sections 226 and 227

(1) This section applies where an offender is convicted—

(a) in England and Wales of—

(i) a class A drug trafficking offence, or

(ii) a domestic burglary,

(b) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,

(c) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or

(d) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence.

Origin: PCC(S)A 2000 s.113(1) (part), (2) (part).

(2) A certificate, given in accordance with subsection (3), of either or both of the following—

(a) that the offender was convicted of that offence on that day;

(b) that the offence was committed on a particular day, or over, or at some time during, a particular period,

is evidence for the purposes of section 226 or 227 of the facts so certified.

Origin: PCC(S)A 2000 s.113(1), (1A), (2), (2A); CJA 2009 Sch.17 para.10(4).

(3) A certificate is given in accordance with this subsection if it is—

(a) given—

(i) by the court by or before which the offender was convicted of the offence, and

(ii) in the case of a court in the United Kingdom, after the court has stated in open court the facts certified by it, and

(b) signed by the proper officer of the court.

Origin: PCC(S)A 2000 s.113(1), (1A), (2), (2A); CJA 2009 Sch.17 para.10(4); PCA.

(4) In this section—

"proper officer" means the clerk of the court, that clerk's deputy or any other person having custody of the court record;

"class A drug trafficking offence" and "domestic burglary" have the same meanings as in sections 226 and 227 respectively;

"corresponding drug trafficking offence" means an offence within section 226(3)(b);

"corresponding domestic burglary offence" means an offence within section 227(3)(b).

Origin: PCC(S)A 2000 s.113(3); CJA 2009 Sch.17 para.10(4)(c).

231 Offences under service law

(1) In sections 226 to 228 and this section—

"civilian offence" means an offence other than—

(a) an offence under section 42 of the Armed Forces Act 2006,

(b) an offence under section 70 of the Army Act 1995, section 70 of the Air Force Act 1955 or section 42 of the Naval Disciplinary Act 1957, or

(c) a member State service offence;

"conviction" includes—

(a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction, and

(b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

"member State service offence" means an offence which was subject to proceedings under the law of a member State other than the United Kingdom governing all or any of the naval, military or air forces of that State.

Origin: PCA 1953 s.1ZA(2) (part); CJA 1988 s.139AZA(2) (part); PCC(S)A 2000 s.114(1B) (part); CJA 2009 Sch.17 para.10(5)(a); CJCA 2015 s.28(3), (7).

(2) For the purposes of section 226(3)(c) and (d), section 227(3)(c) and (d) and section 228(5)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.

Origin: CJA 1988 s.139AZA(3); CJCA 2015 s.28(7); AFA 2006 Sch.16 para.166; SCA 2007 Sch.5 para.3; CJA 2009 Sch.17 para.10(5)(b); PCA.

232 Determination of day when offence committed

Where an offence is found to have been committed—

(a) over a period of 2 or more days, or

(b) at some time during a period of 2 or more days,

it is to be taken for the purposes of sections 226, 227 and 228 to have been committed on the last of those days.

Origin: PCA 1953 s.1(2F); CJA 1988 s.139(6F), s.139A(5F); PCC(S)A 2000 s.115; CJCA 2015 s.28(2), (5), (6).

233 Other required minimum sentences

For other requirements to impose a minimum sentence for certain offences see—

(a) section 1A(5) of the Prevention of Crime Act 1953 (threatening with offensive weapon in public);

(b) section 51A(2) of the Firearms Act 1968;
(c) section 139AA(7) of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon);
(d) section 29(4) or (6) of the Violent Crime Reduction Act 2006 (using someone to mind a weapon).

Origin: Drafting.

CHAPTER 8

EFFECT OF LIFE SENTENCES

234 Life sentence: minimum term order or whole life order

(1) This section applies where a court passes a life sentence.

Origin: PCC(S)A 2000 s.82A(1); CJCSA 2000 s.60(1), (3); CJA 2003 s.269(1), s.336(2).

(2) The court must make—
(a) a minimum term order, or
(b) a whole life order.

Origin: PCC(S)A 2000 s.82A(2) (part), (4) (part); CJCSA 2000 s.60(1); CJA 2003 s.269(2) (part), (4) (part); drafting.

(3) A minimum term order is an order that the early release provisions (see section 237) are to apply to the offender as soon as the offender has served the part of the sentence which is specified in the order in accordance with section 235 or 236 ("the minimum term").

Origin: PCC(S)A 2000 s.82A(2) (part); CJCSA 2000 s.60(1); CJA 2003 s.269(2) (part).

(4) A whole life order is an order that the early release provisions are not to apply to the offender.

Origin: PCC(S)A 2000 s.82A(4) (part); CJCSA 2000 s.60(1); CJA 2003 s.269(4) (part).

(5) The court must make a whole life order if—
(a) the offender was 21 or over when the offence was committed, and
(b) the court is of the opinion that, because of the seriousness of—
(i) the offence, or
(ii) the combination of the offence and one or more offences associated with it,
it should not make a minimum term order.

Origin: PCC(S)A 2000 s.82A(4) (part); CJCSA 2000 s.60(1); CJA 2003 s.269(4) (part).

235 Mandatory life sentences: further provision

(1) This section applies where a court passes a life sentence for an offence the sentence for which is fixed by law.

Origin: CJA 2003 s.270(1); LASPOA 2012 s.64(3)(a).

Minimum term

(2) If the court makes a minimum term order, the minimum term must be such part of the offender's sentence as the court considers appropriate taking into account—

(a) the seriousness of—

(i) the offence, or

(ii) the combination of the offence and any one or more offences associated with it, and

(b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

(i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody),

(ii) any direction which the court would have given under section 238 or 240 (crediting periods of remand on certain types of bail or in custody pending extradition).

Origin: PCC(S)A 2000 s.82A(3); CJCSA 2000 s.60(1); CJA 2003 s.269(3), (3A), Sch.32 para.109(3); LASPOA 2012 s.110(10)(a), (b); CJCA 2015 s.15(1).

Determination of seriousness

(3) In considering the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, under—

(a) section 234(5) (determining whether to make a whole life order), or

(b) subsection (2) (determining the minimum term),

the court must have regard to—

(a) the general principles set out in Schedule 14, and

(b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 14.

Origin: CJA 2003 s.269(5).

Duty to give reasons for minimum term order or whole life order

(4) Where the court makes a minimum term order or a whole life order, in complying with the duty under section 50(2) to state its reasons for deciding on the order made, the court must in particular—

(a) state which of the starting points in Schedule 14 it has chosen and its reasons for doing so, and

(b) state its reasons for any departure from that starting point.

Origin: CJA 3004 s.270(2); LASPOA 2012 s.64(3)(b).

236 Minimum term order: other life sentences

(1) This section applies where a court—

(a) passes a life sentence in circumstances in which the sentence is not fixed by law, and

(b) makes a minimum term order.

Origin: PCC(S)A 2000 s.82A(1); CJCSA 2000 s.60(1); CJA 2003 Sch.32 para.109(2).

(2) The minimum term must be such as the court considers appropriate, taking into account—

(a) the seriousness of—

(i) the offence, or

(ii) the combination of the offence and one or more offences associated with it,

(b) the early release provisions as compared with section 244(1) of the Criminal Justice Act 2003 (duty to release prisoners), and

(c) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

(i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);

(ii) any direction which the court would have given under section 238 or 240 (crediting periods of remand on bail subject to certain types of condition or in custody pending extradition).

Origin: PCC(S)A 2000 s.82A(3); CJCSA 2000 s.60(1); CJA 2003 Sch.32 para.109(3); CJCA 2015 s.15(1); drafting.

237 Life sentences: interpretation

In this Chapter—

"the early release provisions" means section 28(5) to (8) of the Crime (Sentences) Act 1997;

"guidelines" means sentencing guidelines issued by the Sentencing Council for England and Wales as definitive guidelines under section 120 of the Coroners and Justice Act 2009, as revised by any subsequent guidelines so issued;

"life sentence" means—

(a) a sentence of imprisonment for life,

(b) a sentence of detention for life or during Her Majesty's pleasure under section 168 or 174, or

(c) a sentence of custody for life under section 187 or 190;

"minimum term order" and "minimum term" have the meanings given by section 234(3);

"whole life order" has the meaning given by section 234(4).

Origin: PCC(S)A 2000 s.82A(7); CJCSA 2000 s.60(1); CJA 2003 s.277 (part); AFA 2006 Sch.16 para.230; CJA 2003 Sch.21 para.86.

CHAPTER 9

SENTENCE ADMINISTRATION

Declaration about time to count as served

238 Direction for time on bail under certain conditions to count as time served

(1) This section applies where—

(a) a court passes a determinate sentence on an offender in respect of an offence (see subsection (5)),

(b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, and

(c) the offender's bail was subject to a qualifying curfew condition and an electronic monitoring condition ("the relevant conditions").

Origin: CJA 2003 s.240A(1); CJIA 2008 s.21(4); clean sweep.

(2) The court must give a direction specifying the credit period for the purposes of section 240A of the Criminal Justice Act 2003 (time remanded on bail to count towards time served) in relation to the sentence.

Origin: CJA 2003 s.240A(2) (part); CJIA 2008 s.21(4).

(3) The credit period is calculated by taking the following steps.

Step 1

Add—

(a) the day on which the offender's bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question), and

(b) the number of other days on which the offender's bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).

Step 2

Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also—

(a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender's compliance with a curfew requirement, or

(b) on temporary release under rules made under section 47 of the Prison Act 1952.

Step 3

From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

Step 4

Divide the result by 2.

Step 5

If necessary, round up to the nearest whole number.

Origin: CJA 2003 s.240A(3); LASPOA 2012 s.109(3).

(4) Where the court gives a direction under subsection (2) it must state in open court—

(a) the number of days on which the offender was subject to the relevant conditions, and

(b) the number of days (if any) which it deducted under each of steps 2 and 3.

Origin: CJA 2003 s.240A(8); CJIA 2008 s.21(4).

(5) For the purposes of subsection (1)(a) a court passes a determinate sentence if it—

(a) sentences the offender to imprisonment for a term, or

(b) passes a determinate sentence of detention in a young offender institution, or

(c) passes a determinate sentence of detention under section 164 or 168 (offenders aged under 18).

Origin: CJA 2003 s.240ZA(1) (part), (11), s.240A(11) (part); CJIA 2008 s.21(4); LASPOA 2012 s.109(2), Sch.20 para.4; CJCA 2015 Sch.1 para.16; drafting.

(6) Section 240ZA of the Criminal Justice Act 2003 makes provision about time remanded in custody which is to count as time served.

Origin: Drafting.

239 Section 238: interpretation

(1) For the purposes of section 238, "sentence of imprisonment" does not include a committal—

(a) in default of payment of any sum of money, other than one adjudged to be paid on a conviction,

(b) for want of sufficient distress to satisfy any sum of money, or

(c) for failure to do or abstain from doing anything required to be done or left undone,

and references to sentencing an offender to imprisonment are to be read accordingly.

This definition has effect in place of the definition of "sentence of imprisonment" in section 273 for those purposes.

Origin: CJA 2003 s.242(1) (part); drafting.

(2) For the purposes of section 238, a suspended sentence—

(a) is to be treated as a sentence of imprisonment when it is activated under paragraph 13(1)(a) or (b) of Schedule 10, and

(b) is to be treated as being imposed by the order under which it is activated.

Origin: CJA 2003 s.240ZA(7); s.240A(11) (part); CJIA 2008 s.21(4); LASPOA 2012 s.108(2).

(3) For the purposes of the reference in section 238(2) to the term to which a person has been sentenced (that is to say, the reference to the offender's "sentence"), consecutive terms and terms which are wholly or partly concurrent are to be treated as a single term if—

(a) the sentences were passed on the same occasion, or

(b) where they were passed on different occasions, the person has not been released at any time during the period beginning with the first and ending with the last of those occasions.

Origin: CJA 2003 s.240ZA(9); s.240A(11) (part); CJIA 2008 s.21(4); LASPOA 2012 s.108(2); IP1.

(4) In section 238—

"curfew requirement" means a requirement (however described) to remain at one or more specified places for a specified number of hours in any given day, which—

(a) is imposed by a court or the Secretary of State, and

(b) arises as a result of a conviction;

"electronic monitoring condition" means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for

the purpose of securing the electronic monitoring of a person's compliance with a qualifying curfew condition;

"qualifying curfew condition" means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day.

Origin: CJA 2003 s.240A(12); CJIA 2008 s.21(4); LASPOA 2012 s.109(7)(a).

240 Period in custody awaiting extradition: declaration by court

(1) This section applies where a court imposes a fixed-term sentence on a person who—

(a) was tried for the offence in respect of which the sentence was imposed, or received the sentence—

(i) after having been extradited to the United Kingdom, and

(ii) without having first been restored or had an opportunity of leaving the United Kingdom, and

(b) was for any period kept in custody while awaiting extradition to the United Kingdom as mentioned in paragraph (a).

Origin: CJA 2003 s.243(1); PJA 2006 Sch.13 para.31; clean sweep.

(2) In this section "fixed term sentence" means—

(a) a sentence of imprisonment for a determinate term,

(b) a determinate sentence of detention in a young offender institution, or

(c) a determinate sentence of detention under section 164 or 168.

Origin: CJA 2003 s.237(1).

(3) The court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.

Origin: CJA 2003 s.243(2); LASPOA 2012 s.110(8).

Recommendations

241 Power of court to recommend licence conditions for certain prisoners

(1) This section applies where a court sentences an offender to—

(a) a term of imprisonment, or

(b) a term of detention in a young offender institution,

of 12 months or more in respect of any offence.

Origin: CJA 2003 s.238(1) (part); SI 2005/643 art.3(8).

(2) The court may, when passing sentence, recommend to the Secretary of State particular conditions which in its view should be included in any licence granted to the offender under Chapter 6 of Part 12 of the Criminal Justice Act 2003 on the offender's release from prison or detention.

Origin: CJA 2003 s.238(1) (part); SI 2005/643 art.3(8); PCA.

(3) A recommendation under subsection (2) is not to be treated for any purpose as part of the sentence passed on the offender.

Origin: CJA 2003 s.238(3).

Conversion of sentence of detention or custody to sentence of imprisonment

242 Conversion of sentence of detention to sentence of imprisonment

(1) This section applies where an offender has been sentenced to a term of detention by a relevant custodial sentence and—

(a) has reached the age of 21, or

(b) has reached the age of 18 and has been reported to the Secretary of State by the independent monitoring board of the institution in which the offender is detained as—

(i) exercising a bad influence on the other inmates of the institution, or

(ii) behaving in a disruptive manner to the detriment of those inmates.

Origin: PCC(S)A 2000 s.99(1) (part); CJA 2003 s.236; OMA 2007 Sch.3 para.9.

(2) The Secretary of State may direct that the offender is to be treated as if sentenced to imprisonment for the same term.

This is subject to the following provisions of this section.

Origin: PCC(S)A 2000 s.99(1); CJA 2003 s.236; OMA 2007 Sch.3 para.9.

Effect of direction

(3) Subsections (4) and (5) apply where the Secretary of State gives a direction under subsection (2) in relation to the offender.

Origin: Drafting.

(4) The portion of the term of detention imposed under the relevant sentence of detention which the offender has already served is to be deemed to have been a portion of a term of imprisonment.

Origin: PCC(S)A 2000 s.99(2); CJA 2003 s.236.

(5) If the relevant custodial sentence is—

(a) an extended sentence of detention under section 164, or

(b) an extended sentence of detention in a young offender institution (see section 181),

the offender is to be treated as if sentenced to an extended sentence of imprisonment under section 194.

Origin: PCC(S)A 2000 s.99(3A); LASPOA 2012 Sch.21 para.12(3).

(6) Rules under section 47 of the Prison Act 1952 may provide that any award for an offence against discipline made in respect of an offender serving a relevant sentence of detention is to continue to have effect after a direction under subsection (2) has been given in relation to the offender.

Origin: PCC(S)A 2000 s.99(4): CJA 2003 s.236.

"Relevant custodial sentence"

(7) In this section "relevant custodial sentence" means any sentence imposed under Chapter 2 or 3 of this Part (custodial sentences for offenders aged under 21) other than a detention and training order.

Origin: PCC(S)A 2000 s.99(5); drafting.

FOURTH GROUP OF PARTS

FURTHER POWERS RELATING TO SENTENCING

PART 11

BEHAVIOUR ORDERS

CHAPTER 1

CRIMINAL BEHAVIOUR ORDERS

243 Criminal behaviour order

In this Code "criminal behaviour order" means an order which, for the purpose of preventing an offender from engaging in behaviour that is likely to cause harassment, alarm or distress to any person—

(a) prohibits the offender from doing anything described in the order;

(b) requires the offender to do anything described in the order.

Origin: ABCPA 2014 s.22(5); drafting.

244 Power to make criminal behaviour orders

(1) This section applies where—

(a) an offender has been convicted of an offence, and

(b) the prosecution makes an application to the court for a criminal behaviour order to be made against the offender.

Origin: ABCPA 2014 s.22(1), (7).

(2) The court may make a criminal behaviour order against the offender if it—

(a) is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and

(b) considers that making the order will help in preventing the offender from engaging in such behaviour.

Origin: ABCPA 2014 s.22(2), (3), (4).

(3) But the court may make a criminal behaviour order only if it—

(a) does so in addition to dealing with the offender for the offence, and

(b) does not make an order for absolute discharge under section 73 in respect of the offence.

Origin: ABCPA 2014 s.22(6); PCA.

(4) Prohibitions and requirements in a criminal behaviour order must, so far as practicable, be such as to avoid—

(a) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment;

(b) any conflict with the requirements of any other court order or injunction to which the offender may be subject.

Origin: ABCPA 2014 s.22(9).

(5) The prosecution must find out the views of the local youth offending team before applying for a criminal behaviour order to be made if the offender will be under the age of 18 when the application is made.

Origin: ABCPA 2014 s.22(8).

(6) In this section "local youth offending team" means the youth offending team in whose area it appears to the prosecution that the offender lives.

Origin: ABCPA 2014 s.22(10); PCA.

245 Proceedings on an application for an order

(1) For the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the offender.

Origin: ABCPA 2014 s.23(1).

(2) It does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.

Origin: ABCPA 2014 s.23(2).

(3) The court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.

Origin: ABCPA 2014 s.23(3).

(4) If the offender does not appear for any adjourned proceedings the court may—

(a) further adjourn the proceedings,

(b) issue a warrant for the offender's arrest, or

(c) hear the proceedings in the offender's absence.

Origin: ABCPA 2014 s.23(4).

(5) The court may not act under paragraph (b) of subsection (4) unless it is satisfied that the offender has had adequate notice of the time and place of the adjourned proceedings.

Origin: ABCPA 2014 s.23(5).

(6) The court may not act under paragraph (c) of subsection (4) unless it is satisfied that the offender—

(a) has had adequate notice of the time and place of the adjourned proceedings, and

(b) has been informed that if the offender does not appear for those proceedings the court may hear the proceedings in the offender's absence.

Origin: ABCPA 2014 s.23(6).

(7) Subsection (8) applies in relation to proceedings in which a criminal behaviour order is made against an offender who is under the age of 18.

Origin: ABCPA 2014 s.23(7).

(8) In so far as the proceedings relate to the making of the order—

(a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the offender;

(b) section 39 of that Act (power to prohibit publication of certain matters) does so apply.

Origin: ABCPA 2014 s.23(8).

246 Requirements included in orders

(1) A criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement.

The person may be an individual or an organisation.

Origin: ABCPA 2014 s.24(1).

(2) Before including a requirement, the court must receive evidence about its suitability and enforceability from—

(a) the individual to be specified under subsection (1), if an individual is to be specified;

(b) an individual representing the organisation to be specified under subsection (1), if an organisation is to be specified.

Origin: ABCPA 2014 s.24(2).

(3) Before including two or more requirements, the court must consider their compatibility with each other.

Origin: ABCPA 2014 s.24(3).

(4) A person specified under subsection (1) must—

(a) make any necessary arrangements in connection with the requirements for which the person has responsibility (the "relevant requirements");

(b) promote the offender's compliance with the relevant requirements;

(c) if the person considers that the offender—

(i) has complied with all the relevant requirements, or

(ii) has failed to comply with a relevant requirement,

inform the prosecution and the appropriate chief officer of police.

Origin: ABCPA 2014 s.24(4).

(5) In subsection (4)(c) "the appropriate chief officer of police" means the chief officer of police for the police area in which it appears to the person specified under subsection (1) that the offender lives.

Origin: ABCPA 2014 s.24(5); PCA.

(6) An offender subject to a requirement in a criminal behaviour order must—

(a) keep in touch with the person specified under subsection (1) in relation to that requirement, in accordance with any instructions given by that person from time to time;

(b) notify the person of any change of address.

These obligations have effect as requirements of the order.

Origin: ABCPA 2014 s.24(6).

247 Duration of order etc

(1) A criminal behaviour order takes effect on the day it is made, subject to subsection (2).

Origin: ABCPA 2014 s.25(1).

(2) If on the day a criminal behaviour order ("the new order") is made the offender is subject to another criminal behaviour order ("the previous order"), the new order may be made so as to take effect on the day on which the previous order ceases to have effect.

Origin: ABCPA 2014 s.25(2).

(3) A criminal behaviour order must specify the period ("the order period") for which it has effect.

Origin: ABCPA 2014 s.25(3).

(4) In the case of a criminal behaviour order made before the offender has reached the age of 18, the order period must be a fixed period of—

(a) not less than 1 year, and

(b) not more than 3 years.

Origin: ABCPA 2014 s.25(4).

(5) In the case of a criminal behaviour order made after the offender has reached the age of 18, the order period must be—

(a) a fixed period of not less than 2 years, or

(b) an indefinite period (so that the order has effect until further order).

Origin: ABCPA 2014 s.25(5).

(6) A criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

Origin: ABCPA 2014 s.25(6).

248 Interim orders

(1) This section applies where a court adjourns the hearing of an application for a criminal behaviour order.

Origin: ABCPA 2014 s.26(1).

(2) The court may make a criminal behaviour order that lasts until the final hearing of the application or until further order ("an interim order") if the court thinks it just to do so.

Origin: ABCPA 2014 s.26(2).

(3) Section 244(1)(b), (3) and (5) and section 247(3) to (5) do not apply in relation to the making of an interim order.

Origin: ABCPA 2014 s.26(3).

(4) Subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

Origin: ABCPA 2014 s.26(4).

249 Variation or discharge of orders

(1) A criminal behaviour order may be varied or discharged by the court which made it on the application of—

(a) the offender, or

(b) the prosecution.

Origin: ABCPA 2014 s.27(1).

(2) If an application by the offender under this section is dismissed, the offender may make no further application under this section without—

(a) the consent of the court which made the order, or

(b) the agreement of the prosecution.

Origin: ABCPA 2014 s.27(2).

(3) If an application by the prosecution under this section is dismissed, the prosecution may make no further application under this section without—

(a) the consent of the court which made the order, or

(b) the agreement of the offender.

Origin: ABCPA 2014 s.27(3).

(4) The power to vary an order includes power—

(a) to include an additional prohibition or requirement in the order, or

(b) to extend the period for which a prohibition or requirement has effect.

Origin: ABCPA 2014 s.27(4).

(5) Section 246 applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.

Origin: ABCPA 2014 s.27(5).

(6) In the case of a criminal behaviour order made by a magistrates' court, the references in this section to the court which made the order include a reference to any magistrates' court acting in the same local justice area as that court.

Origin: ABCPA 2014 s.27(6).

250 Review of orders

(1) If—

(a) an offender subject to a criminal behaviour order will be under the age of 18 at the end of a review period (see subsection (2)),

(b) the term of the order runs until the end of that period or beyond, and

(c) the order is not discharged before the end of that period,

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

Origin: ABCPA 2014 s.28(1).

(2) The "review periods" are—

(a) the period of 12 months beginning with—

(i) the day on which the criminal behaviour order takes effect, or

(ii) if during that period the order is varied under section 249, the day on which it is varied (or most recently varied, if the order is varied more than once);

(b) a period of 12 months beginning with—

(i) the day after the end of the previous review period, or

(ii) if during that period of 12 months the order is varied under section 249, the day on which it is varied (or most recently varied, if the order is varied more than once).

Origin: ABCPA 2014 s.28(2).

(3) A review under this section must include consideration of—

(a) the extent to which the offender has complied with the order;

(b) the adequacy of any support available to the offender to help the offender comply with it;

(c) any matters relevant to the question whether an application should be made for the order to be varied or discharged.

Origin: ABCPA 2014 s.28(3).

(4) Those carrying out or participating in a review under this section must have regard to any relevant guidance issued by the Secretary of State under section 254 when considering—

(a) how the review should be carried out;

(b) what particular matters the review should deal with;

(c) what action (if any) it would be appropriate to take as a result of the findings of the review.

Origin: ABCPA 2014 s.28(4).

251 Carrying out and participating in reviews

(1) A review under section 250 is to be carried out by the chief officer of police of the police force maintained for the police area in which the offender lives or appears to be living.

Origin: ABCPA 2014 s.29(1).

(2) The chief officer, in carrying out a review under section 250, must act in co-operation with the council for the local government area in which the offender lives or appears to be living; and the council must co-operate in the carrying out of the review.

Origin: ABCPA 2014 s.29(2).

(3) The chief officer may invite the participation in the review of any other person or body.

Origin: ABCPA 2014 s.29(3).

(4) In this section "local government area" means—

(a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;

(b) in relation to Wales, a county or a county borough.

For the purposes of this section, the council for the Inner and Middle Temples is the Common Council of the City of London.

Origin: ABCPA 2014 s.29(4).

252 Breach of order

(1) It is an offence for a person without reasonable excuse—

(a) to do anything he or she is prohibited from doing by a criminal behaviour order, or

(b) to fail to do anything he or she is required to do by a criminal behaviour order.

Origin: ABCPA 2014 s.30(1).

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.

Origin: ABCPA 2014 s.30(2).

(3) If a person is convicted of an offence under this section, an order for conditional discharge under section 74 is not available for the court by or before which the person is convicted.

Origin: ABCPA 2014 s.30(3).

(4) In proceedings for an offence under this section, a copy of the original criminal behaviour order, certified by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

Origin: ABCPA 2014 s.30(4).

(5) In relation to any proceedings for an offence under this section that are brought against a person under the age of 18—

(a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the person;

(b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.

Origin: ABCPA 2014 s.30(5).

(6) If, in relation to any proceedings mentioned in subsection (5), the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it must give its reasons for doing so.

Origin: ABCPA 2014 s.30(6).

253 Special measures for witnesses

(1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to criminal behaviour order proceedings as it applies to criminal proceedings, but with—

(a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision appropriate only in the context of criminal proceedings), and
(b) any other necessary modifications.

Origin: ABCPA 2014 s.31(1).

(2) The provisions are—
(a) section 17(4) to (7);
(b) section 21(4C)(e);
(c) section 22A;
(d) section 27(10);
(e) section 32.

Origin: ABCPA 2014 s.31(2).

(3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to criminal behaviour order proceedings—
(a) to the extent provided by rules of court, and
(b) subject to any modifications provided by rules of court.

Origin: ABCPA 2014 s.31(3).

(4) Section 47 of that Act (restrictions on reporting special measures directions etc) applies with any necessary modifications—
(a) to a direction under section 19 of that Act as applied by this section;
(b) to a direction discharging or varying such a direction.

Sections 49 and 51 of that Act (offences) apply accordingly.

Origin: ABCPA 2014 s.31(4).

(5) In this section "criminal behaviour order proceedings" means proceedings in a magistrates' court or the Crown Court so far as relating to the issue whether to make a criminal behaviour order.

Origin: ABCPA 2014 s.31(5).

254 Guidance

(1) The Secretary of State may issue guidance to—
(a) chief officers of police, and
(b) the councils mentioned in section 251(2),

about the exercise of their functions under this Chapter.

Origin: ABCPA 2014 s.32(1).

(2) The Secretary of State may revise any guidance issued under this section.

Origin: ABCPA 2014 s.32(2).

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

Origin: ABCPA 2014 s.32(3).

CHAPTER 2

PROTECTION FROM HARASSMENT

255 Restraining order

(1) In this Code "restraining order" means an order made under section 256 or 257 against a person which prohibits the person from doing anything described in the order.

Origin: PHA 1997 s.5(2) (part), s.5A(1) (part); DVCVA 2004 s.12(5).

(2) A restraining order may have effect—

(a) for a period specified in the order, or

(b) until further order.

Origin: PHA 1997 s.5(3).

256 Restraining order: availability on conviction

(1) This section applies where a court is dealing with an offender for an offence.

Origin: PHC 1997 s.5(1) (part).

(2) The court may make a restraining order under this section against the offender for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from conduct which—

(a) amounts to harassment, or

(b) will cause a fear of violence.

Origin: PHA 1997 s.5(1) (part), (2); SOCPA 2005 s.125(6).

(3) But the court may make a restraining order under this section only if it does so in addition to dealing with the offender for the offence.

Origin: PHA 1997 s.5(1) (part).

257 Restraining order on acquittal

(1) This section applies where a person ("the defendant") is acquitted of an offence by or before a court.

Origin: PHA 1997 s.5A(1) (part); DVCVA 2004 s.12(5); PCA.

(2) The court may, if it considers it necessary to do so to protect a person from harassment by the defendant, make a restraining order under this section against the defendant.

Origin: PHA 1997 s.5A(1) (part); DVCVA 2004 s.12(5).

(3) Where the Court of Appeal allow an appeal against conviction they may remit the case to the Crown Court to consider whether to proceed under this section.

Origin: PHA 1997 s.5A(3): DVCVA 2004 s.12(5).

(4) Where—

(a) the Crown Court allows an appeal against conviction, or

(b) a case is remitted to the Crown Court under subsection (3),

the reference in subsection (1) to a court before which a person is acquitted of an offence is to be read as referring to that court.

Origin: PHA 1997 s.5A(4); DVCVA 2004 s.12(5).

(5) A person against whom a restraining order is made under this section has the same right of appeal against the order as if—

(a) the person had been convicted of the offence in question before the court which made the order, and

(b) the order had been made under section 256.

Origin: PHA 1997 s.5A(5); DVCVA 2004 s.12(5).

258 Procedure for making, varying or discharging restraining order

(1) Where a person is subject to a restraining order—

(a) that person,

(b) the prosecution, or

(c) any other person mentioned in the order,

may apply to the court which made the order for it to be varied or discharged by a further order.

Origin: PHA 1997 s.5(4).

(2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).

Origin: PHA 1997 s.5(4A); DVCVA 2004 s.12(3).

259 Evidence in proceedings relating to restraining orders

(1) This section applies to proceedings—

(a) under section 256 or 257 for the making of a restraining order, or

(b) under section 258 or 260(6) for the variation or discharge of a restraining order.

Origin: PHA 1997 s.5(3A) (part); DVCVA 2004 s.12(2); PCA.

(2) In any such proceedings, both the prosecution and the defence may lead, as further evidence, any evidence that would be admissible in proceedings for an injunction under section 3 of the Protection from Harassment Act 1997 (civil remedy).

Origin: PHA 1997 s.5(3A) (part); DVCVA 2004 s.12(2).

260 Offence of breaching restraining order

(1) It is an offence for a person who is subject to a restraining order without reasonable excuse to do anything prohibited by the restraining order.

Origin: PHA 1997 s.5(5).

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both.

Origin: PHA 1997 s.5(6); LASPOA 2012 s.85.

(3) Subsection (1) does not apply to conduct of a person on a particular occasion if the Secretary of State certifies that, in the opinion of the Secretary of State, anything done by that person on that occasion related to—

(a) national security,

(b) the economic well-being of the United Kingdom, or

(c) the prevention or detection of serious crime,

and was done behalf of the Crown.

Origin: PHA 1997 s.12(1) (part).

(4) A certificate under subsection (3) is conclusive evidence that subsection (1) does not apply to conduct of that person on that occasion.

Origin: PHA 1997 s.12(1) (part).

(5) A document purporting to be a certificate under subsection (3) is to be received in evidence and, unless the contrary is proved, to be treated as being such a certificate.

Origin: PHA 1997 s.12(3).

(6) A court dealing with a person for an offence under this section may vary or discharge the restraining order by a further order.

Origin: PHA 1997 s.5(7); DVCVA 2004 s.12(4).

261 Restraining orders: meaning of "conduct" and "harassment"

For the purposes of this Chapter—

"conduct" includes speech;

"harassment", in relation to a person, includes—

(a) alarming the person, or

(b) causing the person distress.

Origin: PHA 1997 s.7(2), (4); drafting.

CHAPTER 3

OTHER ORDERS

262 Other behaviour orders etc

(1) For further orders available to a court dealing with an offender for particular offences in particular circumstances, see the following—

Provision	*Description of order*
section 1 of the Licensed Premises (Exclusion of Certain Persons) Act 1980	exclusion order for certain offences committed on licensed premises

Provision	*Description of order*
section 14A of the Football Spectators Act 1989	football banning order in case of certain offences relating to football matches
section 8 of the Crime and Disorder Act 1998	parenting order made— (a) in respect of parent or guardian of person aged under 18 convicted of offence, or (b) in case of offence under section 443 or 444 of the Education Act 1996 (school attendance)
section 33 of the Criminal Justice and Police Act 2001	travel restriction order in case of certain drug trafficking offences
section 103A of the Sexual Offences Act 2003	sexual harm prevention order in relation to offence listed in Schedule 3 or 5 to that Act
section 19 of the Serious Crime Act 2007	serious crime prevention order made by Crown Court in case of serious offence in England and Wales
section 14 of the Modern Slavery Act 2015	slavery and human trafficking prevention order
section 19 of the Psychoactive Substances Act 2016	prohibition order in case of certain offences under that Act

(2) - Part 2 of the Sexual Offences Act 2003 makes provision about notification requirements in the case of a person convicted of an offence listed in Schedule 3 to that Act (sexual offences for the purposes of that Part of that Act).

Origin: Drafting.

FIFTH GROUP OF PARTS

GENERAL PROVISIONS

PART 12

MISCELLANEOUS PROVISION AND GENERAL PROVISION ABOUT SENTENCING

CHAPTER 1

COMMENCEMENT AND AMENDMENT OF CROWN COURT SENTENCE

263 Commencement of Crown Court sentence

(1) A sentence imposed by the Crown Court when dealing with an offender takes effect from the beginning of the day on which it is imposed, unless the court otherwise directs.

Origin: PCC(S)A 2000 s.154(1) (part).

(2) The power to give a direction under subsection (1) is subject to—

(a) section 155 (restriction on consecutive sentences for released prisoners), and

(b) sections 106 and 106A of the Powers of Criminal Courts (Sentencing) Act 2000 (interaction of detention and training order with other sentences).

Origin: PCC(S)A 2000 s.154(2); CJA 2003 Sch.32 para.121.

(3) In this section—

"sentence" (see section 277)—

(a) includes a recommendation for deportation made when dealing with an offender;

(b) does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid: payment for services and enforcement), and

"imposed" includes made.

Origin: PCC(S)A 2000 s.154(1) (part), (3), s.155(8); LASPOA 2012 Sch.5 para.54; drafting.

264 Alteration of Crown Court sentence

(1) Subsection (2) applies where the Crown Court has imposed a sentence when dealing with an offender.

Origin: PCC(S)A 2000 s.155(1) (part).

(2) The Crown Court may vary or rescind the sentence at any time within the period of 56 days beginning with the day on which the sentence was imposed. This subsection is subject to subsections (3) and (4).

Origin: PCC(S)A 2000 s.155(1) (part); CJIA 2008 Sch.8 para.28(2)(a).

(3) Subsection (2) does not apply where an appeal, or an application for leave to appeal, against that sentence has been determined.

Origin: PCC(S)A 2000 s.155(1A); CJIA 2008 Sch.8 para.28(3).

(4) The power conferred by subsection (2) may be exercised only by—

(a) the court constituted as it was when the sentence was imposed, or

(b) where that court comprised one or more justices of the peace, a court so constituted except for the omission of any one or more of those justices.

Origin: PCC(S)A 2000 s.155(4).

(5) Where a sentence is varied under this section, the sentence, as so varied, is to take effect from the beginning of the day on which it was originally imposed, unless the court otherwise directs.

This is subject to subsection (6).

Origin: PCC(S)A 2000 s.155(5);

(6) For the purposes of—

(a) section 18(2) of the Criminal Appeal Act 1968 (time limit for notice of appeal or of application for leave to appeal), and

(b) paragraph 1 of Schedule 3 to the Criminal Justice Act 1988 (time limit for notice of an application for leave to refer a case under section 36 of that Act),

the sentence is to be regarded as imposed on the day on which it is varied under this section.

Origin: PCC(S)A 2000 s.155(6).

(7) Criminal Procedure Rules may—

(a) provide for extending the period fixed by subsection (2) for cases where two or more persons are tried separately on the same or related facts alleged in one or more indictments;

(b) subject to the other provisions of this section, prescribe the cases and circumstances in which, and the time within which, any order or other decision made by the Crown Court may be varied or rescinded by that court.

Origin: PCC(S)A 2000 s.155(7); CJA 2003 s.69(1); drafting.

(8) In this section—

"sentence" (see section 277)—

(a) includes a recommendation for deportation made when dealing with an offender;

(b) does not include an order relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (legal aid: payment for services and enforcement), and

"imposed" includes made.

Origin: PCC(S)A 2000 s.155(1) (part), (1A) (part), (4) (part), (5) (part), (6) (part), (8); LASPOA 2012 Sch.5 para.52(4).

CHAPTER 2

ASSISTANCE FOR PROSECUTION ETC: REVIEW OF SENTENCE

Reference back to court for review of sentence

265 Failure by offender to provide agreed assistance: review of sentence

(1) This section applies if—

(a) the Crown Court has passed a sentence on an offender in respect of an offence,

(b) the sentence ("the original sentence") is a discounted sentence in consequence of the offender's having offered in pursuance of a written agreement to give assistance to the prosecutor or investigator of an offence, and

(c) the offender knowingly fails to any extent to give assistance in accordance with the agreement.

Origin: SOCPA 2005 s.74(1), (2)(a) (part).

(2) A specified prosecutor may at any time refer the case back to the Crown Court if—

(a) the offender is still serving the original sentence, and

(b) the specified prosecutor thinks it is in the interests of justice to do so.

Origin: SOCPA 2005 s.74(3) (part).

(3) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.

Origin: SOCPA 2005 s.74(4) (part).

(4) - If the court is satisfied that the offender knowingly failed to give the assistance it may substitute for the original sentence a sentence that is—

(a) - greater than the original sentence, but

(b) - not greater than the sentence which it would have passed but for the agreement mentioned in subsection (1)(b) ("the original maximum").

Origin: SOCPA 2005 s.74(5) (part).

(5) - Where the substitute sentence is a discounted sentence, the court must state in open court—

(a) - that fact, and

(b) the original maximum.

This is subject to subsection (7).

Origin: SOCPA 2005 s.73(3), s.74(15); drafting.

(6) - Section 50(2) or, as the case may be, 235(4) (requirement to explain reasons for sentence or other order) applies where a substitute sentence is imposed under subsection (4) unless—

(a) - the court considers that it is not in the public interest to disclose that the original sentence was a discounted sentence, or

(b) - subsection (7) provides otherwise.

Origin: SOCPA 2005 s.74(14); drafting.

(7) Where the substitute sentence is a discounted sentence and the court considers that it would not be in the public interest to disclose that fact—

(a) subsection (5) does not apply;

(b) the court must give a written statement of the matters specified in subsection (5)(a) and (b) to—

(i) the prosecutor, and

(ii) the offender;

(c) section 50(2) or, as the case may be, 235(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.

Origin: SOCPA 2005 s.73(4), (7), s.74(15).

(8) Any part of the original sentence which the offender has already served must be taken into account in determining when a substitute sentence imposed under subsection (4) has been served.

Origin: SOCPA 2005 s.74(7) (part).

(9) For the purposes of this section, a substitute sentence imposed under subsection (4) is a discounted sentence if it is lower than the original maximum because of assistance given in pursuance of the written agreement mentioned in subsection (1)(b).

Origin: Drafting.

266 Review of sentence following subsequent agreement for assistance by offender

(1) A case is eligible for review under this section if—

(a) the Crown Court has passed a sentence on an offender in respect of an offence,

(b) the offender is still serving the sentence, and

(c) pursuant to a written agreement subsequently made with a specified prosecutor, the offender has assisted or offered to assist the investigator or prosecutor of any offence,

but this is subject to subsection (2).

Origin: SOCPA 2005 s.73(9) (part), s.74(1) (part), (3)(a) (part), (11) (part), (15).

(2) A case is not eligible for review under this section if—

(a) the sentence was discounted and the offender has not given the assistance offered in accordance with the written agreement by virtue of which it was discounted, or

(b) the offence was one for which the sentence was fixed by law and the offender did not plead guilty to it.

Origin: SOCPA 2005 s.74(2)(b) (part), (c) (part), (13) (part); PCA.

(3) A specified prosecutor may at any time refer a case back to the Crown Court if—

(a) the case is eligible for review under this section, and

(b) the prosecutor considers that it is in the interests of justice to do so.

Origin: SOCPA 2005 s.74(3) (part).

(4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.

Origin: SOCPA 2005 s.74(4) (part).

(5) The court may—

(a) take into account the extent and nature of the assistance given or offered;

(b) substitute for the sentence to which the referral relates such lesser sentence as it thinks appropriate.

Origin: SOCPA 2005 s.74(6) (part).

(6) Nothing in—

(a) any of the provisions listed in section 274(1)(b) or (c) (minimum sentences in certain circumstances), or

(b) section 234 (and Schedule 14) (determination of minimum term in relation to mandatory life sentence),

affects the Crown Court's power under subsection (5).

Origin: SOCPA 2005 s.73(5), s.74(15); PCA.

(7) Where a sentence is substituted under subsection (5) the court must state in open court—

(a) the fact that the substitute sentence is a discounted sentence, and

(b) the original maximum.

This is subject to subsection (9).

Origin: SOCPA 2005 s.73(3), s.74(15); drafting.

(8) Section 50(2) or, as the case may be, 235(4) (requirement to explain reasons for sentence or other order) applies where a sentence is imposed under subsection (5).

But this is subject to subsection (9).

Origin: SOCPA 2005 s.74(14)(b); PCA.

(9) Where the court considers that it would not be in the public interest to disclose that the substitute sentence is a discounted sentence —

(a) subsection (7) does not apply;

(b) the court must give a written statement of the matters specified in subsection (7)(a) and (b) to—

(i) the prosecutor, and

(ii) the offender;

(c) section 50(2) or, as the case may be, 235(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.

Origin: SOCPA 2005 s.73(4), (7), s.74(15).

(10) Any part of the sentence to which the referral relates which the offender has already served must be taken into account in determining when the substitute sentence has been served.

Origin: SOCPA 2005 s.74(7) (part).

References under this Chapter: further provision

267 References under sections 265 and 266: appeals

(1) Where a reference is made under section 265 or 266—

(a) the person in respect of whom the reference is made, or

(b) the specified prosecutor,

may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision of the Crown Court.

Origin: SOCPA 2005 s.74(8) (part).

(2) Section 33(3) of the Criminal Appeal Act 1968 (limitation on appeal from the criminal division of the Court of Appeal) does not prevent an appeal to the Supreme Court under this section.

Origin: SOCPA 2005 s.74(9) (part).

(3) In relation to any proceedings under this section, the Secretary of State may by regulations make provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

Origin: SOCPA 2005 s.74(12)(a); SI 2010/976 Sch.15 para.19.

268 Proceedings under section 265 or 266: exclusion of public

(1) This section applies to—

(a) any proceedings relating to a reference made under section 265 or 266, and

(b) any other proceedings arising in consequence of such proceedings.

Origin: SOCPA 2005 s.75(1) (part).

(2) The court in which the proceedings will be or are being heard may make such order as it considers appropriate—

(a) to exclude from the proceedings any person who does not fall within subsection (4);

(b) to prohibit the publication of any matter relating to the proceedings (including the fact that the reference has been made).

Origin: SOCPA 2005 s.75(2) (part); PCA.

(3) The court may make an order under subsection (2) only if the court considers that the order is—

(a) necessary to protect the safety of any person, and

(b) in the interests of justice.

Origin: SOCPA 2005 s.75(3) (part); PCA.

(4) The following persons fall within this subsection—

(a) a member or officer of the court;

(b) a party to the proceedings;

(c) counsel or a solicitor for a party to the proceedings;

(d) a person otherwise directly concerned with the proceedings.

Origin: SCOPA 2005 s.75(4) (part).

(5) - This section does not affect any other power which the court has by virtue of - any rule of law or other enactment— -

(a) - to exclude any person from proceedings, or

(b) - to restrict the publication of any matter relating to proceedings.

Origin: SOCPA 2005 s.75(5) (part). -

269 Proceedings under section 265 or 266: use of live link

Section 57E of the Crime and Disorder Act 1998 (use of live link in sentencing hearings) applies to hearings relating to a reference under section 265 or 266 as it applies to sentencing hearings.

Origin: SOCPA 2005 s.75A; PJA 2006 Sch.14 para.62. -

270 Interpretation of Chapter

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

Origin: Drafting.

(2) - A discounted sentence is a sentence passed in pursuance of—

(a) - section 68, or

(b) - section 266,

(and includes a sentence imposed under section 265(4) which is less than the original maximum (within the meaning of that section)).

Origin: SCOPA 2005 s.74(10) (part); PCA.

(3) - References—

(a) - to a written agreement are to an agreement made in writing with a specified prosecutor;

(b) - to a specified prosecutor must be construed in accordance with section 69.

Origin: SOCPA 2005 s.74(11) (part). -

CHAPTER 3

RECOGNIZANCES

271 Power of magistrates' court to dispense with recognizance

(1) - This section applies where under an enactment, whether passed before or after the commencement of this Act, an offender sentenced on summary conviction to imprisonment or a fine is required to enter into a recognizance with or without sureties to—

(a) - keep the peace, or

(b) - observe any other condition.

Origin: MCA 1980 s.34(2) (part). -

(2) - The magistrates' court which convicted the offender may dispense with or - modify the requirement. -

Origin: MCA 1980 s.34(2) (part).

(3) In subsection (1) "enactment" includes an enactment contained in a local Act or in any order, regulation or other instrument having effect by virtue of an Act.

Origin: MCA 1980 s.150(1).

CHAPTER 4

ORDERS IMPOSING COMMUNITY REQUIREMENTS

272 Rules relating to community orders and suspended sentence orders

(1) The Secretary of State may make rules for regulating—

(a) the supervision of persons who are subject to relevant orders,

(b) without prejudice to the generality of paragraph (a), the functions of responsible officers within the meaning of section 143 or 214 in relation to offenders subject to relevant orders,

(c) the arrangements to be made by providers of probation services for—

(i) persons subject to unpaid work requirements to perform work, and

(ii) the performance of such work,

(d) the provision and carrying on of attendance centres,

(e) the attendance of persons subject to—

(i) rehabilitation activity requirements,

(ii) activity requirements,

(iii) attendance centre requirements, or

(iv) attendance centre requirements imposed by youth rehabilitation orders under Part 1 of the Criminal Justice and Immigration Act 2008,

at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records,

(f) electronic monitoring in pursuance of an electronic monitoring requirement, and

(g) without prejudice to the generality of paragraph (f), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.

Origin: CJA 2003 s.222(1); CJIA 2008 Sch.4 para.93; ORA 2014, Sch.5 para.5(b); SI 2008/912 Sch.1 para.19(13); clean sweep.

(2) Rules under subsection (1)(c) may, in particular, make provision—

(a) limiting the number of hours of work to be done by a person on any one day,

(b) as to the reckoning of hours worked and the keeping of work records, and

(c) for the payment of travelling and other expenses in connection with the performance of work.

Origin: CJA 2003 s.222(2).

PART 13

INTERPRETATION

Interpretation

273 Interpretation: general

(1) In this Code, except where the contrary intention appears—

"the appropriate officer of the court" means, in relation to a magistrates' court, the clerk of the court;

"associated", in relation to offences, is to be read in accordance with section 275;

"attendance centre" has the meaning given by section 221 of the Criminal Justice Act 2003;

"community order" means an order under section 128;

"community order requirement" is to be read in accordance with section 128(2);

"community requirement", in relation to a suspended sentence order, has the meaning given by section 200(7);

"community sentence" means a sentence which consists of or includes—

(a) a community order, or

(b) a youth rehabilitation order;

"compensation order" has the meaning given by section 94;

"court" does not include the Court Martial;

"criminal courts charge order" has the meaning given by section 43;

"custodial sentence" has the meaning given by section 151;

"detention and training order" has the meaning given by section 100 of the Powers of Criminal Courts (Sentencing) Act 2000;

"electronic monitoring requirement" means—

(a) an electronic compliance monitoring requirement, or

(b) an electronic whereabouts monitoring requirement;

"extended sentence" means a sentence under—

(a) section 164 (extended custodial sentence for persons aged under 18),

(b) section 181 (extended sentence of detention in a young offender institution for adults aged under 21), or

(c) section 194 (extended sentence of imprisonment);

"end date", in relation to a community order, means the date for the time being specified in the order under—

(a) section 138 (community order to specify end date), or

(b) paragraph 13(1)(b) of Schedule 4 (power to substitute later end date on breach);

"guardian" has the same meaning as in the Children and Young Persons Act 1933 (see section 107(1) of that Act);

"offender's home local justice area" means—

(a) in relation to a community order, the local justice area specified in the order under section 139 or paragraph 16 or 17 of Schedule 4;

(b) in relation to a suspended sentence order which imposes one or more community requirements, the local justice area specified in the order under section 211 paragraph 23 or 24 of Schedule 10;

"pre-sentence report" has the meaning given by section 29;

"probation trust" means a trust established under section 5 of the Offender Management Act 2007;

"relevant order" means—

(a) a community order, or

(b) a suspended sentence order which imposes one or more community requirements;

"the responsible officer"—

(a) in relation to a community order, has the meaning given by section 143;

(b) in relation to a suspended sentence order which imposes one or more community requirements, has the meaning given by section 214;

"restraining order" has the meaning given by section 255;

"sentence of imprisonment" does not include a committal—

(a) in default of payment of any sum of money,

(b) for want of sufficient distress to satisfy any sum of money, or

(c) for failure to do or abstain from doing anything required to be done or left undone,

and references to sentencing an offender to imprisonment are to be read accordingly;

"sentencing guidelines" means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines issued;

"specified offence" has the meaning given by section 221;

"suspended sentence" and "suspended sentence order" have the meanings given by section 200(6);

"youth offending team" means a team established under section 39 of the Crime and Disorder Act 1998;

"youth rehabilitation order" has the same meaning as in Part 1 of the Criminal Justice and Immigration Act 2008 (see section 1 of that Act).

Origin: PCC(S)A 2000 s.76, s.148A(10) (part), s.147B(5), s.163(1); CJA 2003 s.147(1), s.196(1), s.305(1), Sch.8 paras.9(3ZC), 10(3ZC); CJA 2009 s.125(8), s.136 (part), Sch.16 para.5(1); LASPOA 2012 s.66(3)(b), (4)(b); drafting.

(2) Any reference in this Code 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.

Origin: PCC(S)A 2000 s.164(2); CJA 2003 s.305(3).

(3) For the purposes of this Code, an offence committed by a person under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) is related to another offence if that other offence is the offence (or one of the offences) which the person intended or believed would be committed.

Origin: Drafting.

(4) A reference in this Code to want of sufficient distress to satisfy a sum includes a reference to circumstances where—

(a) there is power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 to recover the sum from a person, but

(b) it appears, after an attempt has been made to exercise the power, that the person's goods are insufficient to pay the amount outstanding (within the meaning given by 50(3) of Schedule 12 to that Act).

Origin: PCC(S)A 2000 s.163(2); CJA 2003 s.305(1A); TCEA 2007 Sch.13 paras.133, 155.

274 Mandatory sentences

(1) For the purposes of this Code, where a court is dealing with an offender for an offence, a mandatory sentence requirement applies in relation to the offence if—

(a) the offence is one for which the sentence is fixed by law,

(b) the court is obliged by one of the following provisions to pass a sentence of detention for life, custody for life or imprisonment for life—

(i) section 173, 189 or 199 (life sentence for certain dangerous offenders);

(ii) section 188 or 198 (life sentence for second listed offence), or

(c) a sentence is required by one of the following provisions and the court is not of the opinion mentioned in that provision—

(i) section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for threatening in public place with offensive weapons);

(ii) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences);

(iii) section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for threatening with article with blade or point or offensive weapon);

(iv) section 226(2) or 227(2) (minimum sentences for certain repeated drug trafficking and burglary offences);

(v) section 228(2) (minimum sentences for certain repeated offences involving weapons or sharp or bladed articles);

(vi) section 29(4) or (6) of the Violent Crime Reduction Act 2006 (minimum sentence in certain cases of using someone to mind a weapon).

Origin: PCC(S)A 2000 s.164(3); CJA 2003 s.142(2)(b), (c), (2AA) (part), s.305(4); VCRA Sch.1 para.9(8); CJIA 2008 Sch.26 para. 72; LASPOA 2012 Sch.19 para.22, Sch.26 para.22; CJCA 2015 Sch.5 paras.10, 16; SI 2008/1587 art.2(4); drafting.

(2) In this Code, "required life sentence" means a sentence of—

(a) detention for life under section 168,

(b) custody for life under section 187, or

(c) imprisonment for life,

required under a provision mentioned in subsection (1)(b).

Origin: Drafting.

275 Meaning of "associated offence"

For the purposes of this Code, an offence is associated with another if—

(a) - the offender—

(i) - is convicted of it in the proceedings in which the offender is convicted of the other offence, or

(ii) - (although convicted of it in earlier proceedings) is sentenced for it at the same time as being sentenced for that offence, or

(b) - in the proceedings in which the offender is sentenced for the other offence, the offender—

(i) - admits having committed it, and

(ii) - asks the court to take it into consideration in sentencing for that other offence.

Origin: PCC(S)A 2000 s.161(1); CJA 2003 s.305(1) (part).

276 Age of the offender

(1) - This section applies for the purposes of any provision of this Code which requires a person's age to be determined by the court or the Secretary of State.

(2) - The person is to be deemed to be whatever age the person appears to the court, - or, as the case may be, the Secretary of State, to be. -

(3) - For this purpose, the court or Secretary of State must consider any available evidence.

Origin: PCC(S)A 2000 s.164(1); CJA 2003 s.305(2).

277 Meaning of "sentence"

In this Code, except where otherwise provided, "sentence", in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offence, and "sentencing" is to be construed accordingly.

Origin: CJA 2003 s.142(3).

PART 14

SUPPLEMENTARY PROVISION

CHAPTER 1

SUPPLEMENTARY -

278 Regulations and rules

[To be added]

279 Amendments of the Sentencing Code

Schedule 15 contains amendments of the Sentencing Code.

280 Powers to amend the Sentencing Code

Schedule 16 contains powers to amend the Sentencing Code.

281 Transitional provisions and savings

Schedule 17 contains transitional provisions and savings.

282 Consequential amendments and repeals etc

(1) - Schedule 18 contains consequential amendments, repeals and revocations.

Armed forces

(2) - Nothing in this Act affects any provision as it applies for the purposes of the - Armed Forces Act 2006. -

Saving for list of offences applied for other purposes

(3) - Nothing in Schedule 18 affects Schedule 15 to the Criminal Justice Act 2003 - (certain specified offences) as it applies for the purposes of any provision not - rewritten in this Act. -

283 Extent

[To be added] -

284 Commencement

This Act comes into force on [date].

285 Short Title

This Act may be cited as the Sentencing Act [2018].

SCHEDULES

SCHEDULE 1

Section 65

OFFENCES WHERE TERRORIST CONNECTION TO BE CONSIDERED

PART 1

OFFENCES

Common law offences

1 Murder.

2 Manslaughter.

3 Culpable homicide.

4 Kidnapping.

5 Abduction.

Statutory offences

6 An offence under any of the following sections of the Offences against the Person Act 1861—

(a) section 4 (soliciting murder),

(b) section 23 (maliciously administering poison etc so as to endanger life or inflict grievous bodily harm),

(c) section 28 (causing bodily injury by explosives),

(d) section 29 (using explosives etc with intent to do grievous bodily harm),

(e) section 30 (placing explosives with intent to do bodily injury),

(f) section 64 (making or having gunpowder etc with intent to commit or enable any person to commit any felony mentioned in the Act).

7 An offence under any of the following sections of the Explosive Substances Act 1883—

(a) section 2 (causing explosion likely to endanger life or property),

(b) section 3 (attempt to cause explosion or making or keeping explosive with intent to endanger life or property),

(c) section 4 (making or possession of explosive under suspicious circumstances),

(d) section 5 (punishment of accessories).

8 An offence under section 1 of the Biological Weapons Act 1974 (restriction on development etc of certain biological agents and toxins and of biological weapons).

9 An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

10 An offence under any of the following sections of the Aviation Security Act 1982—

(a) section 1 (hijacking),

(b) section 2 (destroying, damaging or endangering safety of aircraft),

(c) section 3 (other acts endangering or likely to endanger safety of aircraft),

(d) section 4 (offences in relation to certain dangerous articles),

(e) section 6(2) (inducing or assisting commission of offence under section 1, 2 or 3 outside the United Kingdom).

11 An offence under any of the following sections of the Nuclear Material (Offences) Act 1983—

(a) section 1B (offences relating to damage to the environment),

(b) section 1C (offences of importing or exporting etc nuclear materials: extended jurisdiction),

(c) section 2 (offences involving preparatory acts and threats), so far as relating to an offence specified in this Schedule.

12 An offence under any of the following sections of the Aviation and Maritime Security Act 1990—

(a) section 1 (endangering safety at aerodromes),

(b) section 9 (hijacking of ships),

(c) section 10 (seizing or exercising control of fixed platforms),

(d) section 11 (destroying ships or fixed platforms or endangering their safety),

(e) section 14(4) (inducing or assisting the commission of an offence outside the United Kingdom), so far as relating to an offence under section 9 or 11 of that Act.

13 An offence under Part 2 of the Channel Tunnel (Security) Order 1994 (S.I. 1994/570) (offences against the safety of channel tunnel trains and the tunnel system).

14 An offence under any of the following sections of the Chemical Weapons Act 1996—

(a) section 2 (use etc of chemical weapons),

(b) section 11 (premises or equipment for producing chemical weapons).

15 An offence under any of the following sections of the Anti-Terrorism, Crime and Security Act 2001—

(a) section 47 (use etc of nuclear weapons),

(b) section 114 (hoaxes involving noxious substances or things).

Ancillary offences

16 Any ancillary offence in relation to an offence specified in this Part of this Schedule.

Origin: CTA 2008 Sch.2 (part).

PART 2

INTERPRETATION

17 - In this Schedule "ancillary offence", in relation to an offence, means any of the following—

(a) - aiding, abetting, counselling or procuring the commission of the offence;

(b) - an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) related to the offence;

(c) - attempting or conspiring to commit the offence.

Origin: CTA 2008 s.94(1) (part).

SCHEDULE 2 - Section 75

ORDER FOR CONDITIONAL DISCHARGE: COMMISSION OF FURTHER OFFENCE

Application of Schedule

1 - This Schedule applies where an order for conditional discharge has been made in the case of a person ("the offender") in respect of an offence ("the original offence").

Origin: PCC(S)A s.13(1) (part).

Orders made on appeal

2 - If the order for conditional discharge was made on appeal, for the purposes of this Schedule it is to be taken—

(a) - if it was made on an appeal from a magistrates' court, to have been made by that magistrates' court;

(b) - if it was made on an appeal—

(i) - from the Crown Court, or

(ii) from the criminal division of the Court of Appeal,

to have been made by the Crown Court.

Origin: PCC(S)A 2000 s.15(2).

Issue of summons or warrant by justice of the peace

3 (1) -This paragraph applies where—

(a) - the order for conditional discharge was made by a magistrates' court, and

(b) - it appears to a justice of the peace on information that the offender—

(i) - has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge, and

(ii) - has been dealt with in respect of that offence.

Origin: PCC(S)A 2000 s.13(1) (part), (2) (part), (3) (part); SI 2005/116 Sch. para.64(a).

(2) The justice may—

(a) issue a summons requiring the offender to appear at the place and time specified in it, or

(b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

Origin: PCC(S)A 2000 s.13(1) (part), (3) (part).

(3) A summons or warrant issued under this paragraph must direct the offender to appear or to be brought before the court which made the order for conditional discharge.

Origin: PCC(S)A 2000 s.13(4).

Issue of summons or warrant by Crown Court

4 (1) This paragraph applies where—

(a) the order for conditional discharge was made by the Crown Court, and

(b) it appears to the Crown Court that the offender—

(i) has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge, and

(ii) has been dealt with in respect of that offence.

Origin: PCC(S)A 2000 s.13(1) (part), (2) (part).

(2) The Crown Court may issue—

(a) a summons requiring the offender to appear at the place and time specified in it, or

(b) a warrant for the offender's arrest.

Origin: PCC(S)A 2000 s.13(1) (part).

(3) A summons or warrant issued under this paragraph must direct the offender to appear or to be brought before the Crown Court.

Origin: PCC(S)A 2000 s.13(4).

Power of magistrates' court convicting offender of further offence

5 (1) This paragraph applies where the offender is convicted by a magistrates' court ("the convicting court") of an offence committed during the period of conditional discharge.

Origin: PCC(S)A 2000 s.13(8) (part).

(2) If the order for conditional discharge was made by another magistrates' court, the convicting court may, with the consent of the court which made the order, deal with the offender for the original offence in any way in which it could deal with the offender if it had just convicted the offender of that offence.

This is subject to paragraph 8 (offenders under 18).

Origin: PCC(S)A 2000 s.13(8) (part).

(3) If the order for conditional discharge was made by the Crown Court, the convicting court may—

(a) commit the offender to custody, or

(b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

If it does so, it must send the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the designated officer by whom the register is kept.

Origin: PCC(S)A 2000 s.13(5); SI 2005/886 Sch. para.64(b).

(4) For powers of the convicting court, where it commits a person under sub-paragraph (3), to commit a person to the Crown Court in respect of other offences, see section 19.

Origin: Drafting - see s.6 PCC(S)A 2000.

Conviction of subsequent offence: power of magistrates' court which made order

6 (1) This paragraph applies where—

(a) the order for conditional discharge was made by a magistrates' court ("the original court"),

(b) it is proved to the satisfaction of the original court that the offender has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge.

Origin: PCC(S)A 2000 s.13(6) (part), (10) (part).

(2) The original court may deal with the offender for the original offence in any way in which it could deal with the offender if the offender had just been convicted by it of that offence.

This is subject to paragraph 8 (offenders under 18).

Origin: PCC(S)A 2000 s.13(6) (part); drafting.

Powers of Crown Court with respect to original offence following subsequent conviction

7 (1) Sub-paragraph (2) applies where—

(a) the offender is—

(i) convicted before the Crown Court of an offence committed during the period of conditional discharge, or

(ii) dealt with by the Crown Court for any such offence in respect of which the offender was committed for sentence to the Crown Court, or

(b) the order for conditional discharge was made by the Crown Court and it is proved to the satisfaction of that court that the offender has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge.

Origin: PCC(S)A s.13(6) (part), (10) (part), (7) (part).

(2) The Crown Court may deal with the offender for the original offence in any way in which the court which made the order for conditional discharge could deal with the offender if the offender had just been convicted by or before it of that offence.

This is subject to paragraph 8 (offenders under 18).

Origin: PCC(S)A 2000 s.13(6) (part), (7); drafting.

(3) -Any question under this paragraph whether the offender has been convicted of an offence committed during the period of conditional discharge is to be determined by the court and not by the verdict of a jury.

Origin: PCC(S)A 2000 s.15(3).

(4) -Where the offender is committed to the Crown Court under sub-paragraph (3) of paragraph 5, any duty or power which, apart from this sub-paragraph, would fall to be discharged or exercised by the convicting court (within the meaning of that paragraph)—

(a) is not to be discharged or exercised by that court, but

(b) is instead to be discharged or may instead be exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (certain duties relating to information).

Origin: RTOA 1988 s.25(4) (part); PCC(S)A 2000 s.7(3) (part), Sch.9 para.118.

Offenders aged under 18

8 (1) -This paragraph applies where—

(a) - the order for conditional discharge was made by a magistrates' court,

(b) - the offender was under 18 years of age when the order was made, and

(c) - the original offence was triable only on indictment in the case of an adult.

(2) -Any powers exercisable under paragraph 5(2), 6(2) or 7(2) by that or any other court in respect of the offender after the offender reaches the age of 18 are powers to do either or both of the following—

(a) - to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;

(b) - to deal with the offender for the original offence in any way in which a magistrates' court could deal with the offender if it had just convicted the offender of an offence punishable with imprisonment for a term not exceeding 6 months.

Origin: PCC(S)A 2000 s.13(9).

SCHEDULE 3 - Sections 134 and 204

COMMUNITY ORDERS: REQUIREMENTS

PART 1

UNPAID WORK REQUIREMENT

Requirement and obligation of offender

1 (1) -In this Code "unpaid work requirement", in relation to a relevant order, means a requirement that the offender must perform unpaid work in accordance with the instructions of the responsible officer as to—

(a) - the work to be performed, and

(b) - the times, during a period of 12 months, at which the offender is to perform it.

Origin: CJA 2003 s.199(1), s.200(1), (2) (part); drafting.

(2) -Paragraph (1)(b) is subject to—

(a) - paragraph 21 of Schedule 4 (community order: power to extend unpaid work requirement);

(b) - paragraph 28(2) of Schedule 10 (suspended sentence order: extension of unpaid work requirement).

Origin: CJA 2003 s.200(2) (part).

Number of hours of unpaid work to be specified in order

2 (1) -The number of hours which a person may be required to work under an unpaid work requirement—

(a) - must be specified in the relevant order, and

(b) - must, in aggregate, be—

(i) - not less than 40, and

(ii) - not more than 300.

Origin: CJA 2003 s.199(2).

(2) -Sub-paragraph (1)(b)(i) is subject to paragraph 13(4) of Schedule 4 (breach of community order: power to impose unpaid work requirement).

Origin: Drafting.

(3) -Sub-paragraph (4) applies where the court—

(a) - makes relevant orders in respect of two or more offences of which the offender has been convicted on the same occasion, and

(b) - includes unpaid work requirements in each of them.

Origin: CJA 2003 s.199(5) (part).

(4) -The court may direct that the hours of work specified in any of those requirements is to be—

(a) - concurrent with, or

(b) additional to, -

those specified in any other of those orders. -

But the total number of hours which are not concurrent must not exceed the maximum number (see sub-paragraph (1)(b)(ii)).

Origin: CJA 2003 s.199(5) (part).

Restriction on imposing unpaid work requirement

3 (1) -A court may not include an unpaid work requirement in a relevant order unless it is satisfied—

(a) - that the offender is a suitable person to perform work under such a requirement, and

(b) - 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 offender's home local justice area.

Origin: CJA 2003 s.199(3) (part), s.218(1); SI 2005/886 Sch. para.104 (part).

(2) -In making a decision under sub-paragraph (1)(a), the court must (if it thinks necessary) hear an officer of a provider of probation services.

Origin: CJA 2003 s.199(3) (part); CJIA 2008 Sch.4 para.84(a), Sch.27 para.1(1); drafting.

PART 2

REHABILITATION ACTIVITY REQUIREMENT

Requirement

4 (1) -In this Code "rehabilitation activity requirement", in relation to a relevant order, means a requirement that, during the relevant period, the offender must comply with any instructions given by the responsible officer to do either or both of the following—

(a) - attend appointments;

(b) - participate in activities.

Origin: CJA 2003 s.200A(1); ORA 2014 s.15.

(2) -The maximum number of days on which the offender may be instructed to participate in activities must be specified in the relevant order.

Origin: CJA 2003 s.200A(2); ORA 2014 s.15; PCA.

(3) -In this paragraph "the relevant period" means—

(a) - in relation to a community order, the period for which the community order remains in force, and

(b) - in relation to a suspended sentence order, the supervision period.

Origin: CJA 2003 s.200A(11); ORA 2014 s.15.

Instructions given by responsible officer

5 (1) -Any instructions given by the responsible officer pursuant to the rehabilitation activity requirement must be given with a view to promoting the offender's rehabilitation.

Origin: CJA 2003 s.200A(3) (part); ORA 2014 s.15.

(2) Sub-paragraph (1) does not prevent the responsible officer giving instructions with a view to other purposes in addition to rehabilitation.

Origin: CJA 2003 s.200A(3) (part); ORA 2014 s.15.

(3) The responsible officer may instruct the offender to attend appointments with the responsible officer or with someone else.

Origin: CJA 2003 s.200A(4); ORA 2014 s.15.

(4) The responsible officer, when instructing the offender to participate in activities, may require the offender to—

(a) participate in specified activities and, while doing so, comply with instructions given by the person in charge of the activities, or

(b) go to a specified place and, while there, comply with any instructions given by the person in charge of the place.

Origin: CJA 2003 s.200A(5); ORA 2014 s.15.

(5) The references in sub-paragraph (4)(a) and (b) to instructions given by a person include instructions given by anyone acting under the person's authority.

Origin: CJA 2003 s.200A(6); ORA 2014 s.15.

(6) The activities that responsible officers may instruct offenders to participate in include—

(a) activities forming an accredited programme (see paragraph 6(2));

(b) activities whose purpose is reparative, such as restorative justice activities.

Origin: CJA 2003 s.200A(7); ORA 2014 s.15.

(7) For the purposes of sub-paragraph (6)(b) an activity is a restorative justice activity if—

(a) the participants consist of, or include, the offender and one or more of the victims,

(b) the aim of the activity is to maximise the offender's awareness of the impact of the offending concerned on the victims, and

(c) the activity gives a victim or victims an opportunity to talk about, or by other means express experience of, the offending and its impact.

Origin: CJA 2003 s.200A(8); ORA 2014 s.15.

(8) In sub-paragraph (7) "victim" means a victim of, or other person affected by, the offending concerned.

Origin: CJA 2003 s.200A(9); ORA 2014 s.15.

(9) Where compliance with an instruction would require the co-operation of a person other than the offender, the responsible officer may give the instruction only if that person agrees.

Origin: CJA 2003 s.200A(10); ORA 2014 s.15.

PART 3

PROGRAMME REQUIREMENT

6 (1) In this Code "programme requirement", in relation to a relevant order, means a requirement that the offender must—

(a) in accordance with instructions given by the responsible officer participate in an accredited programme at a particular place, and

(b) while at that place, comply with instructions given by, or under the authority of, the person in charge of the programme.

Origin: CJA 2003 s.202(1) (part), (6) (part); LASPOA 2012 s.70(4) (part).

(2) In this Code "accredited programme" means a programme that is for the time being accredited by the Secretary of State for the purposes of this paragraph.

Origin: CJA 2003 s.202(2); OMA 2007 s.31(1)(a).

(3) Any programme that immediately before 1 May 2008 was accredited for the purposes of section 202 of the Criminal Justice Act 2003 is treated as accredited by the Secretary of State for the purposes of this paragraph.

Origin: OMA 2007 s.31(2); SI 2007/3001 art.3(a).

(4) In this paragraph "programme" means a systematic set of activities.

Origin: CJA 2003 s.202(3)(a).

(5) Where a relevant order includes a programme requirement—

(a) the order must specify the number of days on which the offender is to be required to participate in an accredited programme under the requirement;

(b) it is for the responsible officer to specify—

(i) the accredited programme in which the offender is to participate, and

(ii) the place at which the offender is to do so.

Origin: CJA 2003 s.202(1) (part), (6) (part); LASPOA 2012 s.70(4) (part), (6)(part);

PART 4

PROHIBITED ACTIVITY REQUIREMENT

Requirement

7 (1) In this Code "prohibited activity requirement", in relation to a relevant order, means a requirement that the offender must refrain from participating in activities—

(a) on one or more particular days, or

(b) during a particular period.

Origin: CJA 2003 s.203(1) (part); drafting.

(2) Where the court makes a relevant order imposing a prohibited activity requirement, the following must be specified in the order—

(a) the activities from which the offender must refrain;
(b) the day or days on which, or the period during which, the offender must refrain from those activities.

Origin: CJA 2003 s.203(1) (part); drafting.

(3) -A prohibited activity requirement may, in particular, include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968.

Origin: CJA 2003 s.203(3).

Restriction on imposing prohibited activity requirement

8 - A court may not include a prohibited activity requirement in a relevant order unless it has consulted an officer of a provider of probation services.

Origin: CJA 2003 s.203(2).

PART 5

CURFEW REQUIREMENT

Requirement

9 (1) -In this Code "curfew requirement", in relation to a relevant order, means a requirement that the offender must remain, for particular periods ("curfew periods"), at a particular place.

Origin: CJA 2003 s.204(1).

(2) -A relevant order which imposes a curfew requirement must specify—
(a) the curfew periods, and
(b) the place at which the offender must remain for each curfew period.

Origin: CJA 2003 s.204(1); drafting.

(3) -Different places or different curfew periods may be specified for different days.

Origin: CJA 2003 s.204(2) (part).

(4) -The curfew periods specified must amount to—
(a) not less than 2 hours in any day, and
(b) not more than 16 hours in any day.

Origin: CJA 2003 s.204(2) (part); LASPOA 2012 s.71(2).

(5) -A curfew period may be specified only if it falls within the period of 12 months beginning with the day on which the relevant order is made.

Origin: CJA 2003 s.204(3) (part); LASPOA 2012 s.71(3).

Requirements as to imposition of curfew requirement

10 (1) -Before making a relevant order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order.

Origin: CJA 2003 s.204(6) (part).

(2) -That information must include information as to the attitude of persons likely to be affected by the offender's enforced presence there.

Origin: CJA 2003 s.204(6) (part).

(3) -Where the court makes a relevant order imposing a curfew requirement it must also impose an electronic compliance monitoring requirement (see paragraph 30) unless—

(a) - it is prevented from doing so by—

(i) - paragraph 35(1) (arrangements in relevant area), or

(ii) - paragraph 34 (consent of person whose co-operation is required), or

(b) - in the particular circumstances of the case, it considers it inappropriate to do so.

Origin: CJA 2003 s.177(3), s.190(3); drafting.

PART 6

EXCLUSION REQUIREMENT

Requirement

11 (1) -In this Code "exclusion requirement", in relation to a relevant order, means a provision prohibiting the offender from entering a particular place (the "prohibited place") for a particular period ("the exclusion period").

Origin: CJA 2003 s.205(1) (part).

(2) -A relevant order which imposes an exclusion requirement must specify—

(a) - the prohibited place, and

(b) - the exclusion period.

Origin: CJA 2003 s.205(1) (part).

(3) -A relevant order may specify—

(a) - more than one prohibited place;

(b) - more than one exclusion period;

(c) - different prohibited places for different exclusion periods or different days.

Origin: CJA 2003 s.205(3).

(4) -If the relevant order is a community order—

(a) - the exclusion period must not be more than 2 years beginning with the day on which the order is made;

(b) - if the order specifies more than one exclusion period, each of the exclusion periods must fall within that 2 year period.

Origin: CJA 2003 s.205(2); drafting.

(5) -A prohibited place may be an area.

Origin: CJA 2003 s.205(4); drafting.

Requirement as to imposition of exclusion requirement

12 Where the court makes a relevant order imposing an exclusion requirement it must also impose an electronic compliance monitoring requirement (see paragraph 30) unless—

(a) it is prevented from doing so by—

(i) paragraph 35(1) (arrangements in relevant area), or

(ii) paragraph 34 (consent of person whose co-operation is required), or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

Origin: CJA 2003 s.177(3) (part), s.190(3) (part); drafting.

PART 7

RESIDENCE REQUIREMENT

Requirement

13 (1) In this Code "residence requirement", in relation to a relevant order, means a requirement that, during a particular period ("the required period"), the offender must reside—

(a) at a particular place ("the required place"), or

(b) if the order so permits, at the required place or, with the prior approval of the responsible officer, at some other place.

Origin: CJA 2003 s.206(1) (part), (2) (part).

(2) A relevant order imposing a residence requirement—

(a) must specify—

(i) the required place, and

(ii) the required period, and

(b) if the offender is to be permitted to reside at some other place with the prior approval of the responsible officer, that fact.

Origin: CJA 2003 s.206(1) (part), (2) (part); drafting.

(3) A hostel or other institution may not be specified as the required place, except on the recommendation of an officer of a provider of probation services.

Origin: CJA 2003 s.206(4); SI 2008/912 Sch.1 para.19(10); drafting.

Requirement as to imposition of residence requirement

14 Before making a relevant order containing a residence requirement, the court must consider the home surroundings of the offender.

Origin: CJA 2003 s.206(3).

PART 8

FOREIGN TRAVEL PROHIBITION REQUIREMENT

15 (1) In this Code "foreign travel prohibition requirement", in relation to a relevant order, means a requirement prohibiting the offender from travelling, on a particular day or days, or for a particular period, to a particular country or territory (or particular countries or territories) outside the British Islands.

Origin: CJA 2003 s.206A(1) (part); LASPOA 2012 s.72(5).

(2) A relevant order which imposes a foreign travel prohibition requirement must specify—

(a) the day or days, or the period, for which the prohibition operates, and

(b) the area in relation to which the prohibition is to operate.

Origin: CJA 2003 s.206A(1) (part); LASPOA 2012 s.72(5); drafting.

(3) A day specified under sub-paragraph (2)(a) must fall within the period of 12 months beginning with the day on which the relevant order is made.

Origin: CJA 2003 s.206A(2); LASPOA 2012 s.72(5).

(4) A period specified under that sub-paragraph may not exceed 12 months beginning with the day on which the relevant order is made.

Origin: CJA 2003 s.206A(3); LASPOA 2012 s.72(5).

(5) The area specified under sub-paragraph (2)(b) may be—

(a) a particular country or territory outside the British Islands specified or described in the order,

(b) all countries and territories outside the British Islands other than a country or territory specified or described in the order, or

(c) all countries and territories outside the British Islands.

Origin: CJA 2003 s.206A(1) (part); LASPOA 2012 s.72(5).

PART 9

MENTAL HEALTH TREATMENT REQUIREMENT

Requirement

16 (1) In this Code "mental health treatment requirement", in relation to a relevant order, means a requirement that the offender must submit, during a particular period or particular periods, to relevant mental health treatment.

Origin: CJA 2003 s.207(1) (part).

(2) "Relevant mental health treatment" means mental health treatment which is—

(a) in-patient treatment,

(b) institution-based out-patient treatment, or

(c) practitioner-based treatment.

Origin: Drafting.

(3) For this purpose—

"mental health treatment", in relation to an offender, means treatment which is—

(a) by or under the direction of a registered medical practitioner or registered psychologist, and

(b) with a view to improvement of the offender's mental condition;

"in-patient treatment" means treatment as a resident patient in—

(a) a care home within the meaning of the Care Standards Act 2000,

(b) an independent hospital, or

(c) a hospital within the meaning of the Mental Health Act 1983,

but not in hospital premises where high security psychiatric services (within the meaning of the Mental Health Act 1983) are provided;

"institution-based out-patient treatment" means treatment as a non-resident patient at a particular institution or place;

"practitioner-based treatment" means treatment by or under the direction of a particular registered medical practitioner or registered psychologist (or both).

Origin: CJA 2003 s.207(1) (part), (2) (part); SI 2009/1182 Sch.5 para.7(a)(i).

(4) A relevant order which imposes a mental health treatment requirement must specify—

(a) the period or periods during which the offender is required to submit to relevant mental health treatment;

(b) if the relevant mental health treatment is to be in-patient treatment, the care home or hospital at which it is to be provided;

(c) if it is to be institution-based out-patient treatment, the institution or place at which it is to be provided;

(d) if it is to be practitioner-based treatment, the registered medical practitioner or registered psychologist (or both) by whom or under whose direction it is to be provided;

but may not otherwise specify the nature of the treatment.

Origin: CJA 2003 s.207(1) (part), (2) (part); PCA.

(5) Different treatment may be specified for different periods.

Origin: CJA 2003 s.207(1) (part); drafting.

(6) In this paragraph—

"independent hospital"—

(a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; and

(b) in relation to Wales, has the same meaning as in the Care Standards Act 2000;

"registered psychologist" means a person registered in the part of the register maintained under the Health and Social Work Professions Order 2001 which relates to practitioner psychologists.

Origin: CJA 2003 s.207(4A), (6) (part); Health and Social Care Act 2012 s.213(8)(b); SI 2009/1182 Sch.5 para.7(b); SI 2010/813 art.14(b).

(7) -While an offender is under treatment which is in-patient treatment in pursuance of a mental health treatment requirement of a relevant order, the responsible officer is to carry out the supervision of the offender only to the extent necessary for the purpose of revocation or amendment of the order.

Origin: CJA 2003 s.207(4).

Restrictions on imposing mental health treatment requirement

17 (1) -A court may not include a mental health treatment requirement in a relevant order unless the following conditions are satisfied—

(a) - the need for treatment condition,

(b) - the arrangements condition, and

(c) - the consent condition.

Origin: CJA 2003 s.207(3) (part); drafting.

(2) -The need for treatment condition is that the court is satisfied that the mental condition of the offender—

(a) - requires treatment,

(b) - may be susceptible to treatment, and

(c) - does not warrant the making of a hospital order or guardianship order within the meaning of the Mental Health Act 1983.

Origin: CJA 2003 s.207(3)(a); LASPOA 2012 s.73(2)(b).

(3) -The arrangements condition is that the court is satisfied that arrangements—

(a) - have been made, or

(b) can be made,

for the treatment intended to be specified in the order.

Those arrangements include arrangements for the reception of the offender where the offender is to be required to submit to treatment as a resident patient.

Origin: CJA 2003 s.207(3)(b).

(4) -The consent condition is that the offender has expressed willingness to comply with the requirement.

Origin: CJA 2003 s.207(3)(c); PCA.

Alternative arrangements for mental health treatment made by practitioner

18 (1) -This paragraph applies where—

(a) - an offender is being treated in pursuance of a mental health treatment requirement, and

(b) - the treatment practitioner considers that part of the treatment can be better or more conveniently given in or at an institution or place—

(i) - which is not specified in the relevant order, and

(ii) - where the treatment will be given by or under the direction of a registered medical practitioner or registered psychologist.

Origin: CJA 2003 s.208(1) (part); SI 2009/1182 Sch.5 para.7(a)(ii); drafting.

(2) The treatment practitioner may, with the consent of the offender, make arrangements ("alternative arrangements") for the offender to be treated accordingly.

Origin: CJA 2003 s.208(1) (part); drafting.

(3) Alternative arrangements may provide for the offender to receive part of the treatment as a resident patient in an institution or place which could not have been specified for that purpose in the relevant order.

Origin: CJA 2003 s.208(2).

(4) Where alternative arrangements are made—

(a) the treatment for which the alternative arrangements provide is to be deemed to be treatment to which the offender must submit in pursuance of the mental health treatment requirement, and

(b) the treatment practitioner must give a notice in writing to the offender's responsible officer, specifying the institution or place where that treatment is to be carried out.

Origin: CJA 2003 s.208(3); drafting.

(5) In this paragraph—

"registered psychologist" means a person registered in the part of the register maintained under the Health and Social Work Professions Order 2001 which relates to practitioner psychologists;

"treatment practitioner" means the medical practitioner or registered psychologist by or under whose direction the offender is being treated in pursuance of the mental health treatment requirement.

Origin: CJA 2003 s.207(6), s.208(1); Health and Social Care Act 2012 s.213(8)(b); SI 2009/1182 Sch.5 para.7(a)(ii), (b); drafting.

PART 10

DRUG REHABILITATION REQUIREMENT

Requirement

19 (1) In this Code "drug rehabilitation requirement", in relation to a relevant order, means a requirement that during a period specified in the order ("the treatment and testing period") the offender—

(a) must submit to relevant drug rehabilitation treatment, and

(b) for the purpose of ascertaining whether the offender has any drug in his or her body during that period, must provide samples in accordance with directions given by—

(i) the responsible officer, or

(ii) the treatment director.

Origin: CJA 2003 s.209(1) (part); drafting.

(2) In this paragraph—

"drug rehabilitation treatment", in relation to an offender, means treatment which is—

(a) by or under the direction of a person who has the necessary qualifications or experience, and

(b) - with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs;

"resident treatment" means treatment as a resident in an institution or place;

"non-resident treatment" means treatment as a non-resident at an institution or place;

"the treatment director" means the person by or under whose direction the treatment is to be provided.

Origin: CJA 2003 s.209(1) (part).

(3) -Relevant drug rehabilitation treatment means drug rehabilitation treatment which is—

(a) - resident treatment, or

(b) - non-resident treatment.

Origin: CJA 2003 s.209(4) (part).

(4) -A relevant order which imposes a drug rehabilitation order must specify—

(a) - the treatment director;

(b) - if the treatment is to be resident treatment, the institution or place where it is to be provided;

(c) - if it is to be non-resident treatment—

(i) - the institution or place where it is to be provided, and

(ii) the intervals at which it is to be provided; -

but must not otherwise specify the nature of the treatment. -

Origin: CJA 2003 s.209(1) (part), (4) (part).

(5) -The order—

(a) - must provide that if by virtue of sub-paragraph (1)(b) the offender provides samples to a person other than the responsible officer, the results of tests carried out on the samples are to be communicated to the responsible officer;

(b) - may make further provision about the provision of samples by virtue of sub-paragraph (1)(b) (which may include provision that directions, or directions of particular kinds, are to be given only by the responsible officer or only by the treatment director).

Origin: CJA 2003 s.209(1) (part), (6).

(6) -The power for the responsible officer or treatment director to give directions by virtue of sub-paragraph (1)(b) about the provision of samples—

(a) - is a power to give directions as to—

(i) - the type of samples to be provided, and

(ii) - the times at which, or circumstances in which, they are to be provided,

(b) - is subject to any provision made by the order, and

(c) - is to be exercised in accordance with guidance given from time to time by the Secretary of State.

Origin: CJA 2003 s.209(1) (part), (5); PCA; drafting.

(7) -In this paragraph and paragraph 20 "drug" means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971.

Origin: CJA 2003 s.209(7).

Restriction on imposing drug rehabilitation requirement

20 (1) -A court may not impose a drug rehabilitation requirement unless the following conditions are satisfied—

(a) - the need for treatment condition,

(b) - the arrangements condition,

(c) - the suitability condition, and

(d) - the consent condition.

Origin: CJA 2003 s.209(2) (part).

(2) -The need for treatment condition is that the court is satisfied—

(a) - that the offender—

(i) - is dependent on drugs, or

(ii) - has a propensity to misuse drugs, and

(b) - that the offender's dependency or propensity—

(i) - requires treatment, and

(ii) - may be susceptible to treatment.

Origin: CJA 2003 s.209(2)(a).

(3) -The arrangement condition is that the court is satisfied that arrangements—

(a) - have been made, or

(b) can be made,

for the treatment intended to be specified in the order.

Those arrangements include arrangements for the reception of the offender where he or she is to be required to submit to treatment as a resident.

Origin: CJA 2003 s.209(2)(b).

(4) -The suitability condition is that the requirement has been recommended to the court as being suitable for the offender by an officer of a provider of probation services.

Origin: CJA 2003 s.209(2)(c); CJIA 2008 Sch.4 para.88, Sch.27 para.1(1).

(5) -The consent condition is that the offender expresses willingness to comply with the requirement.

Origin: CJA 2003 s.209(2)(d).

Drug rehabilitation requirement: provision for review by court

21 (1) -A relevant order imposing a drug rehabilitation requirement—

(a) - must include provision for review if the treatment and testing period is more than 12 months, and

(b) - may do so in any other case.

Origin: CJA 2003 s.210(1) (part).

(2) -For this purpose, "provision for review" means provision—

(a) - for the requirement to be reviewed periodically at intervals of not less than one month,

(b) - for each review of the requirement to be made at a hearing held for the purpose by the responsible court (a "review hearing"),

(c) - requiring the offender to attend each review hearing,

(d) - requiring a written report on the offender's progress under the requirement to be made by an officer of a provider of probation services to the responsible court before each review hearing,

(e) - requiring each such report to include—

(i) - the test results communicated to the responsible officer under paragraph 19(5) or otherwise, and

(ii) - the views of the treatment provider as to the treatment and testing of the offender.

Origin: CJA 2003 s.210(1) (part); ORA 2014 Sch.4 para.4; drafting.

(3) -Paragraphs (b) and (c) of sub-paragraph (2) are subject to paragraph 22(6) (hearing not necessary for review).

Origin: CJA 2003 s.210(1)(b) (part); drafting.

(4) -In this paragraph, "the responsible court", in relation to a relevant order imposing a drug rehabilitation requirement, means—

(a) - if a court is specified as the responsible court under sub-paragraph (5), that court;

(b) - otherwise, the court which made the order.

Origin: CJA 2003 s.210(2); drafting.

(5) -Where—

(a) - a magistrates' court makes a relevant order imposing a drug rehabilitation requirement, and

(b) - the area for which the court acts is not the offender's home local justice area,

the court may specify in the order a magistrates' court which acts for the offender's home local justice area as the responsible court.

Origin: CJA 2003 s.210(3); drafting.

(6) -For the purposes of sub-paragraph (4)(b), a relevant order imposing a drug rehabilitation requirement which is made on an appeal—

(a) - from the Crown Court, or

(b) from the criminal division of the Court of Appeal,

is to be treated as having been made by the Crown Court.

Origin: CJA 2003 s.210(4); drafting.

Periodic review of drug rehabilitation requirement

22 (1) -This paragraph applies in relation to a relevant order which imposes a drug rehabilitation requirement that is subject to review.

Origin: Drafting.

(2) -At a review hearing the court may, after considering the officer's report referred to in paragraph 21(2) ("the review officer's report"), amend the relevant order, so far as it relates to the drug rehabilitation requirement.

Origin: CJA 2003 s.211(1); ORA 2014 Sch.4 para.5(2)(b).

(3) -The court—

(a) - may not amend the drug rehabilitation requirement unless the offender expresses willingness to comply with the requirement as amended, and

(b) - except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending.

Origin: CJA 2003 s.211(2)(a), (c); LASPOA 2012 s.74(2)(a).

(4) -If the offender fails to express willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may—

(a) - revoke the community order, or the suspended sentence order and the suspended sentence to which it relates, and

(b) - deal with the offender, for the offence in respect of which the relevant order was made, in any way in which the court which made the order could deal with the offender if the offender had just been convicted by or before it.

For the purposes of paragraph (b), if the order was made on an appeal from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken to have been made by the Crown Court.

Origin: CJA 2003 s.210(4), s.211(3); PCA.

(5) -In dealing with the offender under sub-paragraph (4)(b), the court—

(a) - must take into account the extent to which the offender has complied with the requirements of the order, and

(b) - may impose a custodial sentence notwithstanding anything in section 159(2) (general restrictions on imposing discretionary custodial sentences).

Origin: CJA 2003 s.211(4).

(6) -Where at a review hearing the court—

(a) - has considered the review officer's report, and

(b) - is of the opinion that the offender's progress under the requirement is satisfactory,

the court may amend the order so that it provides for each subsequent review to be made by the court without a hearing.

Origin: CJA 2003 s.211(6); ORA 2014 Sch.4 para.5(3); drafting.

(7) -Where at a review without a hearing the court—

(a) - has considered the review officer's report, and

(b) - is of the opinion that the offender's progress under the requirement is no longer satisfactory,

the court may require the offender to attend a hearing of the court at a specified time and place.

Origin: CJA 2003 s.211(7); ORA 2014 Sch.4 para.5(3); drafting

(8) -At that hearing the court, after considering that report, may—

(a) - exercise the powers conferred by this paragraph as if the hearing were a review hearing, and

(b) - amend the order so that it provides for each subsequent review to be made at a review hearing.

Origin: CJA 2003 s.211(8); drafting.

(9) -In this section "review hearing" has the meaning given by paragraph 21(2)(b).

Origin: Drafting.

(10) -In relation to a review without a hearing, a reference in this paragraph to the court is to be read—

(a) - in the case of the Crown Court, as a reference to a judge of the court;

(b) - in the case of a magistrates' court, as a reference to a justice of the peace.

Origin: CJA 2003 s.211(9); drafting.

(11) -If the order is a community order and an officer of probation services is of the opinion that the order should be amended so as to provide for each subsequent review to be made—

(a) - without a hearing instead of at a review hearing, or

(b) at a review hearing instead of without a hearing,

the officer must apply under paragraph 19 of Schedule 4 (amendment of requirements of community order) to the appropriate court (within the meaning of that Schedule) for the order to be amended.

Origin: CJA 2003 Sch.8 para.19; ORA 2014 Sch.4 para.6(6).

PART 11

ALCOHOL TREATMENT REQUIREMENT

Requirement

23 (1) -In this Code "alcohol treatment requirement", in relation to a relevant order, means a requirement that, during a period specified in the order the offender must submit to relevant alcohol dependency treatment.

Origin: CJA 2003 s.212(1) (part).

(2) -In this paragraph—

"alcohol dependency -treatment", in relation to an offender, means treatment which is—

(a) - by or under the direction of a person who has the necessary qualifications or experience ("the treatment director"), and

(b) - with a view to reducing or eliminating the offender's dependency on alcohol;

"resident treatment" means treatment as a resident in an institution or place;

"institution-based treatment" means treatment as a non-resident at an institution or place;

"practitioner-based -treatment" means treatment by or under the direction of a person having the necessary qualification or experience.

Origin: CJA 2003 s.212(1) (part), (5) (part); drafting.

(3) Relevant alcohol dependency treatment means alcohol dependency treatment which is—

(a) resident treatment,

(b) institution-based treatment, or

(c) practitioner-based treatment.

Origin: Drafting.

(4) A relevant order which imposes an alcohol treatment requirement must specify—

(a) the treatment director;

(b) whether the relevant alcohol dependency treatment is to be resident treatment, institution-based treatment or practitioner-based treatment;

(c) if it is to be resident treatment, the institution or place where it is to be provided;

(d) if it is to be institution-based treatment—

(i) the institution or place where it is to be provided, and

(ii) the intervals at which it is to be provided;

(e) if it is to be practitioner-based treatment, the person by or under whose direction it is to be provided;

but must not otherwise specify the nature of the treatment.

Origin: CJA 2003 s.212(1) (part), (5) (part).

Restrictions on imposing alcohol treatment requirement

24 (1) A court may not impose an alcohol treatment requirement unless the following conditions are satisfied—

(a) the need for treatment condition,

(b) the arrangements condition, and

(c) the consent condition.

Origin: CJA 2003 s.212(2) (part), (3) (part).

(2) The need for treatment condition is that the court is satisfied—

(a) that the offender is dependent on alcohol,

(b) that the offender's dependency—

(i) requires treatment, and

(ii) may be susceptible to treatment.

Origin: CJA 2003 s.212(2) (part).

(3) The arrangements condition is that the court is satisfied that arrangements—

(a) have been made, or

(b) can be made,

for the treatment intended to be specified in the order.

Those arrangements include arrangements for the reception of the offender where he or she is to be required to submit to treatment as a resident.

Origin: CJA 2003 s.212(2) (part).

(4) The consent condition is that the offender expresses willingness to comply with the requirement.

Origin: CJA 2003 s.212(3) (part).

PART 12

ALCOHOL ABSTINENCE AND MONITORING REQUIREMENT IN PILOT AREAS

Requirement

25 (1) In this Code "alcohol abstinence and monitoring requirement", in relation to a relevant order, means a requirement that, during a particular period ("the abstinence and monitoring period") —

(a) the offender must —

(i) abstain from consuming alcohol, or

(ii) not consume alcohol so that at any time during the abstinence and monitoring period there is more than a particular level of alcohol in the offender's body, and

(b) that the offender must submit to monitoring in accordance with particular arrangements for the purpose of ascertaining whether the offender is complying with provision under paragraph (a).

Paragraph (a) is subject to sub-paragraph (3).

Origin: CJA 2003 s.212A(1) (part); LASPOA 2012 s.76(1).

(2) A relevant order that includes an alcohol abstinence and monitoring requirement must specify —

(a) the abstinence and monitoring period;

(b) if the order imposes a requirement falling within sub-paragraph (1)(a)(ii), the level of alcohol;

(c) the arrangements for monitoring.

Origin: CJA 2003 s.212A(1) (part); LASPOA 2012 s.76(1).

(3) A relevant order that includes an alcohol abstinence and monitoring requirement may specify exceptions from any requirement imposed under sub-paragraph (1)(a); if it does so the requirement has effect subject to those exceptions.

Origin: CJA 2003 s.212A(1) (part): LASPOA 2012 s.76(1); drafting.

(4) The abstinence and monitoring period must be —

(a) if a minimum period is prescribed under sub-paragraph (7)(a), not less than that minimum period, and

(b) not more than 120 days.

Origin: CJA 2003 s.212A(2), (3) (part); LASPOA 2012 s.76(1).

(5) The level of alcohol specified under sub-paragraph (2)(b) must be the level prescribed under sub-paragraph (7)(b).

Origin: CJA 2003 s.212A(4) (part); LASPOA 2012 s.76(1).

(6) The arrangements for monitoring under sub-paragraph (2)(c) must be consistent with those prescribed by regulations under sub-paragraph (7)(c).

Origin: CJA 2003 s.212A(6) (part); LASPOA 2012 s.76(1).

(7) The Secretary of State may by regulations prescribe —

(a) a minimum period as the abstinence and monitoring period;
(b) a level of alcohol for the purposes of sub-paragraph (1)(a)(ii);
(c) arrangements for monitoring for the purposes of sub-paragraph (1)(b).

Origin: CJA 2003 s.212A(3) (part), (4) (part), (6) (part); LASPOA 2012 s.76(1).

(8) Regulations under sub-paragraph (7)(b) may prescribe a level—
(a) by reference to the proportion of alcohol in any one or more of an offender's breath, blood, urine or sweat, or
(b) by some other means.

Origin: CJA 2003 s.212A(5); LASPOA 2012 s.76(1).

(9) Regulations under sub-paragraph (7)(c) may in particular prescribe—
(a) arrangement for monitoring by electronic means;
(b) arrangements for monitoring by other means of testing.

Origin: CJA 2003 s.212A(7); LASPOA 2012 s.76(1).

(10) In this paragraph and paragraph 26, "alcohol" includes anything containing alcohol.

Origin: CJA 2003 s.212A(13); LASPOA 2012 s.76(1).

Restriction on imposing alcohol abstinence and monitoring requirement

26 (1) A relevant order may not include both—
(a) an alcohol treatment requirement, and
(b) an alcohol abstinence and monitoring requirement.

Origin: CJA 2003 s.212A(11); LASPOA 2012 s.76(1).

(2) A court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met—
(a) the relevance of alcohol condition,
(b) the non-dependency condition, and
(c) the availability of arrangements condition.

Origin: CJA 2003 s.212A(8) (part); LASPOA 2012 s.76(1).

(3) The relevance of alcohol condition is that—
(a) the offender's consumption of alcohol is an element of the offence for which the order is to be imposed or of an associated offence, or
(b) the court is satisfied that the offender's consumption of alcohol was a factor that contributed to the commission of that offence or to an associated offence.

Origin: CJA 2003 s.212A(9); LASPOA 2012 s.76(1).

(4) The non-dependency condition is that the court is satisfied that the offender is not dependent on alcohol.

Origin: CJA 2003 s.212A(10); LASPOA 2012 s.76(1).

(5) The availability of arrangements condition is that the court has been notified by the Secretary of State that arrangements for monitoring of the kind to be

specified in the relevant order are available in the offender's home local justice area.

Origin: CJA 2003 s.212A(12); LASPOA 2012 s.76(1).

PART 13

ATTENDANCE CENTRE REQUIREMENT

Requirement: provisions applicable generally

27 (1) -In this Code "attendance centre requirement", in relation to a relevant order, means a requirement that the offender must attend—

(a) - at an attendance centre (see paragraph 28), and

(b) - for the number of hours specified in the order.

Origin: CJA 2003 s.214(1) (part); ORA 2014 s.17(3).

(2) -The aggregate number of hours for which the offender may be required to attend at an attendance centre must be—

(a) - not less than 12, and

(b) - not more than 36.

Origin: CJA 2003 s.214(2).

(3) -A requirement to attend at an attendance centre for any period on any occasion by virtue of an attendance centre requirement of a relevant order operates as a requirement, for that period, to engage in occupation, or receive instruction, whether at the centre or elsewhere—

(a) - under the supervision of the officer in charge of the centre, and

(b) - in accordance with instructions given by, or under the authority of, that officer.

Origin: CJA 2003 s.214(7); CJIA 2008 Sch.4 para.90; drafting; clean sweep.

(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.

Origin: CJA 2003 s.214(4).

(5) -The subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances.

Origin: CJA 2003 s.214(5).

(6) -The 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 3 hours on any occasion.

Origin: CJA 2003 s.214(6).

Attendance centre to be notified by responsible officer

28 (1) -Where an attendance centre requirement is imposed by a relevant order, the attendance centre at which the offender is required to attend is to be notified to the offender by the responsible officer from time to time.

Origin: CJA 2003 s.214(3A); ORA 2014 s.17(5).

(2) When choosing an attendance centre the responsible officer must consider—

(a) the accessibility of the attendance centre to the offender, having regard to the means of access available to the offender and any other circumstances, and

(b) the description of persons for whom it is available.

Origin: CJA 2003 s.214(3B); ORA 2014 s.17(5).

Restriction on imposing attendance centre requirement

29 A court may not impose an attendance centre requirement in a relevant order unless it is satisfied that an attendance centre which is available for persons of the offender's description is reasonably accessible to the offender, having regard to the means of access available to the offender and any other circumstances.

Origin: CJA 2003 s.214(3); ORA 2014 s.17(4).

PART 14

ELECTRONIC MONITORING

Electronic compliance monitoring requirement

30 (1) In this Code "electronic compliance monitoring requirement", in relation to a relevant order, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period ("the monitoring period")—

(a) specified in the order, or

(b) determined by the responsible officer in accordance with the relevant order.

Origin: CJA s.215(1).

(2) Sub-paragraph (3) applies where the responsible officer is to determine the monitoring period in accordance with the relevant order.

Origin: CJA s.215(4) (part); drafting.

(3) Before it begins, the responsible officer must notify the following people of when the monitoring period is to begin—

(a) the offender,

(b) the person responsible for the monitoring, and

(c) any person falling within paragraph 34(b).

Origin: CJA s.215(4) (part); drafting.

(4) An electronic compliance monitoring requirement may not be imposed for the purpose of securing the electronic monitoring of compliance with an alcohol abstinence and monitoring requirement.

Origin: CJA 2003 s.215(5); LASPOA 2012 s.76(6); drafting.

(5) But that does not prevent an order which imposes an alcohol abstinence and monitoring requirement from including an electronic compliance

monitoring requirement for the purpose of securing the electronic monitoring of the offender's compliance with any other requirement.

Origin: CJA 2003 s.215(6); LASPOA 2012 s.76(6); drafting.

Electronic whereabouts monitoring requirement

31 In this Code "electronic whereabouts monitoring requirement", in relation to a relevant order, means a requirement to submit to electronic monitoring of the offender's whereabouts (otherwise than for the purpose of monitoring the offender's compliance with any other requirement included in the order) during a period specified in the order.

Origin: CJA 2003 s.215(1)(b); CCA 2013 Sch.16 para.16(2); drafting.

Electronic monitoring: person responsible for monitoring

32 (1) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring.

Origin: CJA s.215(3) (part).

(2) A person who is made so responsible must be of a description specified in regulations made by the Secretary of State.

Origin: CJA s.215(3) (part).

Electronic monitoring: general

33 Where a relevant order imposes an electronic monitoring requirement, the offender must (in particular)—

(a) submit, as required from time to time by the responsible officer or the person responsible for the monitoring, to—

(i) being fitted with, or installation of, any necessary apparatus, and

(ii) inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,

(b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and

(c) take any steps required by the responsible officer, or the person responsible for the monitoring, for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring.

Origin: CJA 2003 s.215(4A); CCA 2013 Sch.16 para.16(3); drafting.

Restriction on imposing electronic monitoring: general

34 Where—

(a) it is proposed to include in a relevant order an electronic monitoring requirement, but

(b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,

the requirement may not be included in the order without that person's consent.

Origin: CJA s.215(2); drafting.

Restriction on imposing an electronic compliance monitoring requirement

35 (1) -A court may not include an electronic compliance monitoring requirement in a relevant order in respect of an offender unless the court—

(a) - has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant area (see sub-paragraphs (2) to (4)), and

(b) - is satisfied that the necessary provision can be made under those arrangements.

Origin: CJA 2003 s.218(4); ORA 2014 s.17(6), (7); CCA 2013 Sch.16, para.18(2)(b).

(2) -In the case of a relevant order containing—

(a) - a curfew requirement, or

(b) - an exclusion requirement,

the relevant area is the area in which the place proposed to be specified in the order is situated.

For this purpose "place", in relation to an exclusion requirement, has the same meaning as in paragraph 11.

Origin: CJA 2003 s.218(5), (8).

(3) -In the case of a relevant order containing an attendance centre requirement, the relevant area is an area in which there is an attendance centre which is available for persons of the offender's description and which the court is satisfied is reasonably accessible to the offender.

Origin: CJA 2003 s.218(6); ORA 2014 s.17(1), (6), (8), 21(1).

(4) -In the case of any other relevant order, the relevant area is the local justice area proposed to be specified in the order.

Origin: CJA 2003 s.218(7); SI 2005/886 Sch. para.104.

Restriction on imposing electronic whereabouts monitoring requirement

36 - A court may not include an electronic whereabouts monitoring requirement in a relevant order in respect of an offender unless the court—

(a) - has been notified by the Secretary of State that electronic monitoring arrangements are available in the local justice area proposed to be specified in the order,

(b) - is satisfied that—

(i) - the offender can be fitted with any necessary apparatus under the arrangements currently available, and

(ii) - any other necessary provision can be made under those arrangements, and

(c) - is satisfied that arrangements are generally operational throughout England and Wales (even if not always operational everywhere there) under which the offender's whereabouts can be electronically monitored.

Origin: CJA 2003 s.215(4A); CCA 2013 Sch.16 para.16(3); drafting.

SCHEDULE 4 - Section 147

BREACH, REVOCATION OR AMENDMENT OF COMMUNITY ORDER

PART 1

PRELIMINARY

Meaning of particular expressions relating to an order

1 In this Schedule, in relation to a community order—

"breach", in relation to a requirement, means a failure to comply with it, and related expressions are to be read accordingly;

"appropriate court" means—

(a) - if the community order imposes a drug rehabilitation requirement which is subject to review, the court responsible for the order (see paragraph 21 of Schedule 3);

(b) - if the community order is a Crown Court community order, the Crown Court;

(c) - in any other case, a magistrates' court acting in the offender's home local justice area;

"treatment requirement", in relation to a community order, means—

(a) - a mental health treatment of the order,

(b) - a drug rehabilitation requirement of the order, or

(c) - an alcohol treatment requirement of the order.

Origin: CJA 2003 Sch.8 paras.11(1) (part), (2) (part), 16(4), 17(6), 18(4), 19A(5), 20(2); LASPOA 2012 s.66(5); ORA 2014 s.18(5); drafting.

Enforcement officers

2 (1) -In this Schedule, "enforcement officer" means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

(2) -An enforcement officer must be an officer of a provider of probation services that is a public sector provider.

(3) -In sub-paragraph (2) "public sector provider" means—

(a) - a probation trust or other public body, or

(b) - the Secretary of State.

Origin: CJA 2003 Sch.8 para.1A; ORA 2014 Sch.4, para.6(2).

Community order subject to magistrates' court supervision and Crown Court order

3 In this Schedule—

"community order subject to magistrates' court supervision" means a community order which—

(a) - was made by a magistrates' court, or

(b) - was made by the Crown Court and includes a direction under section 140 (any breach of a requirement to be dealt with by a magistrates' court);

"Crown Court community order" means a community order which—

(a) - was made by the Crown Court, and

(b) - does not include a direction under that section.

Origin: CJA 2003 Sch.8 para.14(1) (part); drafting.

Requirements subject to review

4 - For the purposes of this Schedule—

(a) - a drug rehabilitation requirement of a community order is subject to review if it is subject to review in accordance with paragraph 21 of Schedule 3;

(b) - a reference to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review is to the responsible court within the meaning of that paragraph (see paragraph 21(4) of that Schedule).

Origin: CJA 2003 Sch.8 para.2

Orders made on appeal

5 - A community order made on appeal is to be taken for the purposes of this Schedule to have been made by the Crown Court.

Origin: CJA 2003 Sch.8 para.4.

PART 2

BREACH OF REQUIREMENT OF ORDER

Duty to give warning or refer matter to enforcement officer

6 (1) -This paragraph applies where the responsible officer is of the opinion that the offender has without reasonable excuse breached a requirement of a community order.

Origin: CJA 2003 Sch.8 para.5(1) (part).

(2) -If the offender has been given a warning under this paragraph within the previous 12 months in relation to a breach of any requirement of the order, the officer must refer the matter to an enforcement officer.

Origin: CJA 2003 Sch.8 para.6(1); ORA 2014 Sch.4 para.6(4).

(3) -Otherwise the officer must either—

(a) - give the offender a warning under this paragraph, or

(b) - refer the matter to an enforcement officer.

Origin: CJA 2003 Sch.8 para.5(1) (part); ORA 2014 Sch.4 para. 6(3).

(4) -A warning under this paragraph must—

(a) - describe the circumstances of the breach,

(b) - state that the breach is unacceptable, and

(c) - inform the offender that if the offender again breaches a requirement of the order within the next 12 months, the offender will be liable to be brought before a court.

Origin: CJA 2003 Sch.8 para.5(2).

(5) -As soon as practicable after giving a warning under this paragraph, the responsible officer must record that fact.

Origin: CJA 2003 Sch.8 para.5(3).

Role of enforcement officer

7 - Where a matter is referred to an enforcement officer under paragraph 6, the enforcement officer must—

(a) - consider the case, and

(b) - where appropriate, cause an information to be laid in respect of the offender's breach of requirement—

(i) - in the case of a community order subject to magistrates' court supervision, before a justice of the peace;

(ii) - in the case of a Crown Court community order, before the Crown Court.

Origin: CJA 2003 Sch.8 para.6A; ORA 2014 Sch.4 para.6(5).

Issue of summons or warrant by justice of the peace

8 (1) -This paragraph applies where—

(a) - a community order subject to magistrates' court supervision is in force, and

(b) - it appears on information to a justice of the peace that the offender has breached a requirement of the order.

Origin: CJA 2003 Sch.8, para.7(1), (2) (part).

(2) -The justice may—

(a) - issue a summons requiring the offender to appear at the place and time specified in it, or

(b) - if the information is in writing and on oath, issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.7(2) (part).

(3) -A summons or warrant issued under this paragraph must direct the offender to appear or be brought—

(a) - in the case of a community order imposing a drug rehabilitation requirement which is subject to review, if a magistrates' court is responsible for the order, before that court, or

(b) - in any other case, before a magistrates' court acting in—

(i) - the local justice area in which the offender resides, or

(ii) - if it is not known where the offender resides, the offender's home local justice area.

Origin: CJA 2003 Sch.8 para.7(3); DVCVA 2004 s.29, Sch.5, para.7(1), (2); SI 2005/886, art.2, Sch. para.106(b); PCA; drafting.

(4) -Where—

(a) - a summons is issued under this paragraph requiring the offender to appear before a magistrates' court, and

(b) - the offender does not appear in answer to the summons,

the magistrates' court may issue a warrant for the arrest of the offender.

Origin: CJA 2003 Sch.8 para.7(4).

Issue of summons or warrant by Crown Court

9 - (1) This paragraph applies where—

(a) - a Crown Court community order is in force, and

(b) - it appears on information to the Crown Court that the offender has breached a requirement of the order.

Origin: CJA 2003 Sch.8 para.8(1), (2) (part).

(2) -The Crown Court may—

(a) - issue a summons requiring the offender to appear at the place and time specified in it, or

(b) - if the information is in writing and on oath, issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.8(2) (part).

(3) -A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

Origin: CJA 2003 Sch.8 para.8(3).

(4) -Where—

(a) - a summons is issued under this paragraph, and

(b) the offender does not appear in answer to the summons, -

the Crown Court may issue a warrant for the arrest of the offender. -

Origin: CJA 2003 Sch.8 para.8(4).

Powers of magistrates' court

10 - (1) This paragraph applies where—

(a) - an offender appears or is brought before a magistrates' court under paragraph 8, and

(b) - it is proved to the satisfaction of the court that the offender has breached a requirement of the community order without reasonable excuse.

Origin: CJA 2003 Sch.8 para.9(1) (part).

(2) -The court must deal with the case under sub-paragraph (5).

Origin: CJA 2003 Sch.8 para.9(1) (part); drafting.

(3) -But if the community order was made by the Crown Court, the court may instead—

(a) - commit the offender to custody, or

(b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

Origin: CJA 2003 Sch.8 para.9(6); LASPOA 2012 s.67(4); CCA 2013 Sch.16 para.22(2); drafting.

(4) -If the court deals with the offender's case under sub-paragraph (3), 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 requirements of the community order in the respect specified in the certificate, and

(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.

Origin: CJA 2003 Sch.8 para.9(7).

(5) -Where the court deals with the case under this sub-paragraph, it must deal with the offender in respect of the breach in any one of the following ways—

(a) - by amending the terms of the community order so as to impose more onerous requirements which the court could include if it were then making the order;

(b) - by ordering the offender to pay a fine not exceeding £2,500;

(c) - if the community order was made by a magistrates' court, by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could deal with the offender if the offender had just been convicted by it of the offence.

Origin: CJA 2003 Sch.8 para.9(1) opening words (part), (a), (aa), (b); LASPOA 2012 s.67(2)(b); drafting.

(6) -Where the court deals with the case under sub-paragraph (5), the criminal courts charge duty (see section 43) applies to the court.

Origin: POA 1985 s.21B(1)(b); CJCA 2015 s.54(1).

(7) -In dealing with the offender under sub-paragraph (5), the court must take into account the extent to which the offender has complied with the requirements of the community order.

Origin: CJA 2003 Sch.8 para.9(2).

(8) -A fine imposed under sub-paragraph (5)(b) is to be treated for the purposes of any enactment as being a sum adjudged to be paid by a conviction.

Origin: CJA 2003 Sch.8 para.9(3B); LASPOA 2012 s.67(3).

(9) -Where—

(a) - the offender has wilfully and persistently failed to comply with the requirements of the community order, and

(b) the court is dealing with the offender under sub-paragraph (5)(c),

the court may impose a custodial sentence notwithstanding anything in section 159(2) (general restriction on imposing discretionary custodial sentences).

Origin: CJA 2003 Sch.8 para.9(4) (part); drafting.

(10) -Where the court deals with the offender under sub-paragraph (5)(c), it must revoke the community order if it is still in force.

Origin: CJA 2003 Sch.8 para.9(5) (part).

(11) -A person sentenced under sub-paragraph (5)(c) for an offence may appeal to the Crown Court against—

(a) - the sentence, and

(b) - an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when imposing that sentence.

Origin: CJA 2003 Sch.8 para.9(8) (part); CJCA 2015 Sch.12 para.15.

Powers of Crown Court

11 - (1) This paragraph applies where—

(a) - an offender appears or is brought before the Crown Court under paragraph 9 or by virtue of paragraph 10(3), and

(b) - it is proved to the satisfaction of that court that the offender has breached a requirement of the community order without reasonable excuse.

Origin: CJA 2003 Sch.8 para.10(1) (part).

(2) -The Crown Court must deal with the offender in respect of the failure in any one of the following ways—

(a) - by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could impose if it were then making the order;

(b) - by ordering the offender to pay a fine of an amount not exceeding £2,500;

(c) - by dealing with the offender, for the offence in respect of which the order was made—

(i) - in any way in which it could deal with the offender for the offence if the offender had just been convicted before it of the offence, unless sub-paragraph (3) applies;

(ii) - if sub-paragraph (3) applies, in any way in which a magistrates' court could deal with the offender for the offence if it had just convicted the offender of the offence.

Origin: CJA 2003 Sch.8 para.10(1) opening words (part), (a), (aa), (b); LASPOA 2012 s.67(5)(b); PCA.

(3) -This sub-paragraph applies where the community order was made by the Crown Court—

(a) - on an appeal from the magistrates' court, or

(b) - where its powers to deal with the offender for the offence were those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence.

Origin: CJA 2003 Sch.8 para.10(3C); PCA.

(4) -Where the court deals with the case under sub-paragraph (2), the criminal courts charge duty (see section 43) applies to the court.

Origin: POA 1985 s.21B(2)(b); CJCA 2015 s.54(1).

(5) -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 requirements of the community order.

Origin: CJA 2003 Sch.8 para.10(2).

(6) A fine imposed under sub-paragraph (2)(b) is to be treated for the purposes of any enactment as being a sum adjudged to be paid by a conviction.

Origin: CJA 2003 Sch.8 para.10(3B); LASPOA 2012 s.67(6).

(7) Where—

(a) the offender has wilfully and persistently failed to comply with the requirements of the community order, and

(b) the court is dealing with the offender under sub-paragraph (2)(c),

the court may impose a custodial sentence notwithstanding anything in section 159(2) (general restriction on imposing discretionary custodial sentences).

Origin: CJA 2003 Sch.8 para.10(4) (part).

(8) Where the Crown Court deals with the offender under sub-paragraph (2)(c), it must revoke the community order if it is still in force.

Origin: CJA 2003 Sch.8 para.10(5) (part).

(9) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the requirements of the community order is to be determined by the court and not by the verdict of a jury.

Origin: CJA 2003 Sch.8 para.10(6).

Restriction of powers in paragraphs 10 and 11 where treatment required

12 (1) Sub-paragraph (2) applies where a community order is in force in respect of an offender who—

(a) is required by a treatment requirement of the order to submit to treatment, and

(b) has refused to undergo any surgical, electrical or other treatment.

Origin: CJA 2003 Sch.8 para.11(1)(part); drafting.

(2) The offender is not to be treated for the purposes of paragraph 10 or 11 as having failed to comply with the requirement on the ground only of that refusal if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

Origin: CJA 2003 Sch.8 para.11(1)(part); drafting.

(3) A court may not under paragraph 10(5)(a) or 11(2)(a) amend a treatment requirement unless the offender expresses willingness to comply with the requirement as amended.

Origin: CJA 2003 Sch.8 para.11(2); drafting.

Powers in paragraphs 10 and 11 to impose more onerous requirements: further provision

13 (1) In dealing with an offender under paragraph 10(5)(a) or 11(2)(a), the court may—

(a) extend the duration of particular requirements, subject to any limit imposed by Schedule 3;

(b) substitute a later date for the end date (but this is subject to sub-paragraphs (2) and (3)).

Origin: CJA 2003 Sch.8 paras.9(3) (part), 10(3) (part); LASPOA 2012 s.66(3)(a), (4)(a); drafting.

(2) An end date substituted under sub-paragraph (1)(b)—

(a) must not be more than 6 months after the end date previously specified;

(b) subject to that, may be more than 3 years after the date of the order.

Origin: CJA 2003 Sch.8 paras.9(3ZA), 10(3ZA); LASPOA 2012 s.66(3)(b), (4)(b).

(3) Once the power in sub-paragraph (1)(b) has been exercised in relation to the order, it may not be exercised again in relation to it by any court.

Origin: CJA 2003 Sch.8 paras.9(3ZB), 10(3ZB); LASPOA 2012 s.66(3)(b), (4)(b); drafting.

(4) Where—

(a) a community order does not contain an unpaid work requirement, and

(b) in dealing with the offender under paragraph 10(5)(a) or 11(2)(a), the court imposes an unpaid work requirement,

the number of hours for which the offender may be required to work under the requirement (see paragraph 2(1) of Schedule 3) must not, in aggregate, be less than 20.

Origin: CJA 2003 Sch.8 paras.9(3A), 10(3A); CJIA 2008 s.38(2), (3).

(5) Paragraphs 10(5)(a) and 11(2)(a) (power to impose more onerous requirements) have effect subject to any provision that applies to the court in making a community order as if the court were imposing the requirements on making the order.

Origin: CJA 2003 Sch.8 para.26 (part); PCA.

PART 3

REVOCATION OF ORDER WITH OR WITHOUT RESENTENCING

Community order subject to magistrates' court supervision

14 (1) This paragraph applies where—

(a) a community order subject to magistrates' court supervision is in force, and

(b) an application is made to the appropriate magistrates' court by—

(i) the offender, or

(ii) an officer of a provider of probation services,

for the community order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made.

Origin: CJA 2003 Sch.8 para.13(1)(part); ORA 2014 Sch.4 para.6(6); drafting.

(2) In this paragraph "the appropriate magistrates' court" means—

(a) in the case of a community order imposing a drug rehabilitation requirement which is subject to review, the magistrates' court responsible for the order, and

(b) - in any other case, a magistrates' court acting in the offender's home local justice area.

Origin: CJA 2003 Sch.8 para.13(7); SI 2005/886 Sch. para.106(c); drafting.

(3) -No application may be made under this paragraph while an appeal against the community order is pending.

Origin: CJA 2003 Sch.8 para.24(1) (part).

(4) -Unless the application was made by the offender, the appropriate court—

(a) - must, before exercising its powers under this paragraph, summon the offender to appear before it, and

(b) - if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.13(6).

(5) -If it appears to the court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the court may—

(a) - revoke the community order, or

(b) - both—

(i) - revoke the community order, and

(ii) - 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 the offender if the offender had just been convicted by it of the offence.

Origin: CJA 2003 Sch.8 para.13(1) (part), (2).

(6) -The circumstances in which a community order may be revoked under sub-paragraph (5) include the offender's—

(a) - making good progress, or

(b) - responding satisfactorily to supervision or treatment (as the case requires).

Origin: CJA 2003 Sch.8 para.13(3).

(7) -If the court deals with the offender under sub-paragraph (5)(b), it must take into account the extent to which the offender has complied with the requirements of the community order.

Origin: CJA 2003 Sch.8 para.13(4).

(8) -A person sentenced under sub-paragraph (5)(b) for an offence may appeal to the Crown Court against the sentence.

Origin: CJA 2003 Sch.8 para.13(5).

Crown Court community order

15 (1) -This paragraph applies where a Crown Court community order is in force and—

(a) - the offender, or

(b) - an officer of a provider of probation services,

applies to the Crown Court for the community order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made.

Origin: CJA 2003 Sch.8 para.14(1) (part); ORA 2014 Sch.4 para.6(6).

(2) Unless the application was made by the offender, the Crown Court—
  (a) must, before exercising its powers under this paragraph, 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.

Origin: CJA 2003 Sch.8 para.14(5); drafting.

(3) 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 order was made, the Crown Court may—
  (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 it could deal with the offender if the offender had just been convicted before it of the offence (but this is subject to sub-paragraph (4)).

Origin: CJA 2003 Sch.8 para.14(2); PCA.

(4) If the community order was made by the Crown Court—
  (a) on an appeal from the magistrates' court, or
  (b) where its powers to deal with the offender for the offence were those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence,

the power of the Crown Court under sub-paragraph (3)(b)(ii) is power to deal with the offender in any way in which a magistrates' court could deal with the offender if it had just convicted the offender of the offence.

Origin: CJA 2003 Sch.8 para.14(2A); PCA.

(5) The circumstances in which a community order may be revoked under sub-paragraph (3) include the offender's—
  (a) making good progress, or
  (b) responding satisfactorily to supervision or treatment (as the case requires).

Origin: CJA 2003 Sch.8 para.14(3).

(6) If the Crown Court deals with the offender under sub-paragraph (3)(b), it must take into account the extent to which the offender has complied with the requirements of the order.

Origin: CJA 2003 Sch.8 para.14(4).

PART 4

AMENDMENT OF ORDER

Amendment because of change of residence

16 (1) -This paragraph applies where at any time while a community order is in force—

(a) - the offender is given permission under section 146 to change residence, and

(b) - the local justice area in which the new residence is situated ("the new local justice area") is different from the offender's home local justice area.

Origin: CJA 2003 Sch.8 para.16(1); ORA 2014 s.18(5).

(2) -If the permission is given by a court, the court must amend the order to specify the new local justice area as the offender's home local justice area.

Origin: CJA 2003 Sch.8 para.16(2); ORA 2014 s.18(5).

17 (1) -This paragraph applies where at any time while a community order is in force—

(a) - a court amends the order,

(b) - the order as amended includes a residence requirement requiring the offender to reside at a specified place, and

(c) - the local justice area in which that place is situated ("the new local justice area") is different from the offender's home local justice area.

Origin: CJA 2003 Sch.8 para.16A(1); ORA 2014 s.18(5).

(2) -The court must amend the order to specify the new local justice area as the offender's home local justice area.

Origin: CJA 2003 Sch.8 para.16A(2); ORA 2014 s.18(5).

Amendment of requirements of community order

18 (1) -The appropriate court may, on the application of the offender or an officer of a provider of probation services, amend a community 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 the court could include if it were then making the order.

Origin: CJA 2003 Sch.8 para.17(1); ORA 2014 Sch.4 para.6(6).

(2) -For the purposes of sub-paragraph (1)(b)—

(a) - requirements are of the same kind if they fall within the same entry in column 1 of the table in section 129, and

(b) - an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

Origin: CJA 2003 Sch.8 para.3.

(3) No application may be made under this paragraph while an appeal against the community order is pending, other than an application which—

(a) relates to a treatment requirement, and

(b) is made by an officer of a provider of probation services with the offender's consent.

Origin: CJA 2003 Sch.8 para.24(1) (part), (2); ORA 2014 Sch.4 para.6(6).

(4) Before exercising its powers under this paragraph, the court must summon the offender to appear before it, unless—

(a) the application was made by the offender, or

(b) the court would exercise the powers only to—

(i) cancel a requirement of the community order,

(ii) reduce the period of any such requirement, or

(iii) substitute a new local justice area or a new place for one specified in the order.

Origin: CJA 2003 Sch.8 para.25(1)(a), (2); SI 2005/886 Sch. para.106(e); drafting.

(5) If the offender fails to appear in answer to a summons under sub-paragraph (4) the court may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.25(1)(b).

(6) Sub-paragraph (1)(b) has effect subject to any provision that applies to the court in making a community order as if the court were imposing the requirements on making the order.

Origin: CJA 2003 Sch.8 para.26; PCA.

(7) The court may not under this paragraph amend a treatment requirement unless the offender expresses willingness to comply with the requirement as amended.

Origin: CJA 2003 Sch.8 para.17(2).

(8) If the offender fails to express willingness to comply with a treatment requirement as proposed to be amended under this paragraph, the court may—

(a) revoke the community order, and

(b) 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 deal with the offender if the offender had just been convicted by or before it of the offence (but this is subject to sub-paragraph (9)).

Origin: CJA 2003 Sch.8 para.17(3); PCA.

(9) If the order was made by the Crown Court—

(a) on an appeal from the magistrates' court, or

(b) where its powers to deal with the offender for the offence were those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence,

the power conferred by sub-paragraph (8)(b) is power to deal with the offender in any way in which a magistrates' court could deal with the offender if it had just convicted the offender of the offence.

Origin: CJA 2003 Sch.8 para.17(3A); PCA.

(10) If the court deals with the offender under sub-paragraph (8)(b), it—

(a) must take into account the extent to which the offender has complied with the requirements of the order, and

(b) may impose a custodial sentence notwithstanding anything in section 159(2) (general restrictions on imposing discretionary custodial sentences).

Origin: CJA 2003 Sch.8 para.17(4).

Amendment of treatment requirement on report of practitioner

19 (1) This paragraph applies where an offender is being treated in pursuance of a treatment requirement and the treatment practitioner—

(a) is of the opinion that—

(i) the treatment of the offender should be continued beyond the period specified in the order,

(ii) the offender needs different treatment,

(iii) the offender is not susceptible to treatment, or

(iv) the offender does not require further treatment, or

(b) is for any reason unwilling to continue to treat or direct the treatment of the offender.

Origin: CJA 2003 Sch.8 para.18(1) (part), (3); drafting

(2) The treatment practitioner must make a report in writing to that effect to the responsible officer.

Origin: CJA 2003 Sch.8 para.18(1) (part).

(3) The responsible officer must cause an application to be made under paragraph 18 to the appropriate court for the replacement or cancellation of the requirement.

Origin: CJA 2003 Sch.8 para.18(1) (part); ORA 2014 Sch.4 para.6(7); PCA.

(4) In this paragraph, "the treatment practitioner", in relation to a treatment requirement, means—

(a) the medical practitioner or other person specified in the community order as the person by whom, or under whose direction, the offender is being treated in pursuance of the requirement, or

(b) in the case of a mental health treatment requirement, if no such person is specified, the person by whom, or under whose direction, the offender is being treated in pursuance of the requirement.

Origin: CJA 2003 Sch.8 para.18(1) (part), (2); PCA.

Extension of order

20 (1) The appropriate court may, on the application of—

(a) the offender, or

(b) an officer of a provider of probation services,

amend a community order by substituting a later date for the end date.

This is subject to sub-paragraphs (3) and (4).

Origin: CJA 2003 Sch.8 para.19A(1); LASPOA 2012 s.66(5); ORA 2014 Sch.4 para.6(6).

(2) Unless the application was made by the offender, the court—
  (a) must, before exercising its powers under this paragraph, summon the offender to appear before the court, and
  (b) if the offender fails to appear in answer to the summons, may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.25(1) (part); drafting.

(3) A date substituted under sub-paragraph (1)—
  (a) must not be more than 6 months after the end date;
  (b) subject to that, may be more than 3 years after the date of the order.

Origin: CJA 2003 Sch.8 para.19A(2); LAPSOA 2012 s.66(5); drafting.

(4) Once the power in sub-paragraph (1) has been exercised in relation to the order, it may not be exercised again in relation to it by any court.

Origin: CJA 2003 Sch.8 para.19A(3); LASPOA 2012 s.66(5).

(5) No application may be made under this paragraph while an appeal against the community order is pending.

Origin: CJA 2003 Sch.8 para.24(1) (part); PCA.

Extension of unpaid work requirement

21 (1) This paragraph applies where a community order imposing an unpaid work requirement is in force in respect of an offender.

Origin: CJA 2003 Sch.8 para.20(1) (part).

(2) The appropriate court may, on the application of—
  (a) the offender, or
  (b) an officer of a provider of probation services,

extend the period of 12 months specified in paragraph 1(1)(b) of Schedule 3, if it appears to the court to be in the interests to do so, having regard to circumstances which have arisen since the order was made.

Origin: CJA 2003 Sch.8 para.20(1) (part); ORA 2014 Sch.4 para.6(6).

(3) No application may be made under this paragraph while an appeal against the community order is pending.

Origin: CJA 2003 Sch.8 para.24(1) (part).

(4) Unless the application was made by the offender, the court—
  (a) must, before exercising its powers under this paragraph, summon the offender to appear before the court, and
  (b) if the offender fails to appear in answer to the summons, may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.25(1); drafting.

PART 5

POWERS OF COURT IN RELATION TO ORDER FOLLOWING SUBSEQUENT CONVICTION

Powers of magistrates' court following subsequent conviction

22 - Paragraphs 23 and 24 apply where—

(a) - a community order ("the existing community order") is in force in respect of an offender, and

(b) - the offender is convicted of an offence by a magistrates' court ("the present court").

Origin: CJA 2003 Sch.8 para.21(1)(a), 22(1) (part); drafting.

23 (1) -This paragraph applies if the existing community order was made by a magistrates' court.

Origin: Drafting.

(2) -If it appears to the present court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the present court may—

(a) - revoke the community order, or

(b) - both—

(i) - revoke the community order, and

(ii) - deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with the offender if it had just convicted the offender of the offence.

Origin: CJA 2003 Sch.8 para.21(1)(b), (2); PCA.

(3) -Unless the offender is before it, the present court may not deal with the offender under sub-paragraph (2)(b) unless it summons the offender to appear before it.

Origin: CJA 2003 Sch.8 para.25(1) (part), (3); PCA.

(4) -If the offender fails to appear in answer to a summons under sub-paragraph (3) the court may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.25(1) (part).

(5) -If the present court deals with the offender under sub-paragraph (2)(b), it must take into account the extent to which the offender has complied with the requirements of the community order.

Origin: CJA 2003 Sch.8 para.21(3).

(6) -A person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

Origin: CJA 2003 Sch.8 para.21(4).

24 (1) -This paragraph applies if the existing community order was made by the Crown Court.

Origin: Drafting.

(2) -The present court may—

(a) - commit the offender in custody, or
(b) release the offender on bail,
until the offender can be brought before the Crown Court.

Origin: CJA 2003 Sch.8 para.22(1) (part).

(3) -Unless the offender is before it, the present court may not deal with the offender under this paragraph unless it summons the offender to appear before it.

Origin: CJA 2003 Sch.8 para.25(1) (part), (3); PCA.

(4) -If the offender fails to appear in answer to a summons under sub-paragraph (3) the court may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.25(1) (part).

(5) -Where the present court deals with the case under this paragraph, it must send to the Crown Court such particulars of the case as may be desirable.

Origin: CJA 2003 Sch.8 para.22(2).

Powers of Crown Court following subsequent conviction

25 (1) -This paragraph applies where a community order is in force in respect of an offender, and the offender—
(a) - is convicted of an offence by the Crown Court, or
(b) - is brought or appears before the Crown Court—
(i) - by virtue of paragraph 24, or
(ii) - having been committed by a magistrates' court to the Crown Court for sentence.

Origin: CJA 2003 Sch.8 para.23(1)(a).

(2) -If it appears to the Crown Court that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the community order was made, the Crown Court may—
(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 it could deal with the offender if the offender had just been convicted by or before it of the offence (but this is subject to sub-paragraph (3)).

Origin: CJA 2003 Sch.8 para.23(1)(b), (2); PCA.

(3) -Where the community order was made by the Crown Court—
(a) - on an appeal from the magistrates' court, or
(b) - where its powers to deal with the offender for the offence were those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence,
the power of the Crown Court under sub-paragraph (2)(b)(ii) is power to deal with the offender in any way in which a magistrates' court could deal with the offender if it had just convicted the offender of the offence.

Origin: CJA 2003 Sch.8 para.23(2A); PCA.

(4) Unless the offender is before it, the Crown Court may not deal with the offender under sub-paragraph (2)(b) unless it summons the offender to appear before it.

Origin: CJA 2003 Sch.8 para.25(1) (part), (3); PCA.

(5) If the offender fails to appear in answer to a summons under sub-paragraph (4) the Crown Court may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.8 para.25(1) (part).

(6) If the Crown Court deals with the offender under sub-paragraph (2)(b), it must take into account the extent to which the offender has complied with the requirements of the community order.

Origin: CJA 2003 Sch.8 para.23(3).

PART 6

SUPPLEMENTARY

Adjournment of hearing

26 (1) This paragraph applies to any hearing relating to an offender held by a magistrates' court in any proceedings under this Schedule.

Origin: CJA 2003 Sch.8 para.25A(1); CJIA 2008 Sch.4 para.109.

(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.

Origin: CJA 2003 Sch.8 para.25A(2); CJIA 2008 Sch.4 para.109.

(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.

Origin: CJA 2003 Sch.8 para.25A(3); CJIA 2008 Sch.4 para.109.

(4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—
(a) it may fix the time and place at which the hearing is to be resumed, but
(b) if it does not do so, it must not resume the hearing unless it is satisfied that—
(i) the offender, and
(ii) any officer of a provider of probation services who the court considers has an interest in the proceedings,
have had adequate notice of the time and place for the resumed hearing.

Origin: CJA 2003 Sch.8 para.25A(4); CJIA 2008 Sch.4 para.109; ORA 2014 Sch.4 para.14(2).

(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.

Origin: CJA 2003 Sch.8 para.25A(5); CJIA 2008 Sch.4 para.109.

(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

(b) - is not to be taken to affect the application of that section to hearings of any other description.

Origin: CJA 2003 Sch.8 para.25A(6); CJIA 2008 Sch.4 para.109.

Duties to provide copies of orders

27 (1) -This paragraph applies on the making of an order by a court under this Schedule revoking or amending a community order.

Origin: CJA 2003 Sch.8 para.27(1) (part).

(2) -The proper officer of the court must provide copies of the revoking or amending order to—

(a) - the offender, and

(b) - the responsible officer.

Origin: CJA 2003 Sch.8 para.27(1)(a).

(3) -In the case of an amending order which substitutes a new local justice area as the offender's home local justice area, the proper officer of the court must also provide a copy of the amending order to—

(a) - a provider of probation services that is a public sector provider operating in that area, and

(b) - the magistrates' court acting in that area.

Origin: CJA 2003 Sch.8 para.27(1)(b); ORA 2014 Sch.4 para.14(3); SI 2005/886 Sch. para.106(f)(i).

(4) -In case of an amending order which imposes or amends a requirement specified in column 1 of the following table, the proper officer of the court must also provide the person specified in the corresponding entry in column 2 with a copy of so much of the amending order as relates to that requirement.

The requirement	*The person to whom a copy must be provided*
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
A residence requirement relating to residence in an institution	The person in charge of the institution

The requirement	*The person to whom a copy must be provided*
A mental health treatment requirement	The person specified under paragraph 16(4)(d) of Schedule 3 or the person in charge of the institution or place specified under paragraph 16(4)(b) or (c) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(4)(b) or (c) of Schedule 3
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 3 or the person in charge of the institution or place specified under paragraph 23(4)(c) or (d) of that Schedule
An electronic monitoring requirement	Any person who by virtue of paragraph 32(1) of Schedule 3 will be responsible for the electronic monitoring
	Any person by virtue of whose consent the requirement is included in the order.

Origin: CJA 2003 Sch.8 para.27(1)(c), Sch.14.

(5) Where the court acts in a local justice area other than the offender's home local justice area specified in the order prior to the revocation or amendment (the "former home area"), the proper officer of the court must provide a copy of the revoking or amending order to a magistrates' court acting in the former home area.

Origin: CJA 2003 Sch.8 para.27(1)(d); DVCVA 2004 Sch.5 para.7(5).

(6) Where under sub-paragraph (3) 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 the proper officer considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

Origin: CJA 2003 Sch.8 para.27(2); SI 2005/886 Sch. para.106(f)(ii); PCA.

(7) In this paragraph—

"proper officer" means—

(a) in relation to a magistrates' court, the designated officer for the court, and

(b) in relation to the Crown Court, the appropriate officer;

"public sector provider" means—

(a) - a probation trust or other public body, or
(b) - the Secretary of State.

Origin: CJA 2003 Sch.8 para.27(3), (4); ORA 2014 Sch.4 para.14(4); SI 2005/886 Sch. para.106(f)(iii).

SCHEDULE 5 - Section 148

TRANSFER OF COMMUNITY ORDERS TO SCOTLAND OR NORTHERN IRELAND

PART 1

SCOTLAND

Making of community order where offender will reside in Scotland

1 (1) -This paragraph applies where a court—
(a) - is considering making a community order, and
(b) - is satisfied that the offender—
(i) - resides in Scotland, or
(ii) - will reside there when the order comes into force.

Origin: CJA 2003 Sch.9 para.1(1) (part).

(2) -The court may make the community order only if it appears to the court that suitable arrangements for the offender's supervision can be made by the local council in Scotland.

Origin: CJA 2003 Sch.9 para.1(1)(b) (part).

Amendment of community order where offender will reside in Scotland

2 (1) -This paragraph applies where the appropriate court (within the meaning of Schedule 4)—
(a) - is considering exercising its power under Part 4 of Schedule 4 ("the amendment power") to amend a community order,
(b) - is satisfied that the offender—
(i) - resides in Scotland, or
(ii) - proposes to reside there when the amendment comes into force, and
(c) - is satisfied that suitable arrangements for the offender's supervision can be made by the local council in Scotland.

Origin: CJA 2003 Sch.9 para.1(3)(a), (b) (part), (4) (part).

(2) -The amendment power includes power to amend the order by requiring—
(a) - the order to be complied with in Scotland, and
(b) - the offender to be supervised in accordance with the arrangements referred to in sub-paragraph (1)(c).

Origin: CJA 2003 Sch.9 para.1(3) (part); drafting.

3 (1) -This paragraph applies where—

(a) - a court in England and Wales is considering exercising any power to amend a community order by virtue of paragraph 25(1)(b) (exercise of powers by court in England and Wales before which home court requires offender to appear), and

(b) - the offender resides in Scotland.

(2) -The court may exercise the power only if it is satisfied that suitable arrangements for the offender's supervision can be made by the local council in Scotland.

Origin: CJA 2003 Sch.9 para.13(a) (part).

Requirements: availability and restrictions

4 - Paragraphs 5 and 6 apply where a court makes or amends an order in accordance with this Part of this Schedule.

Origin: CJA 2003 Sch.9 para.14 (part); drafting.

5 - The following are not available requirements—

(a) - an alcohol abstinence and monitoring requirement;

(b) - an attendance centre requirement.

Origin: CJA 2003 Sch.9 para.1(5) (part); LASPOA 2012 s.76(9)(a).

6 (1) -The court may not impose a locally based requirement unless it appears to the court that—

(a) - arrangements exist for persons to comply with such a requirement in the locality in Scotland in which the offender resides, or will be residing at the relevant time, and

(b) - provision can be made for the offender to comply with the requirement under those arrangements.

Origin: CJA 2003 Sch.9 paras.1(1)(a), (3)(b) (part), (4) (part), 13(a) (part).

(2) -For the purposes of this paragraph "locally based requirement" means any of the following—

(a) - an unpaid work requirement;

(b) - a rehabilitation activity requirement;

(c) - a programme requirement;

(d) - a mental health treatment requirement;

(e) - a drug rehabilitation requirement;

(f) - an alcohol treatment requirement;

(g) - an electronic compliance monitoring requirement.

Origin: CJA 2003 Sch.9 para.1(2); CCA 2013 Sch.16 para.20(2) (part); ORA 2014 Sch.5 para.7(2); drafting.

Modifications of requirements etc where court exercises powers by virtue of this Part of this Schedule

7 - In a case where a court makes or amends a community order by virtue of this Part of this Schedule, Schedule 3 (requirements) has effect as if—

(a) - any reference to the responsible officer were a reference to the local authority officer concerned;

(b) - the following provisions were omitted—

(i) paragraph 13(3) (residence requirement: hostel or institution not to be specified except on recommendation);

(ii) paragraph 32(2) (responsible person to be of prescribed description);

(iii) paragraph 35 (requirement not to be imposed unless Secretary of State has notified arrangements);

(c) in paragraph 16 (mental health treatment requirement), in sub-paragraph (3), for the definition of "in-patient treatment" there were substituted—

""in-patient treatment" means treatment as a resident patient in a hospital within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003, not being a State hospital within the meaning of that Act;".

Origin: CJA 2003 Sch.9 para.2(1) (part), (2) (part), (3)(c), (d), (4), (5); SI 2011/2298 Sch. para.14(3).

PART 2

NORTHERN IRELAND

Making of community order where offender will reside in Northern Ireland

8 (1) This paragraph applies where a court—

(a) is considering making a community order, and

(b) is satisfied that the offender—

(i) resides in Northern Ireland, or

(ii) will reside there when the order comes into force.

Origin: CJA 2003 Sch.9 para.3(1) (part).

(2) The court may make the community order only if it appears to the court that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.9 para.3(1)(b).

Amendment of community order where offender will reside in Northern Ireland

9 (1) This paragraph applies where the appropriate court (within the meaning of Schedule 4)—

(a) is considering exercising its power under Part 4 of Schedule 4 ("the amendment power") to amend a community order,

(b) is satisfied that the offender—

(i) resides in Northern Ireland, or

(ii) proposes to reside there, and

(c) is satisfied that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.9 para.3(3)(a), (b) (part).

(2) The amendment power includes power to amend the order by requiring—

(a) the order to be complied with in Northern Ireland, and

(b) - the offender to be supervised in accordance with the arrangements referred to in sub-paragraph (1)(c).

Origin: CJA 2003 Sch.9 para.3(3) (part); drafting.

10 - (1) This paragraph applies where—

(a) - a court in England and Wales is considering exercising any power to amend a community order by virtue of paragraph 25(1)(b) (exercise of powers by court in England and Wales before which home court requires offender to appear), and

(b) - the offender resides in Northern Ireland.

(2) -The court may exercise the power only if it is satisfied that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.9 para.13(a) (part).

Requirements: availability and restrictions

11 - Paragraphs 12 and 13 apply where a court makes or amends an order in accordance with this Part of this Schedule.

Origin: Drafting.

12 - An alcohol abstinence and monitoring requirement is not an available requirement.

Origin: CJA 2003 Sch.9 para.3(4A); LASPOA 2012 s.76(9)(b).

13 (1) -The court may not impose a locally based requirement unless it appears to the court that—

(a) - arrangements exist for persons to comply with such a requirement in the administrative court division in Northern Ireland in which the offender resides, or will be residing at the relevant time, and

(b) - provision can be made for the offender to comply with the requirement under those arrangements.

Origin: CJA 2003 Sch.9 para.3(1)(a), (4); PCA.

(2) -For the purpose of this paragraph, "locally based requirement" means any of the following—

(a) - an unpaid work requirement;

(b) - a rehabilitation activity requirement;

(c) - a programme requirement;

(d) - a mental health treatment requirement;

(e) - a drug rehabilitation requirement;

(f) - an alcohol treatment requirement;

(g) - an attendance centre requirement;

(h) - an electronic compliance monitoring requirement.

Origin: CJA 2003 Sch.9 para.3(2); CCA 2013 Sch.16 para.20(2) (part); ORA 2014 Sch.5 para.7(4).

Further provision where offender resides or will reside in Northern Ireland

14 In a case where a court makes or amends a community order by virtue of this Part of this Schedule, Schedule 3 (requirements) has effect as if—

(a) any reference to the responsible officer were a reference to the probation officer concerned;

(b) the following provisions were omitted—

(i) paragraph 13(3) (residence requirement: hostel or institution not to be specified except on recommendation);

(ii) paragraph 32(2) (responsible person to be of prescribed description);

(iii) paragraph 35 (requirement not to be imposed unless Secretary of State has notified arrangements);

(c) in paragraph 16 (mental health treatment requirement), in sub-paragraph (3), for the definition of "in-patient treatment" there were substituted—

""in-patient treatment" means treatment (whether as an in-patient or an out-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, approved by the Department of Health for the purposes of paragraph 4(3) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (NI 24));"

(d) in Part 13 of that Schedule (attendance centre requirements), any reference to an attendance centre were to a day centre, as defined by paragraph 3(6) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)).

Origin: CJA 2003 Sch.9 para.4(1), (2), (3)(c), (d), (4), (5), (6); DA(NI) 2016 s.1(5).

PART 3

MAKING OR AMENDMENT OF ORDER IN ACCORDANCE WITH PART 1 OR 2 OF THIS SCHEDULE

Application

15 This Part of this Schedule applies in a case where a court in England and Wales makes or amends a community order in accordance with Part 1 or 2 of this Schedule.

Origin: CJA 2003 Sch.9 paras.1(6) (part), 6 (part), 9 (part), 14 (part), 3(5) (part), (6) (part).

Explanation to be given by court before order is made or amended

16 Before making or amending the community order, the court must explain to the offender in ordinary language—

(a) the effect of paragraph 21 (order to be treated as corresponding order),

(b) the requirements of the legislation relating to corresponding orders which has effect in Scotland or Northern Ireland (as the case may be),

(c) the powers of the home court under that legislation, as modified by Part 4 of this Schedule, and

(d) its own powers in relation to the community order (see Part 4 of this Schedule).

Origin: CJA 2003 Sch.9 para.9 (part); PCA (effect of paragraph 21).

Matters to be specified in the order

17 (1) The community order must specify—

(a) the locality in Scotland, or

(b) the administrative court division in Northern Ireland,

in which the offender resides or will be residing at the relevant time.

Origin: CJA 2003 Sch.9 para.1(6)(a), 3(5) (part); PCA.

(2) Sub-paragraph (1) has effect in place of section 139 (offender's home local justice area to be specified).

Origin: CJA 2003 Sch.9 para.1(6) (part), 3(5) (part); SI 2005/886 Sch. para.107; drafting.

(3) The community order must specify a corresponding order for the purposes of this Schedule (see Part 4 of this Schedule).

Origin: CJA 2003 Sch.9 para.1(6)(b) (part), 3(6) (part).

(4) The corresponding order must be an order that may be made—

(a) in the case of a Scottish community order, by a court in Scotland;

(b) in the case of a Northern Ireland community order, by a court in Northern Ireland.

Origin: CJA 2003 Sch.9 para.1(6)(b) (part), 3(6) (part).

(5) A Scottish community order which specifies as the corresponding order a community payback order within the meaning of section 227A of the Criminal Procedure (Scotland) Act 1995 must also specify the appropriate court for the purposes of sections 227A to 227ZK of that Act.

Origin: CJA 2003 Sch.9 para.1(6)(c) (part); SI 2011/2298 Sch. para.14(2) PCA.

(6) That court—

(a) must be a court of summary jurisdiction having jurisdiction in the locality specified under sub-paragraph (1)(a), and

(b) must, in the case of an offender convicted on indictment, be the sheriff court.

Origin: CJA 2003 Sch.9 para.1(6)(c) (part).

Provision of copies

18 (1) The court which makes or amends the community order must—

(a) provide the offender with a copy of the order, and

(b) provide the home court with—

(i) a copy of the order as made or amended, and

(ii) such other documents and information relating to the case as it considers likely to be of assistance to the home court.

Origin: CJA 2003 s.219(1)(a) (part), Sch.9 para.6 (part); ORA 2014 Sch.4 para.12(2).

(2) Where the court—

(a) makes a community order which imposes a requirement specified in column 1 of the table in sub-paragraph (3), or

(b) amends a community order so as to impose or amend such a requirement,

it must also provide the person specified in the corresponding entry in column 2 of the table with a copy of so much of the community order or amending order as relates to that requirement.

Origin: CJA 2003 s.219(2) (part); drafting.

(3) The table is—

The requirement	*The person to whom a copy must be provided*
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
A residence requirement relating to residence in an institution	The person in charge of the institution
A mental health treatment requirement	The person specified under paragraph 16(4)(d) of Schedule 3 or the person in charge of the institution or place specified under paragraph 16(4)(b) or (c) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(4)(b) or (c) of Schedule 3
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 3 or the person in charge of the institution or place specified under paragraph 23(4)(c) or (d) of that Schedule
An electronic monitoring requirement	Any person who by virtue of paragraph 32(1) of Schedule 3 will be responsible for the electronic monitoring
	Any person by virtue of whose consent the requirement is included in the order.

Origin: CJA 2003 s.219(2) (part), Sch.14; drafting.

(4) This paragraph has effect in place of section 142 (provision of copies of relevant orders).

Origin: CJA 2003 Sch.9 para.6 (part); drafting.

PART 4

EFFECT OF ORDER MADE OR AMENDED IN ACCORDANCE WITH PART 1 OR 2 OF THIS SCHEDULE

Application

19 This Part of this Schedule applies where a community order has been made or amended in accordance with Part 1 or 2 of this Schedule.

Origin: CJA 2003 Sch.9 paras.7 (part), 8 (part), 11 (part), 12 (part), 13 (part); drafting.

Duty to keep in touch with responsible officer

20 (1) The offender must keep in touch—

(a) with the local authority officer concerned, in the case of a Scottish community order, or

(b) with the local probation officer concerned, in the case of a Northern Ireland community order,

in accordance with such instructions as the officer may give the offender from time to time.

(2) That obligation is enforceable as if it were a requirement imposed by the community order.

(3) This paragraph has effect in place of section 145.

Origin: CJA 2003 s.220, Sch.9 paras.2(2) (part), 4(2) (part), 7; drafting.

Order to be treated as corresponding order in certain circumstances

21 (1) The community order is to be treated as if it were a corresponding order.

(2) The relevant home legislation applies accordingly.

(3) In this Schedule, "relevant home legislation"—

(a) in relation to a Scottish community order, means the legislation relating to corresponding orders that has effect in Scotland;

(b) in relation to a Northern Ireland community order, means the legislation relating to corresponding orders that has effect in Northern Ireland.

(4) This paragraph is subject to the following provisions of this Part of this Schedule.

Origin: CJA 2003 Sch.9 para.8; drafting.

Powers of home court

22 (1) -The home court may exercise any relevant local power in relation to the community order, subject to the following restrictions.

(2) -A "relevant local power" means a power which the home court could exercise in relation to a corresponding order by virtue of the relevant home legislation.

(3) -The home court may not discharge or revoke the order.

(4) -But that does not prevent the home court from exercising a power to revoke the order where—

(a) - the offender has been convicted of a further offence, and

(b) - the court has imposed a custodial sentence.

(5) -The home court may not deal with the offender for the offence in respect of which the community order was made.

(6) -The home court may not vary the order—

(a) - if the order imposes an unpaid work requirement, so as to extend the specified number of hours to more than the maximum number of hours for the time being specified in paragraph 2(1)(b)(ii) of Schedule 3;

(b) - if the order imposes a curfew requirement, so as to specify any curfew periods (within the meaning of paragraph 9 of Schedule 3) that fall after the end of the 12 month period specified in sub-paragraph (5) of that paragraph.

Origin: CJA 2003 Sch.9 para.10; drafting; PCA.

Power of home court to require offender to appear before court in England and Wales

23 (1) -Where the home court is of the opinion that—

(a) - the offender has breached any of the requirements of the order, or

(b) - it would be in the interests of justice for a power conferred by Part 3 of Schedule 4 (revocation of order with or without resentencing) to be exercised,

the home court may require the offender to appear before the court which made the order or which last amended the order in England and Wales.

(2) -The court may form an opinion within sub-paragraph (1)(a) for the purposes of this paragraph only—

(a) - on information from the local authority officer concerned, if the home court is in Scotland, or

(b) - upon a complaint being made to a justice of the peace, if the home court is in Northern Ireland.

(3) -The court may form an opinion within sub-paragraph (1)(b) for the purposes of this paragraph only on the application—

(a) - of the offender, or

(b) - of—

(i) - the local authority officer concerned, if the home court is in Scotland;

(ii) - the probation officer concerned, if the home court is in Northern Ireland.

Origin: CJA 2003 Sch.9 para.11; drafting; PCA.

Home court to certify breach of requirement

24 (1) Where the home court requires the offender to appear before a court in England and Wales by virtue of paragraph 23(1)(a) (breach of a requirement of the order), the home court must send the court in England in Wales—

(a) a certificate certifying that the offender has breached a requirement of the community order specified in the certificate, and

(b) such other particulars of the case as may be desirable.

(2) A certificate under sub-paragraph (1)(a) which purports to be signed by the clerk of the home court is admissible as evidence of the breach before the court in England and Wales.

Origin: CJA 2003 Sch.9 para.15; PCA.

Powers of court in England and Wales where offender required to appear under paragraph 23

25 (1) In any case where under paragraph 23 the home court requires the offender to appear before a court in England and Wales, the court in England and Wales—

(a) may issue a warrant for the offender's arrest, and

(b) may exercise any power which it could exercise in respect of the community order if the offender resided in England and Wales.

Origin: CJA 2003 Sch.9 para.12 (part).

(2) Any enactment relating to the exercise of such powers has effect accordingly, and any reference in any such enactment to the responsible officer is to be read as a reference—

(a) if the home court is in Scotland, to the local authority officer concerned;

(b) if the home court is in Northern Ireland, to the probation officer concerned.

Origin: CJA 2003 Sch.9 para.12 (part).

(3) If the offender resides in Scotland or Northern Ireland, a power may be exercised by virtue of sub-paragraph (1)(b) only in accordance with—

(a) paragraph 3, if the offender resides in Scotland, or

(b) paragraph 10, if the offender resides in Northern Ireland.

Origin: CJA 2003 Sch.9 para.13 (part).

PART 5

INTERPRETATION

26 In this Schedule—

"administrative court division" means an administrative court division specified under section 2 of the Justice Act (Northern Ireland) 2015 (c. 9 (N.I.));

"breach", in relation to a requirement, means a failure to comply with it, and related expressions are to be read accordingly;

"corresponding order", in relation to a community order, means an order of the kind specified in the community order under paragraph 17(3);

"home court" means—

(a) if the offender resides in Scotland, or will be residing there at the relevant time, the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside, and

(b) if the offender resides in Northern Ireland, or will be residing there at the relevant time, a court of summary jurisdiction;

"the local authority officer concerned", in relation to an offender, means the officer of a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 responsible for—

(a) the offender's supervision, and

(b) discharging in relation to the offender the functions of the responsible officer under sections 227A to 227ZK of the Criminal Procedure (Scotland) Act 1995;

"the local council in Scotland" means the council constituted under section 2 of the Local Government etc (Scotland) Act 1994 in whose area the offender resides or will be residing at the relevant time;

"Northern Ireland community order" means a community order made or amended in accordance with Part 2 of this Schedule;

"the probation officer concerned", in relation to an offender, means the probation officer responsible for—

(a) the offender's supervision, or

(b) as the case may be, discharging in relation to the offender the functions conferred by Part 2 of the Criminal Justice (Northern Ireland) Order 1996 (SI 1996/3160 (N.I. 24)));

"relevant home legislation" has the meaning given by paragraph 21(3);

"the relevant time", in relation to an order made or amended in accordance with Part 1 or 2 of this Schedule, means the time when the order or the amendment to it comes into force;

"Scottish community order" means a community order made or amended in accordance with Part 1 of this Schedule.

Origin: CJA 2003 Sch.9 para.5; SI 2011/2298 Sch. para.14(4); PCA; drafting.

SCHEDULE 6

Section 168

OFFENDER UNDER 18: OFFENCES FOR WHICH SENTENCE OF DETENTION UNDER SECTION 168 AVAILABLE

Offence punishable with imprisonment for 14 years or more

1 An offence punishable in the case of a person aged 21 or over with imprisonment for 14 years or more, other than an offence for which the sentence is fixed by law.

Origin: PCC(S)A 2000 s.91(1)(a); SOA 2003 Sch.6 para.43(2).

Sexual offences

2 An offence under any of the following provisions of the Sexual Offences Act 2003—

(a) section 3 (sexual assault);

(b) section 13 (child sex offences committed by children or young persons);

(c) section 25 (sexual activity with a child family member);

(d) section 26 (inciting a child family member to engage in sexual activity).

Origin: PCC(S)A 2000 s.91(1)(b) to (e); SOA 2003 Sch.6 para.43(2).

Weapons offences where exceptional circumstances justify not imposing required custodial sentence

3 An offence in relation to which section 51A of the Firearms Act 1968 applies (offence relating to certain prohibited weapons committed when offender was aged 16 or over), other than an offence under section 5(2A), 16, 17 or 18 of that Act.

Origin: PCC(S)A 2000 s.91(1A), (1B); CJA 2003 s.289(2); VCRA 2006 Sch.1 para.7(1), (2); drafting.

4 An offence under section 28 of the Violent Crime Reduction Act 2006 (using someone to mind a weapon) in relation to which section 29(3) of that Act applies (the offender was aged 16 or over at the time of the offence and the offence involved a prohibited weapon).

Origin: PCC(S)A 2000 s.91(1C); VCRA 2006 Sch.1 para.7(2).

SCHEDULE 7

Sections 180 and 193

SPECIAL SENTENCE FOR OFFENDERS OF PARTICULAR CONCERN: OFFENCES

Terrorism offences

1 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder) that has a terrorist connection.

2 An offence under section 28 of that Act (causing bodily injury by explosives) that has a terrorist connection.

3 An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm) that has a terrorist connection.

4 An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property) that has a terrorist connection.

5 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property) that has a terrorist connection.

6 An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances) that has a terrorist connection.

7 An offence under section 54 of the Terrorism Act 2000 (weapons training).

8 An offence under section 56 of that Act (directing terrorist organisation).

9 An offence under section 57 of that Act (possession of article for terrorist purposes).

10 An offence under section 59 of that Act (inciting terrorism overseas).

11 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).

12 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).

13 An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).

14 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).

15 An offence under section 6 of that Act (training for terrorism).

16 An offence under section 9 of that Act (making or possession of radioactive device or material).

17 An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).

18 An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc).

Sexual offences

19 - An offence under section 5 of the Sexual Offences Act 2003 (rape of a child under 13.

20 - An offence under section 6 of that Act (assault of a child under 13 by penetration).

Accessories and inchoate offences

21 (1) -Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Schedule (a "relevant offence").

(2) -An attempt to commit a relevant offence.

(3) -Conspiracy to commit a relevant offence.

(4) -An offence under Part 2 of the Serious Crime Act 2007 related to a relevant offence.

22 - An offence in the following list that has a terrorist connection—

(a) - an attempt to commit murder;

(b) - conspiracy to commit murder;

(c) - an offence under Part 2 of the Serious Crime Act 2007 related to murder.

Abolished offences

23 - An offence that—

(a) - was abolished before 13 April 2015, and

(b) - if committed on the day on which the offender was convicted of the offence, would have constituted an offence specified in the preceding paragraphs of this Schedule.

Meaning of "terrorist connection"

24 - For the purposes of this Schedule, an offence has a terrorist connection if a court has determined under section 65 that the offence has such a connection.

Origin: CJA 2003 Sch.18A paras.1 to 24; CJCA 2015 Sch.1 para.4; SI 2015/778 art.3, Sch.1 para.72.

SCHEDULE 8 - Sections 182 and 195

EXTENDED SENTENCES: THE EARLIER OFFENCE CONDITION: OFFENCES

PART 1

OFFENCES UNDER THE LAW OF ENGLAND AND WALES

The following offences to the extent that they are offences under the law of England and Wales—

1 - Manslaughter.

Origin: CJA 2003 Sch.15B para.1; LASPOA 2012 Sch.18.

2 - An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).

Origin: CJA 2003 Sch.15B para.2; LASPOA 2012 Sch.18.

3 - An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).

Origin: CJA 2003 Sch.15B para.3; LASPOA 2012 Sch.18.

4 - An offence under section 28 of that Act (causing bodily injury by explosives).

Origin: CJA 2003 Sch.15B para.3A; CJCA 2015 s.3(2).

5 - An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm.

Origin: CJA 2003 Sch.15B para.3B; CJCA 2015 s.3(2).

6 - An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).

Origin: CJA 2003 Sch.15B para.3C; CJCA 2015 s.3(2).

7 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).

Origin: CJA 2003 Sch.15B para.3D; CJCA 2015 s.3(2).

8 An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).

Origin: CJA 2003 Sch.15B para.3E; CJCA 2015 s.3(2).

9 An offence under section 16 of the Firearms Act 1968 (possession of a firearm with intent to endanger life).

Origin: CJA 2003 Sch.15B para.4; LASPOA 2012 Sch.18.

10 An offence under section 17(1) of that Act (use of a firearm to resist arrest).

Origin: CJA 2003 Sch.15B para.5; LASPOA 2012 Sch.18.

11 An offence under section 18 of that Act (carrying a firearm with criminal intent).

Origin: CJA 2003 Sch.15B para.6; LASPOA 2012 Sch.18.

12 An offence of robbery under section 8 of the Theft Act 1968 where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.

Origin: CJA 2003 Sch.15B para.7; LASPOA 2012 Sch.18.

13 An offence under section 1 of the Protection of Children Act 1978 (indecent images of children).

Origin: CJA 2003 Sch.15B para.8; LASPOA 2012 Sch.18.

14 An offence under section 54 of the Terrorism Act 2000 (weapons training).

Origin: CJA 2003 Sch.15B para.8A; CJCA 2015 s.3(3).

15 An offence under section 56 of that Act (directing terrorist organisation).

Origin: CJA 2003 Sch.15B para.9; LASPOA 2012 Sch.18; CJCA 2015 s.3(4).

16 An offence under section 57 of that Act (possession of article for terrorist purposes).

Origin: CJA 2003 Sch.15B para.10; LASPOA 2012 Sch.18.

17 An offence under section 59 of that Act (inciting terrorism overseas) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.11; LASPOA 2012 Sch.18.

18 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).

Origin: CJA 2003 Sch.15B para.12; LASPOA 2012 Sch.18.

19 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).

Origin: CJA 2003 Sch.15B para.13; LASPOA 2012 Sch.18.

20 An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).

Origin: CJA 2003 Sch.15B para.14; LASPOA 2012 Sch.18.

21 An offence under section 1 of the Sexual Offences Act 2003 (rape).

Origin: CJA 2003 Sch.15B para.15; LASPOA 2012 Sch.18.

22 An offence under section 2 of that Act (assault by penetration).

Origin: CJA 2003 Sch.15B para.16; LASPOA 2012 Sch.18.

23 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.17; LASPOA 2012 Sch.18.

24 An offence under section 5 of that Act (rape of a child under 13).

Origin: CJA 2003 Sch.15B para.18; LASPOA 2012 Sch.18.

25 An offence under section 6 of that Act (assault of a child under 13 by penetration).

Origin: CJA 2003 Sch.15B para.19; LASPOA 2012 Sch.18.

26 An offence under section 7 of that Act (sexual assault of a child under 13).

Origin: CJA 2003 Sch.15B para.20; LASPOA 2012 Sch.18.

27 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).

Origin: CJA 2003 Sch.15B para.21; LASPOA 2012 Sch.18.

28 An offence under section 9 of that Act (sexual activity with a child).

Origin: CJA 2003 Sch.15B para.22; LASPOA 2012 Sch.18.

29 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).

Origin: CJA 2003 Sch.15B para.23; LASPOA 2012 Sch.18.

30 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).

Origin: CJA 2003 Sch.15B para.24; LASPOA 2012 Sch.18.

31 An offence under section 12 of that Act (causing a child to watch a sexual act).

Origin: CJA 2003 Sch.15B para.25; LASPOA 2012 Sch.18.

32 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).

Origin: CJA 2003 Sch.15B para.26; LASPOA 2012 Sch.18.

33 An offence under section 15 of that Act (meeting a child following sexual grooming etc).

Origin: CJA 2003 Sch.15B para.27; LASPOA 2012 Sch.18.

34 An offence under section 25 of that Act (sexual activity with a child family member) if the offender is aged 18 or over at the time of the offence.

Origin: CJA 2003 Sch.15B para.28; LASPOA 2012 Sch.18.

35 An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if the offender is aged 18 or over at the time of the offence.

Origin: CJA 2003 Sch.15B para.29; LASPOA 2012 Sch.18.

36 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.30; LASPOA 2012 Sch.18.

37 An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.31; LASPOA 2012 Sch.18.

38 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.32; LASPOA 2012 Sch.18.

39 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.33; LASPOA 2012 Sch.18.

40 An offence under section 47 of that Act (paying for sexual services of a child) against a person aged under 16.

Origin: CJA 2003 Sch.15B para.34; LASPOA 2012 Sch.18.

41 An offence under section 48 of that Act (causing or inciting child prostitution or pornography).

Origin: CJA 2003 Sch.15B para.35; LASPOA 2012 Sch.18.

42 An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography).

Origin: CJA 2003 Sch.15B para.36; LASPOA 2012 Sch.18.

43 An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography).

Origin: CJA 2003 Sch.15B para.37; LASPOA 2012 Sch.18.

44 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) if the offender is liable on conviction on indictment to imprisonment for life.

Origin: CJA 2003 Sch.15B para.38; LASPOA 2012 Sch.18.

45 An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).

Origin: CJA 2003 Sch.15B para.39; LASPOA 2012 Sch.18.

46 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).

Origin: CJA 2003 Sch.15B para.40; LASPOA 2012 Sch.18.

47 An offence under section 6 of that Act (training for terrorism).

Origin: CJA 2003 Sch.15B para.40A; CJCA 2015 s.3(5).

48 An offence under section 9 of that Act (making or possession of radioactive device or materials).

Origin: CJA 2003 Sch.15B para.41; LASPOA 2012 Sch.18.

49 An offence under section 10 of that Act (misuse of radioactive devices or material and misuse and damage of facilities).

Origin: CJA 2003 Sch.15B para.42; LASPOA 2012 Sch.18.

50 An offence under section 11 of that Act (terrorist threats relating to radioactive devices, materials or facilities).

Origin: CJA 2003 Sch.15B para.43; LASPOA 2012 Sch.18.

51 An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).

Origin: CJA 2003 Sch.15B para.43A; MSA 2015 s.6(4).

52 An offence under section 2 of that Act (human trafficking).

Origin: CJA 2003 Sch.15B para.43B; MSA 2015 s.6(4).

53 (1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule ("a listed offence") or murder.

(2) Conspiracy to commit a listed offence or murder.

(3) Incitement to commit a listed offence or murder.

(4) An offence under Part 2 of the Serious Crime Act 2007 related to a listed offence or murder.

(5) Aiding, abetting, counselling or procuring the commission of a listed offence.

Origin: CJA 2003 Sch.15B para.44; LASPOA 2012 Sch.18.

54 Murder.

Origin: CJA 2003 Sch.15B para.45; LASPOA 2012 Sch.18.

55 Any offence that—

(a) was abolished (with or without savings) before 3 December 2012, and

(b) would, if committed on the day on which the offender was convicted of the offence referred to in section 182(1)(a) or 195(1)(a) (as appropriate), have constituted an offence specified in any of the preceding paragraphs in this Part of this Schedule.

Origin: CJA 2003 Sch.15B para.46; LASPOA 2012 Sch.18; SI 2012/2906 art.2(p).

PART 2

OFFENCES UNDER SERVICE LAW

56 An offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is an offence specified in Part 1 of this Schedule.

Origin: CJA 2003 Sch.15B para.47; LASPOA 2012 Sch.18.

57 (1) An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence specified in Part 1 of this Schedule.

(2) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc) applies for the purposes of this paragraph as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to this paragraph.

Origin: CJA 2003 Sch.15B para.48; LASPOA 2012 Sch.18.

PART 3

OFFENCES UNDER THE LAW OF SCOTLAND, NORTHERN IRELAND OR A MEMBER STATE OTHER THAN THE UNITED KINGDOM

58 A civilian offence for which the person was convicted in Scotland, Northern Ireland or a member State other than the United Kingdom and which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 of this Schedule.

Origin: CJA 2003 Sch.15B para.49; LASPOA 2012 Sch.18; CJCA 2015 s.3(7).

59 A member State service offence which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 of this Schedule.

Origin: CJA 2003 Sch.15B para.49A; CJCA 2015 s.3(8).

60 In this Part of this Schedule—

"civilian offence" means an offence other than an offence described in Part 2 of this Schedule or a member State service offence;

"member State service offence" means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

Origin: CJA 2003 Sch.15B para.49B; CJCA 2015 s.3(8).

PART 4

INTERPRETATION

61 In this Schedule "imprisonment for life" includes custody for life and detention for life.

Origin: CJA 2003 Sch.15B para.50; LASPOA 2012 Sch.18.

SCHEDULE 9

Sections 188 and 198

LIFE SENTENCE FOR SECOND OFFENCE: LISTED OFFENCES

PART 1

OFFENCES UNDER THE LAW OF ENGLAND AND WALES

The following offences to the extent that they are offences under the law of England and Wales—

	Offence	*Cut off date*
1	Manslaughter.	3 December 2012
2	An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).	3 December 2012
3	An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).	3 December 2012
4	An offence under section 16 of the Firearms Act 1968 (possession of a firearm with intent to endanger life).	3 December 2012
5	An offence under section 28 of that Act (causing bodily injury by explosives).	13 April 2015
6	An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm).	13 April 2015
7	An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).	13 April 2015
8	An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).	13 April 2015
9	An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).	13 April 2015

	Offence	*Cut off date*
10	An offence under section 17(1) of that Act (use of a firearm to resist arrest).	3 December 2012
11	An offence under section 18 of that Act (carrying a firearm with criminal intent).	3 December 2012
12	An offence of robbery under section 8 of the Theft Act 1968 (robbery) where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.	3 December 2012
13	An offence under section 1 of the Protection of Children Act 1978 (indecent images of children).	3 December 2012
14	An offence under section 54 of the Terrorism Act 2000 (weapons training).	13 April 2015
15	An offence under section 56 of that Act (directing terrorist organisation).	3 December 2012
16	An offence under section 57 of that Act (possession of article for terrorist purposes).	3 December 2012
17	An offence under section 59 of that Act (inciting terrorism overseas) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012
18	An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).	3 December 2012
19	An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).	3 December 2012
20	An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).	3 December 2012
21	An offence under section 1 of the Sexual Offences Act 2003 (rape).	3 December 2012
22	An offence under section 2 of that Act (assault by penetration).	3 December 2012
23	An offence under section 5 of that Act (rape of a child under 13).	3 December 2012
24	An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012

	Offence	*Cut off date*
25	An offence under section 6 of that Act (assault of a child under 13 by penetration).	3 December 2012
26	An offence under section 7 of that Act (sexual assault of a child under 13).	3 December 2012
27	An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).	3 December 2012
28	An offence under section 9 of that Act (sexual activity with a child).	3 December 2012
29	An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).	3 December 2012
30	An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).	3 December 2012
31	An offence under section 12 of that Act (causing a child to watch a sexual act).	3 December 2012
32	An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).	3 December 2012
33	An offence under section 15 of that Act (meeting a child following sexual grooming etc).	3 December 2012
34	An offence under section 25 of that Act (sexual activity with a child family member) if the offender is aged 18 or over at the time of the offence.	3 December 2012
35	An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if the offender is aged 18 or over at the time of the offence.	3 December 2012
36	An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012
37	An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012

	Offence	*Cut off date*
38	An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012
39	An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012
40	An offence under section 47 of that Act (paying for sexual services of a child) against a person aged under 16.	3 December 2012
41	An offence under section 48 of that Act (causing or inciting child prostitution or pornography).	3 December 2012
42	An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography).	3 December 2012
43	An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography).	3 December 2012
44	An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) if the offender is liable on conviction on indictment to imprisonment for life.	3 December 2012
45	An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).	3 December 2012
46	An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).	3 December 2012
47	An offence under section 6 of that Act (training for terrorism).	13 April 2015
48	An offence under section 9 of that Act (making or possession of radioactive device or materials).	3 December 2012
49	An offence under section 10 of that Act (misuse of radioactive devices or material and misuse and damage of facilities).	3 December 2012

	Offence	*Cut off date*
50	An offence under section 11 of that Act (terrorist threats relating to radioactive devices, materials or facilities).	3 December 2012
51	An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).	31 July 2015
52	An offence under section 2 of that Act (human trafficking).	31 July 2015
53	An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule ("a listed offence") or murder. Conspiracy to commit a listed offence or murder. Incitement to commit a listed offence or murder. An offence under Part 2 of the Serious Crime Act 2007 related to a listed offence or murder. Aiding, abetting, counselling or procuring the commission of a listed offence.	The date specified for the listed offence

Origin: CJA 2003 Sch.15B paras.1 to 44 (part); LASPOA 2012 Sch.18; CJCA 2015 s.3; MSA 2015 s.6(4).

PART 2

FURTHER OFFENCES UNDER THE LAW OF ENGLAND AND WALES

The following offences to the extent that they are offences under the law of England Wales—

54 Murder.

Origin: CJA 2003 Sch.15B para.45; LASPOA 2012 Sch.18.

55 Any offence that—

(a) was abolished (with or without savings) before 3 December 2012, and

(b) would, if committed when the index offence was committed, have constituted an offence specified in Part 1 of this Schedule.

Origin: CJA 2003 Sch.15B para.46; LASPOA 2012 Sch.18; SI 2012/2906 art.2(p); drafting.

PART 3

OFFENCES UNDER SERVICE LAW

56 - An offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is an offence specified in Part 1 or 2 of this Schedule.

Origin: CJA 2003 Sch.15B para.47; LASPOA 2012 Sch.18.

57 (1) -An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence specified in Part 1 or 2 of this Schedule.

(2) -Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc) applies for the purposes of this paragraph as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to this paragraph.

Origin: CJA 2003 Sch.15B para.48; LASPOA 2012 Sch.18.

PART 4

OFFENCES UNDER THE LAW OF SCOTLAND, NORTHERN IRELAND OR A MEMBER STATE - OTHER THAN THE UNITED KINGDOM -

58 - A civilian offence for which the person was convicted in Scotland, Northern Ireland or a member State other than the United Kingdom and which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 or 2 of this Schedule.

This is subject to paragraph 61.

Origin: CJA 2003 Sch.15B para.49; LASPOA 2012 Sch.18; CJCA 2015 s.3(7).

59 - A member State service offence which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 or 2 of this Schedule.

This is subject to paragraph 61.

Origin: CJA 2003 Sch.15B para.49A; CJCA 2015 s.3(8).

60 In this Part of this Schedule—

"civilian offence" means an offence other than an offence described in Part 3 of this Schedule or a member State service offence;

"member State service offence" means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

Origin: CJA 2003 Sch.15B para.49B; CJCA 2015 s.3(8).

61 (1) -Where the index offence was committed before 13 April 2015, this Part of this Schedule has effect—

(a) - as if, in paragraph 58, the reference to a civilian offence were to an offence, and

(b) with the omission of paragraphs 59 and 60.

Origin: CJCA 2015 s.3(9), (10) (part); SI 2015/778 Sch.1 para.3.

(2) For the purposes of sub-paragraph (1), where an offence is found to have been committed—

(a) over a period of 2 or more days, or

(b) at some time during a period of 2 or more days,

it is to be taken to have been committed on the last of those days.

Origin: CJCA 2015 s.3(11) (part).

PART 5

INTERPRETATION

62 In this Schedule—

"imprisonment for life" includes custody for life and detention for life;

"index offence" has the same meaning as in section 188 or 198 (as appropriate).

Origin: CJA 2003 Sch.15B para.50; LASPOA 2012 Sch.18; drafting.

SCHEDULE 10

Section 218

BREACH OR AMENDMENT OF SUSPENDED SENTENCE ORDER, AND EFFECT OF FURTHER CONVICTION

PART 1

PRELIMINARY

Interpretation: general

1 In this Schedule, in relation to a suspended sentence order—

"activation order" has the meaning given by paragraph 14(1);

"breach", in relation to a community requirement, means a failure to comply with it, and related expressions are to be read accordingly;

"the appropriate court" means—

(a) in the case of a suspended sentence order which is subject to review, the court responsible for the order,

(b) in the case of a Crown Court order, the Crown Court, and

(c) in any other case, a magistrates' court acting in the local justice area concerned.

Origin: CJA 2003 Sch.12 para.1, 13(3), 14(5), 18(2); S.I. 2005/886 Sch. para.110(a), (d); drafting.

Enforcement officers

2 (1) In this Schedule "enforcement officer" means a person who is for the time being responsible for discharging the functions conferred by this Schedule

on an enforcement officer in accordance with arrangements made by the Secretary of State.

(2) -An enforcement officer must be an officer of a provider of probation services that is a public sector provider.

(3) -For this purpose "public sector provider" means—
(a) - a probation trust or other public body, or
(b) - the Secretary of State.

Origin: CJA 2003 Sch.12 para.1A; ORA 2014 Sch.4 para.7(2).

"Order subject to magistrates' court supervision" and "Crown Court order"

3 In this Schedule—
"order subject to magistrates' court supervision" means a suspended sentence order that imposes any community requirement which—
(a) - was made by a magistrates' court, or
(b) - was made by the Crown Court and includes a direction that any breach of a community requirement of the order is to be dealt with by a magistrates' court;
"Crown Court order" means a suspended sentence order that imposes any community requirement which—
(a) - was made by the Crown Court, and
(b) - does not include a direction that any breach of a community requirement of the order is to be dealt with by a magistrates' court.

Origin: CJA 2003 Sch.12 para.6(1) (part), 7(1) (part); drafting

Orders and community requirements which are subject to review

4 (1) -For the purposes of this Schedule a suspended sentence order is subject to review if—
(a) - the order is subject to review in accordance with section 208(1), or
(b) - the order imposes a drug rehabilitation requirement which is subject to review in accordance with paragraph 21 of Schedule 3.

(2) -In this Schedule, a reference to the court responsible for a suspended sentence order which is subject to review is to the responsible court within the meaning given—
(a) - in section 208(4), or
(b) in paragraph 21(4) of Schedule 3, -
(as the case may be). -

Origin: CJA 2003 Sch.12 para.2; drafting.

Orders made on appeal

5 - A suspended sentence order made on appeal is to be taken for the purposes of this Schedule to have been made by the Crown Court.

Origin: CJA 2003 Sch.12 para.3.

PART 2

BREACH OF COMMUNITY REQUIREMENT OR CONVICTION OF FURTHER OFFENCE

Breach of community requirement: duty to give warning or refer to enforcement officer

6 (1) -This paragraph applies where the responsible officer is of the opinion that the offender has without reasonable excuse breached a community requirement of a suspended sentence order.

Origin: CJA 2003 Sch.12 para.4(1) (part), 5(1) (part).

(2) -If the offender has been given a warning under this paragraph within the previous 12 months in relation to a breach of any community requirement of the order, the officer must refer the matter to an enforcement officer.

Origin: CJA 2003 Sch.12 para.5(1); ORA 2014 Sch.4 para.7(3).

(3) -Otherwise the officer must either—

(a) - give the offender a warning under this paragraph, or

(b) - refer the matter to an enforcement officer.

Origin: CJA 2003 Sch.12 para.4(1); ORA 2014 Sch.3 para.7(3).

(4) -A warning under this paragraph must—

(a) - describe the circumstances of the breach,

(b) - state that the breach is unacceptable, and

(c) - inform the offender that if the offender again breaches a requirement of the order within the next 12 months, the offender will be liable to be brought before a court.

Origin: CJA 2003 Sch.12 para.4(2).

(5) -As soon as practicable after giving a warning under this paragraph, the responsible officer must record that fact.

Origin: CJA 2003 Sch.12 para.4(3).

Role of enforcement officer

7 - Where a matter is referred to an enforcement officer under paragraph 6, the enforcement officer must—

(a) - consider the case, and

(b) - where appropriate, cause an information to be laid in respect of the offender's breach of the requirement—

(i) - in the case of an order subject to magistrates' court supervision, before a justice of the peace;

(ii) - in the case of a Crown Court order, before the Crown Court.

Origin: CJA 2003 Sch.12 para.5A; ORA 2014 Sch.4 para.7(5).

Order subject to magistrates' court supervision: issue of summons or warrant by justice

8 (1) -This paragraph applies where—

(a) - an order subject to magistrates' court supervision is in force, and

(b) - it appears on information to a justice of the peace that the offender has breached any community requirement of the order.

Origin: CJA 2003 Sch.12 para.6(1), (2) (part).

(2) The justice may—

(a) issue a summons requiring the offender to appear at the place and time specified in it, or

(b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.12 para.6(2).

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought—

(a) in the case of a suspended sentence order which is subject to review, before the court responsible for the order;

(b) in any other case, before a magistrates' court acting in—

(i) the local justice area in which the offender resides, or

(ii) if it is not known where the offender resides, in the offender's home local justice area.

Origin: CJA 2003 Sch.12 para.6(3); DVCVA 2004 Sch.5 para.8(3); SI 2005/886 Sch. para.110(b).

(4) Where—

(a) a summons issued under this paragraph requires the offender to appear before a magistrates' court, and

(b) the offender does not appear in answer to the summons,

the magistrates' court may issue a warrant for the arrest of the offender.

Origin: CJA 2003 Sch.12 para.6(4).

Crown Court order: issue of summons or warrant by Crown Court

9 (1) This paragraph applies where—

(a) a Crown Court order is in force, and

(b) it appears on information to the Crown Court that the offender has breached any community requirement of the order.

Origin: CJA 2003 Sch.12 para.7(1), (2) (part).

(2) The Crown Court may—

(a) issue a summons requiring the offender to appear at the place and time specified in it, or

(b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.12 para.7(2) (part).

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

Origin: CJA 2003 Sch.12 para.7(3).

(4) Where—

(a) a summons issued under this paragraph requires the offender to appear before the Crown Court, and

(b) the offender does not appear in answer to the summons,

the Crown Court may issue a warrant for the arrest of the offender.

Origin: CJA 2003 Sch.12 para.7(4).

Offender before magistrates' court: breach of community requirement

10 (1) This paragraph applies where—

(a) the offender is before a magistrates' court ("the present court") in relation to a suspended sentence order by virtue of—

(i) paragraph 8 (breach of community requirement), or

(ii) section 209(5) (review), and

(b) it is proved to the satisfaction of the court that the offender has breached a community requirement of the order without reasonable excuse.

Origin: CJA 2003 Sch.12 para.8(1).

(2) If the suspended sentence order was made by a magistrates' court, the present court must deal with the case under paragraph 13.

Origin: CJA 2003 Sch.12 para.8(2) (part).

(3) If the suspended sentence order was made by the Crown Court, the present court must—

(a) deal with the case under paragraph 13, or

(b) commit the offender to custody or release the offender on bail until the offender can be brought or appear before the Crown Court.

Origin: CJA 2003 Sch.12 para.8(2) (part), (6); LASPOA 2012 s.69(2)(c); PCA.

(4) If the present court deals with the case under sub-paragraph (3)(b), it must send to the Crown Court—

(a) a certificate signed by a justice of the peace certifying that the offender has breached the community requirements of the suspended sentence order in the respect specified in the certificate, and

(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 breach before the Crown Court.

Origin: CJA 2003 Sch.12 para.8(7).

Offender before magistrates' court: further conviction

11 (1) Where—

(a) an offender is convicted of an offence committed during the operational period of a suspended sentence which has not already taken effect,

(b) the suspended sentence was passed by a magistrates' court, and

(c) the offender is before a magistrates' court ("the present court"), whether on conviction of that other offence or subsequently,

the present court must deal with the case under paragraph 13.

Origin: CJA 2003 Sch.12 para.8(1) (part), (2) (part), 11(1) (part); drafting.

(2) -Where an offender is convicted by a magistrates' court of any offence ("the new offence") which the court is satisfied was committed during the operational period of a suspended sentence passed by the Crown Court, the court—

(a) - may commit the offender in custody or on bail to the Crown Court, and

(b) - if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court.

Origin: CJA 2003 Sch.12 para.11(2).

(3) -For powers of the magistrates' court, where it commits a person under sub-paragraph (2)(a), also to commit the person to the Crown Court in respect of the new offence or any other offence, see section 19.

Origin: Drafting.

(4) -Where a magistrates' court commits a person to the Crown Court under sub-paragraph (2)(a), any duty or power which, apart from this sub-paragraph, would fall to be discharged or exercised by the magistrates' court—

(a) - is not to be discharged or exercised by that court, but

(b) - is instead to be discharged or may instead by exercised by the Crown Court.

This does not apply to any duty imposed on a magistrates' court by section 25(1) or (2) of the Road Traffic Offenders Act 1988 (duties relating to information).

Origin: PCC(S)A 2000 s.7(3) (part).

Offender before Crown Court: breach of community requirement or further conviction

12 - (1) Where—

(a) - an offender to whom a suspended sentence order relates is before the Crown Court, and

(b) sub-paragraph (2) or (3) applies, -

the court must deal with the case under paragraph 13. -

Origin: CJA 2003 Sch.12 para.8(1) (part), (2) (part), 11(1) (part);

(2) -This sub-paragraph applies where—

(a) - the offender is before the Crown Court in relation to the order by virtue of—

(i) - paragraph 9 (summons or warrant for breach of community requirement),

(ii) - section 209(5) (review of order), or

(iii) paragraph 10(3)(b) (committal from magistrates' court), and

(b) - it is proved to the satisfaction of the court that the offender has breached a community requirement of the order without reasonable excuse.

Origin: CJA 2003 Sch.12 para.8(1)(a) (part); PCA.

(3) -This sub-paragraph applies where the offender has been convicted of an offence committed during the operational period (and no activation order relating to the suspended sentence has been made).

Origin: CJA 2003 Sch.12 para.8(1)(b); PCA.

(4) In proceedings before the Crown Court under this paragraph—
(a) any question whether the offender has breached a community requirement of the suspended sentence order, and
(b) any question whether the offender has been convicted during the operational period of the suspended sentence,
is to be determined by the court and not by the verdict of a jury.

Origin: CJA 2003 Sch.12 para.8(8); LASPOA 2012 Sch.9 para.10(5).

Powers of court to deal with offender on breach of requirement or subsequent conviction

13 (1) Where a court deals with a case under this paragraph, the court must deal with the offender in one of the following ways—
(a) the court may order that the suspended sentence is to take effect with its original term unaltered;
(b) the court may order that the suspended sentence is to take effect with the substitution for the original term of a lesser term;
(c) the court may order the offender to pay a fine of an amount not exceeding £2,500;
(d) in the case of a suspended sentence order that imposes one or more community requirements, the court may amend the order by doing any one or more of the following—
(i) imposing more onerous community requirements which the court could include if it were then making the order,
(ii) subject to section 202(4), extending the supervision period, or
(iii) subject to section 202(2), extending the operational period;
(e) in the case of a suspended sentence order that does not impose any community requirement, the court may, subject to section 202(2), amend the order by extending the operational period.

Origin: CJA 2003 Sch.12 para.8(2); LASPOA 2012 s.69(2)(a), Sch.9 para.10(2), (3), Sch.10 para.38(2)(b).

(2) The criminal courts charge duty (see section 43) applies where—
(a) a magistrates' court deals with an offender under this paragraph by virtue of paragraph 10 (breach of community requirement), or
(b) the Crown Court deals with an offender under this paragraph by virtue of paragraph 12(2) (breach of community requirement).

Origin: POA 1985 s.21B(1)(c), (2)(c); CJCA 2015 s.54(1); drafting.

(3) Where a court deals with an offender under sub-paragraph (1) in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.

Origin: CJA 2003 Sch.12 para.8(5).

Exercise of power in paragraph 13: duty to make activation order where not unjust

14 (1) The court must make an order under paragraph 13(1)(a) or (b) ("an activation order") unless it is of the opinion that it would be unjust to do so

in view of all the circumstances, including the matters mentioned in sub-paragraph (2).
Where it is of that opinion the court must state its reasons.

Origin: CJA 2003 Sch.12 para.8(3).

(2) The matters referred to in sub-paragraph (1) are—
(a) the extent to which the offender has complied with any community requirements of the suspended sentence order, and
(b) in a case falling within paragraph 11 or 12(3) (conviction of further offence during operational period), the facts of the subsequent offence.

Origin: CJA 2003 Sch.12 para.8(4); LASPOA 2012 Sch.9 para.10(4).

Activation orders: further provision

15 (1) This paragraph applies where a court makes an activation order relating to a suspended sentence.

Origin: Drafting.

(2) The activation order may provide for—
(a) the sentence to take effect immediately, or
(b) the term of the sentence to begin on the expiry of another custodial sentence passed on the offender.
This is subject to section 155 (restriction on consecutive sentences for released prisoners).

Origin: CJA 2003 Sch.12 para.9(1), (2); PCA.

(3) For the purpose of any enactment conferring rights of appeal in criminal cases, each of the following orders is to be treated as a sentence passed on the offender by the court for the offence for which the suspended sentence was passed—
(a) the activation order;
(b) any order made by the court under section 43 (criminal courts charge duty) when making the activation order.

Origin: CJA 2003 Sch.12 para.9(3); CJCA 2015 Sch.12 para.16; drafting.

Power under paragraph 13 to fine or amend community requirements: further provision

16 (1) A fine imposed under paragraph 13(1)(c) is to be treated for the purposes of any enactment as being a sum adjudged to be paid by a conviction.

Origin: CJA 2003 Sch.12 para.8(4ZA); LASPOA 2012 s.69(2)(b).

(2) Paragraph 13(1)(d) (power to impose more onerous requirements or extend periods) is subject to any provision that applies to the court in making a suspended sentence order as if the court were making the order.

Origin: CJA 2003 Sch.12 para.21 (part); PCA.

Restriction of powers in paragraph 13 where treatment required

17 (1) Sub-paragraph (2) applies where an offender—

(a) - is required by any of the following community requirements of a suspended sentence order to submit to treatment—

(i) a mental health treatment requirement,

(ii) a drug rehabilitation requirement, or

(iii) an alcohol treatment requirement, and

(b) - has refused to undergo any surgical, electrical or other treatment.

(2) -The offender is not to be treated for the purposes of paragraph 10(1)(b) or 12(2)(b) as having breached that requirement on the ground only of that refusal if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

(3) -A court may not under paragraph 13(1)(d)(i) amend—

(a) - a mental health treatment requirement,

(b) - a drug rehabilitation requirement, or

(c) - an alcohol treatment requirement,

unless the offender expresses willingness to comply with the requirement as amended.

Origin: CJA 2003 Sch.12 para.10.

Duty of court in Scotland or Northern Ireland when informed of suspended sentence

18 - Where—

(a) - an offender is convicted in Scotland or Northern Ireland of an offence, and

(b) - the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales,

the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed.

Origin: CJA 2003 Sch.12 para.12(3).

Issue of summons or warrant where court convicting of further offence does not deal with suspended sentence

19 (1) -This paragraph applies where it appears to the Crown Court that an offender—

(a) - has been convicted in the United Kingdom of an offence committed during the operational period of a suspended sentence passed by the Crown Court, and

(b) - has not been dealt with in respect of the suspended sentence.

Origin: CJA 2003 Sch.12 para.12(1) (part).

(2) -The Crown Court may issue—

(a) - a summons requiring the offender to appear at the place and time specified in it, or

(b) - a warrant for the offender's arrest.

Origin: CJA 2003 Sch.12 para.12(1) (part).

(3) -A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

Origin: CJA 2003 Sch.12 para.12(5) (part).

20 (1) This paragraph applies where it appears to a justice of the peace that an offender—

(a) has been convicted in the United Kingdom of an offence committed during the operational period of a suspended sentence passed by a magistrates' court acting in the same local justice area as the justice, and

(b) has not been dealt with in respect of the suspended sentence.

Origin: CJA 2003 Sch.12 para.12(1) (part), (2) (part); SI 2005/886 Sch. para.110(c); drafting.

(2) The justice may issue—

(a) a summons requiring the offender to appear at the place and time specified in it, or

(b) a warrant for the offender's arrest.

This is subject to sub-paragraphs (3) and (4).

Origin: CJA 2003 Sch.12 para.12(1) (part).

(3) Unless acting in consequence of a notice under paragraph 18 (conviction in Scotland or Northern Ireland), a justice—

(a) may not issue a summons under this paragraph except on information, and

(b) may not issue a warrant under this paragraph except on information in writing and on oath.

Origin: CJA 2003 Sch.12 para.12(4).

(4) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the court by which the suspended sentence was passed.

Origin: CJA 2003 Sch.12 para.12(5).

PART 3

AMENDMENT OF SUSPENDED SENTENCE ORDER

Application of Part

21 This Part of this Schedule applies where an offender is subject to a suspended sentence order that imposes one or more community requirements.

Origin: CJA 2003 Sch.12 para.12B; LASPOA 2012 Sch.9 para.11.

Cancellation of community requirements of suspended sentence order

22 (1) This paragraph applies where an application is made to the appropriate court by—

(a) the offender, or

(b) an officer of a provider of probation services,

for the community requirements of the suspended sentence order to be cancelled.

Origin: CJA 2003 Sch.12 para.13(1) (part).

(2) If it appears to the court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the court may cancel the community requirements of the suspended sentence order.

Origin: CJA 2003 Sch.12 para.13(1) (part).

(3) The circumstances in which community requirements of the order may be cancelled under sub-paragraph (2) include the offender's—

(a) making good progress, or

(b) responding satisfactorily to supervision.

Origin: CJA 2003 Sch.12 para.13(2).

(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending.

Origin: CJA 2003 Sch.12 para.19(1) (part).

Amendment by reason of change of residence

23 (1) This paragraph applies where—

(a) the offender is given permission under section 217 to change residence, and

(b) the local justice area in which the new residence is situated ("the new local justice area") is different from the offender's home local justice area.

Origin: CJA 2003 Sch.12 para.14(1); ORA 2014 s.18(8); clean sweep.

(2) If the permission is given by a court, the court must amend the suspended sentence order to specify the new local justice area as the offender's home local justice area.

Origin: CJA 2003 Sch.12 para.14(2); ORA 2014 s.18(8).

24 (1) This paragraph applies where—

(a) a court amends the suspended sentence order,

(b) the order as amended includes a residence requirement requiring the offender to reside at a specified place, and

(c) the local justice area in which that place is situated ("the new local justice area") is different from the local justice area specified in the order.

(2) The court must amend the order to specify the new local justice area.

Origin: CJA 2003 Sch.12 para.14A; ORA s.18(8).

Amendment of community requirements of suspended sentence order

25 (1) At any time during the supervision period, the appropriate court may, on the application of the offender or an officer of a provider of probation services, amend any community requirement of the suspended sentence order—

(a) by cancelling the requirement, or

(b) by replacing it with a requirement of the same kind, which the court could include if it were then making the order.

Origin: CJA 2003 Sch.12 para.15(1); ORA 2014 Sch.4 para.7(6).

(2) For the purposes of sub-paragraph (1)—

(a) a requirement falling within any entry in the table in section 201 is of the same kind as any other requirement falling within that entry, and

(b) an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

Origin: CJA 2003 Sch.12 para.15(2).

(3) Sub-paragraph (1)(b) is subject to any provision that applies to the court in making a suspended sentence order as if the court were making the order.

Origin: CJA 2003 Sch.12 para.21 (part); PCA.

(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending, other than an application which—

(a) relates to a treatment requirement, and

(b) is made by an officer of a provider of probation services with the offender's consent.

Origin: CJA 2003 Sch.12 para.19(1) (part); (2); ORA 2014 Sch.4 para.7(6).

(5) Before exercising its powers under this paragraph, the court must summon the offender to appear before the court, unless—

(a) the application was made by the offender, or

(b) the order would cancel a community requirement of the suspended sentence order.

Origin: CJA 2003 Sch.12 para.20(1)(a), (2).

(6) If the offender fails to appear in answer to a summons under sub-paragraph (5) the court may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.12 para.20(1)(b).

(7) The court may not amend a treatment requirement under this paragraph unless the offender expresses willingness to comply with the requirement as amended.

Origin: CJA 2003 Sch.12 para.15(3) (part).

(8) If the offender fails to express willingness to comply with a treatment requirement as proposed to be amended under this paragraph, the court may—

(a) revoke—

(i) the suspended sentence order, and

(ii) the suspended sentence to which it relates, and

(b) deal with the offender, for the offence in respect of which the suspended sentence was imposed, in any way in which it could deal with the offender if the offender had just been convicted by or before the court of the offence (but this is subject to sub-paragraph (9)).

Origin: CJA 2003 Sch.12 para.15(4); PCA.

(9) Where the order was made by the Crown Court—
  (a) on an appeal from the magistrates' court, or
  (b) where its powers to deal with the offender for the offence were those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence,

the power conferred by sub-paragraph (8)(b) is power to deal with the offender in any way in which a magistrates' court could deal with the offender if it had just convicted the offender of the offence.

Origin: CJA 2003 Sch.12 para.15(4A); PCA.

(10) In dealing with the offender under sub-paragraph (8)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.

Origin: CJA 2003 Sch.12 para.15(5).

(11) In this paragraph "treatment requirement" means—
  (a) a mental health treatment requirement,
  (b) a drug rehabilitation requirement, or
  (c) an alcohol treatment requirement.

Origin: CJA 2003 Sch.12 para.15(3) (part), (4) (part).

Amendment of treatment requirement on report of practitioner

26 (1) This paragraph applies where the suspended sentence order contains a treatment requirement under which the offender is being treated and the treatment practitioner—
  (a) is of the opinion that—
    (i) the treatment of the offender should be continued beyond the period specified in that behalf in the order,
    (ii) the offender needs different treatment,
    (iii) the offender is not susceptible to treatment, or
    (iv) the offender does not require further treatment, or
  (b) is for any reason unwilling to continue to treat or direct the treatment of the offender.

Origin: CJA 2003 Sch.12 para.16(1) (part), (3).

(2) The treatment practitioner must make a report in writing to that effect to the responsible officer.

Origin: CJA 2003 Sch.12 para.16(1) (part).

(3) The responsible officer must cause an application to be made under paragraph 25 to the appropriate court for the requirement to be replaced or cancelled.

Origin: CJA 2003 Sch.12 para.16(1) (part); ORA 2014 Sch.4 para.7(7).

(4) For the purposes of this paragraph—
  (a) "treatment requirement" means—
    (i) a mental health treatment requirement,
    (ii) a drug rehabilitation requirement, or
    (iii) an alcohol treatment requirement;

(b) the treatment practitioner is—

(i) the person specified in the order as the person by whom, or under whose direction, the offender is being treated in pursuance of the requirement, or

(ii) in the case of a mental health treatment requirement, if no such person is specified, the person by whom, or under whose direction, the offender is being treated in pursuance of the requirement.

Origin: CJA 2003 Sch.12 para.16(1) (part), (2); drafting.

Amendment in relation to review of drug rehabilitation requirement

27 (1) This paragraph applies if—

(a) the suspended sentence order imposes a drug rehabilitation requirement which is subject to review, and

(b) an officer of a provider of probation services is of the opinion that the order should be amended so as to provide for each periodic review (see paragraph 23 of Schedule 3)—

(i) to be made without a hearing instead of at a review hearing, or

(ii) to be made at a review hearing instead of without a hearing.

Origin: CJA 2003 Sch.12 para.17 (part); ORA 2014 Sch.4 para.7(6); drafting.

(2) The officer must apply under paragraph 25 to the court responsible for the order for the suspended sentence order to be amended.

Origin: CJA 2003 Sch.12 para.17 (part); drafting.

Extension of unpaid work requirement

28 (1) This paragraph applies where the suspended sentence order imposes an unpaid work requirement.

Origin: CJA 2003 Sch.12 para.18(1) (part).

(2) The appropriate court may, in relation to the order, extend the period of 12 months specified in paragraph 1(1) of Schedule 3.

Origin: CJA 2003 Sch.12 para.18(1) (part).

(3) The power in sub-paragraph (2) is exercisable only—

(a) on the application of

(i) the offender, or

(ii) an officer of a provider of probation services, and

(b) if it appears to the appropriate court that it would be in the interests of justice to exercise it in the way proposed having regard to circumstances which have arisen since the order was made.

Origin: CJA 2003 Sch.12 para.18(1) (part); ORA 2014 Sch.4 para.7(6); drafting.

(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending.

Origin: CJA 2003 Sch.12 para.19(1) (part).

PART 4

SUPPLEMENTARY

Adjournment

29 (1) This paragraph applies to any hearing relating to an offender held by a magistrates' court in any proceedings under this Schedule.

Origin: CJA 2003 Sch.8 para.25A(1); CJIA 2008 Sch.4 para.109; PCA.

(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.

Origin: CJA 2003 Sch.8 para.25A(2); CJIA 2008 Sch.4 para.109; PCA.

(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.

Origin: CJA 2003 Sch.8 para.25A(3); CJIA 2008 Sch.4 para.109; PCA.

(4) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

(a) it may fix the time and place at which the hearing is to be resumed, but

(b) if it does not do so, it must not resume the hearing unless it is satisfied that—

(i) the offender, and

(ii) any officer of a provider of probation services who the court considers has an interest in the proceedings,

have had adequate notice of the time and place for the resumed hearing.

Origin: CJA 2003 Sch.8 para.25A(4); CJIA 2008 Sch.4 para.109; ORA 2014 Sch.4 para.14(2); PCA.

(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.

Origin: CJA 2003 Sch.8 para.25A(5); CJIA 2008 Sch.4 para.109; PCA.

(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

(b) is not to be taken to affect the application of that section to hearings of any other description.

Origin: CJA 2003 Sch.8 para.25A(6); CJIA 2008 Sch.4 para.109; PCA.

Copies of orders

30 (1) This paragraph applies on the making by a court of an order under this Schedule amending a suspended sentence order.

Origin: CJA 2003 Sch.12 para.22(1) (part).

(2) The proper officer of the court must provide copies of the amending order to—

(a) the offender, and

(b) the responsible officer.

Origin: CJA 2003 Sch.12 para.22(1)(a).

(3) In the case of an amending order which substitutes a new local justice area, the proper officer of the court must also provide a copy of the amending order to—

(a) a provider of probation services that is a public sector provider operating in that area, and

(b) the magistrates' court acting in that area.

Origin: CJA 2003 Sch.12 para.22(1)(b); ORA 2014 Sch.4 para.15(2); SI 2005/886 Sch. para.110(f)(i).

(4) In the case of an amending order which imposes or amends a requirement specified in column 1 of the following table, the proper officer of the court must also provide the person specified in the corresponding entry in column 2 with a copy of so much of the amending order as relates to that requirement.

The requirement	*The person to whom a copy must be provided*
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
A residence requirement relating to residence in an institution	The person in charge of the institution
A mental health treatment requirement	The person specified under paragraph 16(4)(d) of Schedule 3 or the person in charge of the institution or place specified under paragraph 16(4)(b) or (c) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(4)(b) or (c) of Schedule 3

The requirement	*The person to whom a copy must be provided*
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 3 or the person in charge of the institution or place specified under paragraph 23(4)(c) or (d) of that Schedule
An electronic monitoring requirement	Any person who by virtue of paragraph 32(1) of Schedule 3 will be responsible for the electronic monitoring
	Any person by virtue of whose consent the requirement is included in the order.

Origin: CJA 2003 Sch.12 para.22(1)(c), Sch.14.

(5) Where the court acts in a local justice area other than the offender's home local justice area specified in the order prior to the amendment ("the former home area"), the proper officer of the court must provide a copy of the amending order to a magistrates' court acting in the former home area.

Origin: CJA 2003 Sch.12 para.22(1)(d); DVCVA 2004 Sch.5 para.8(5); PCA.

(6) Where under sub-paragraph (3) 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 the proper officer considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

Origin: CJA 2003 Sch.12 para.22(2); SI 2005/886 Sch. para.110(f)(ii); PCA.

(7) In this paragraph—

"proper officer" means—

(a) in relation to a magistrates' court, the designated officer for the court, and

(b) in relation to the Crown Court, the appropriate officer;

"public sector provider" means—

(a) a probation trust or other public body, or

(b) the Secretary of State.

Origin: CJA 2003 Sch.12 para.22(3), (4); ORA 2014 Sch.4 para.15(3); SI 2005/886 Sch. para.110(f)(iii).

SCHEDULE 11

Section 219

TRANSFER OF SUSPENDED SENTENCE ORDERS TO SCOTLAND OR NORTHERN IRELAND

PART 1

INTERPRETATION

1 (1) In this Schedule—

"the appropriate court" has the same meaning as in Schedule 10 (see paragraph 1 of that Schedule);

"breach" in relation to a community requirement, means a failure to comply with it, and related expressions are to be read accordingly;

"the home authority"—

(a) in relation to an SSSO, means the local authority for the local authority area specified in the order;

(b) in relation to an NISSO, means the Probation Board for Northern Ireland;

"home court" means—

(a) in the case of an SSSO, the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside, and

(b) in the case of an NISSO, a court of summary jurisdiction in Northern Ireland;

"local authority" means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; and any reference to the area of such an authority is a reference to the local government area within the meaning of that Act;

"the local council in Scotland", in relation to an SSSO, means the local authority in whose area the offender resides, or will be residing at the relevant time;

"NISSO" means a relevant suspended sentence order that—

(a) has been made or amended under Part 3 of this Schedule (Northern Ireland), and

(b) has not ceased to be such an order under paragraph 36 (transfer to England and Wales);

"original court", in relation to an SSSO or an NISSO, means the court in England and Wales which made or last amended the order;

"the relevant officer" means—

(a) in relation to an SSSO, the local authority officer appointed or assigned under paragraph 15;

(b) in relation to an NISSO, the probation officer appointed or assigned under paragraph 15;

"relevant suspended sentence order" means a suspended sentence order that imposes one or more community requirements;

"the relevant time", in relation to making, or amending a suspended sentence order so as to become, an SSSO or an NISSO, means the time when the order or the amendment comes into force;

"SSSO" means a relevant suspended sentence order that—

(a) has been made or amended under Part 2 of this Schedule (Scotland), and

(b) - has not ceased to be such an order under paragraph 36 (transfer to England and Wales).

Origin: CJA 2003 Sch.13 paras.1(1)(a) (part), (4) (part), 4(2) (part), 5, 6(1)(a) (part), (4) (part), 9(2) (part), 11; drafting; PCA.

(2) -For the purposes of this Schedule, a relevant suspended sentence order is subject to review if—

(a) the order is subject to review in accordance with section 208(1), or

(b) the order imposes a drug rehabilitation requirement which is subject to review in accordance with paragraph 21 of Schedule 3.

Origin: Drafting.

PART 2

SCOTLAND

Restriction on making relevant suspended sentence order where offender lives in Scotland

2 - (1) This paragraph applies where a court—

(a) - is considering making a relevant suspended sentence order, and

(b) - is satisfied that the offender—

(i) - resides in Scotland, or

(ii) - will reside there when the order comes into force.

Origin: CJA 2003 Sch.13 para.1(1) (part); LASPOA 2012 Sch.9 para.12(2).

(2) -The court may not make the suspended sentence order unless it appears to the court that suitable arrangements for the offender's supervision can be made by the local council in Scotland.

Origin: CJA 2003 Sch.13 para.1(1)(b).

(3) -If the court makes a relevant suspended sentence order in accordance with this paragraph, it may not provide for it to be subject to review.

Origin: CJA 2003 Sch.13 para.1(6) (part).

Amendment of relevant suspended sentence order to become SSSO

3 - (1) This paragraph applies where—

(a) - the appropriate court is considering exercising a power conferred by Part 3 of Schedule 10 to amend a relevant suspended sentence order,

(b) - the court is satisfied that the offender—

(i) - resides in Scotland, or

(ii) - proposes to reside there, and

(c) - it appears to the court that suitable arrangements for the offender's supervision can be made by the local council in Scotland.

Origin: CJA 2003 Sch.13 para.1(1)(b) (part), (3) (part).

(2) -That power includes power to amend the order by requiring—

(a) - the order to be complied with in Scotland, and

(b) - the offender to be supervised in accordance with the arrangements referred to in sub-paragraph (1)(c).

Origin: CJA 2003 Sch.13 para.1(3) (part): drafting.

4 (1) -A relevant suspended sentence order which is subject to review ceases to be subject to review if it is amended in accordance with paragraph 3.

Origin: CJA 2003 Sch.13 para.1(6) (part).

(2) -If the court amends a relevant suspended sentence order in accordance with paragraph 3, it may not provide for it to be subject to review.

Origin: CJA 2003 Sch.13 para.1(6) (part); PCA.

Amendment of SSSO under Schedule 10

5 (1) -This paragraph applies where—

(a) - a court in Scotland is considering exercising a power conferred by Part 3 of Schedule 10 to amend an SSSO by virtue of paragraph 31 of this Schedule;

(b) - a court in England and Wales is considering exercising a power conferred by Schedule 10 to amend an SSSO (see paragraphs 28(2) and 35 of this Schedule for cases in which it may do so).

Origin: CJA 2003 Sch.13 paras.10, 17 (part); drafting.

(2) -The court may exercise the power only if it is satisfied that suitable arrangements for the offender's supervision can be made by the local council in Scotland.

Origin: CJA 2003 Sch.13 paras.1(1)(b), 17 (part).

(3) -If the court amends a relevant suspended sentence order in accordance with this paragraph, it may not provide for it to be subject to review.

Origin: CJA 2003 Sch.13 paras.1(6) (part), 18 (part); PCA.

PART 3

NORTHERN IRELAND

Restriction on making suspended sentence order where offender lives in Northern Ireland

6 (1) -This paragraph applies where a court—

(a) - is considering making a relevant suspended sentence order, and

(b) - is satisfied that the offender—

(i) - resides in Northern Ireland, or

(ii) - will reside there when the order comes into force.

Origin: CJA 2003 Sch.13 para.6(1) (part).

(2) -The court may not make the relevant suspended sentence order unless it appears to the court that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.13 para.6(1)(b).

(3) -If the court makes a relevant suspended sentence order in accordance with this paragraph, it may not provide for it to be subject to review.

Origin: CJA 2003 Sch.13 para.6(5) (part).

Amendment of relevant suspended sentence order to become an NISSO

7 - (1) This paragraph applies where—

(a) - the appropriate court is considering exercising a power under Part 3 of Schedule 10 to amend a relevant suspended sentence order,

(b) - the court is satisfied that the offender—

(i) - resides in Northern Ireland, or

(ii) - proposes to reside there, and

(c) - it appears to the court that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.13 para.6(1)(b) (part), (3)(a), (b).

(2) -That power includes power to amend the order by requiring—

(a) - the order to be complied with in Northern Ireland, and

(b) - the offender to be supervised in accordance with the arrangements referred to in sub-paragraph (1)(c).

Origin: CJA 2003 Sch.13 para.6(3) (part); drafting.

8 (1) -A relevant suspended sentence order which is subject to review ceases to be subject to review if it is amended in accordance with paragraph 7.

Origin: CJA 2003 Sch.13 para.6(5) (part).

(2) -If the court amends a relevant suspended sentence order in accordance with paragraph 7, it may not provide for it to be subject to review.

Origin: CJA 2003 Sch.13 para.6(5) (part); PCA.

Amendment of NISSO under Schedule 10

9 - (1) This paragraph applies where—

(a) - a court in Northern Ireland is considering exercising the power in Part 3 of Schedule 10 to amend an NISSO by virtue of paragraph 31 of this Schedule;

(b) - a court in England and Wales is considering exercising a power conferred by Schedule 10 to amend an NISSO (see paragraphs 28(2) and 35 of this Schedule for cases in which it may do so).

Origin: CJA 2003 Sch.13 para.17 (part); drafting.

(2) -The court may exercise the power only if it is satisfied that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.13 paras.1(1)(b), 17 (part).

(3) -If the court amends a relevant suspended sentence order in accordance with this paragraph, it may not provide for it to be subject to review.

Origin: CJA 2003 Sch.13 paras.6(5) (part), 18 (part); PCA.

PART 4

MAKING OF ORDERS

Making or amending a suspended sentence order under

10 - This Part of this Schedule applies where, in accordance with Part 2 or 3 of this Schedule, a court—

(a) - makes an SSSO or an NISSO,

(b) - amends a suspended sentence order so as to become an SSSO or an NISSO, or

(c) - amends an SSSO or an NISSO.

Origin: CJA 2003 Sch.13 paras. 1(1) (part), (4) (part), 2 (part), 3(1) (part), 4(1) (part), 6(1) (part), (4), (part), (4A) (part), 7 (part), 8 (part), 9 (part), 18 (part), 19(b).

Community requirements: availability and restrictions on imposition

11 - The following are not available requirements—

(a) - in the case of an SSSO, an attendance centre requirement;

(b) - in relation to an SSSO or an NISSO, an alcohol abstinence and monitoring requirement.

Origin: CJA 2003 Sch.13 para.1(5) (part), 6(4A); LASPOA 2012 s.76(10)(a), (b).

12 (1) -The order, as made or amended, may not impose a locally based requirement unless it appears to the court that—

(a) - arrangements exist for persons to comply with such a requirement in—

(i) - the locality in Scotland in which the offender resides, or will be residing at the relevant time, in the case of an SSSO, or

(ii) - the administrative court division specified under section 2 of the Justice Act (Northern Ireland) 2015 (c. 9 (N.I.)) in which the offender resides, or will be residing at the relevant time, in the case of an NISSO, and

(b) - provision can be made for the offender to comply with the requirement under those arrangements.

Origin: CJA 2003 Sch.13 paras.1(1)(a) (part), 6(1)(a); PCA; drafting.

(2) -For the purposes of this paragraph "locally based requirement" means any of the following—

(a) - an unpaid work requirement;

(b) - a rehabilitation activity requirement;

(c) - a programme requirement;

(d) - a mental health treatment requirement;

(e) - a drug rehabilitation requirement;

(f) - an alcohol treatment requirement;

(g) - in relation to an NISSO, an attendance centre requirement;

(h) - an electronic compliance monitoring requirement.

Origin: CJA 2003 Sch.13 paras.1(2), 6(2); ORA 2014 Sch.5 para.8(2), (4); drafting.

13 - Schedule 3 (requirements) applies as if—

(a) - any reference to the responsible officer were to the relevant officer;

(b) - the following provisions were omitted—

(i) - paragraph 13(3) (residence requirement: hostel or institution not to be specified except on recommendation);

(ii) - paragraph 32(2) (person for electronic monitoring to be of prescribed description);

(iii) - paragraph 35 (restriction on imposing electronic monitoring requirement);

(c) - in paragraph 16(3) (mental health treatment requirement), for the definition of "in-patient treatment" there were substituted—

(i) - in relation to an SSSO or proposed SSSO—

""in-patient treatment" means treatment as a resident patient in a hospital within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003, not being a State hospital within the meaning of that Act;";

(ii) - in relation to an NISSO or proposed NISSO—

""in-patient treatment" means treatment (whether as an in-patient or an out-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, approved by the Department of Health for the purpose of paragraph 4(3) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));";

(d) - in relation to an SSSO or proposed SSSO, Part 13 (attendance centre requirement) were omitted;

(e) - in relation to an NISSO or proposed NISSO, any reference in Part 13 (attendance centre requirement) to an attendance centre were to a day centre, as defined by paragraph 3(6) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)).

Origin: CJA 2003 Sch.13 paras. 4(1) (part), (2), (3)(c), (d), (4), (5), 9(1) (part); DA(NI) 2016 s.1(5); drafting.

Matters to be specified in the order

14 (1) -The suspended sentence order, as made or amended in accordance with Part 2 or 3 of this Schedule, must—

(a) - if it is an SSSO, specify the local authority area in Scotland, or

(b) - if it is an NISSO, specify the petty sessions district in Northern Ireland,

in which the offender resides or will be residing at the relevant time.

Origin: CJA 2003 Sch.13 para.2(a), 7(a).

(2) -This paragraph has effect in place of section 211 (offender's home local justice area to be specified).

Origin: CJA 2003 Sch.13 para.2 (part), 7 (part); SI 2005/886 Sch. para.111(a); drafting. -

Order to require home authority to appoint relevant officer

15 The suspended sentence order, as made or amended in accordance with Part 2 or 3 of this Schedule, must require the home authority to appoint or assign an officer who will be responsible for discharging in relation to the offender the functions conferred on responsible officers in relation to relevant suspended sentence orders by this Code.

Origin: CJA 2003 Sch.13 para.2(b); 7(b).

Provision of copies

16 (1) This paragraph applies where a court—
(a) makes an SSSO in accordance with paragraph 2,
(b) amends a suspended sentence order in accordance with paragraph 3 so that it becomes an SSSO,
(c) amends an SSSO in accordance with paragraph 5 so as to substitute a new local authority area,
(d) makes an NISSO in accordance with paragraph 6,
(e) amends a suspended sentence order in accordance with paragraph 7 so that it becomes an NISSO,
(f) amends an NISSO in accordance with paragraph 9 so as to substitute a new petty sessions district.

Origin: CJA 2003 Sch.13 paras.3(1) (part), 8(1) (part), 19(b) (part).

(2) The court must—
(a) provide the offender with a copy of the order, and
(b) provide—
(i) the home authority, and
(ii) the home court,
with the relevant documents.

Origin: CJA 2003 s.219(1)(a) (part), Sch.13 paras.3(1) (part), 8(1) (part); drafting.

(3) In sub-paragraph (2), "the relevant documents" means—
(a) a copy of the order as made or amended, and
(b) such other documents and information relating to the case as the court considers likely to be of assistance.

Origin: CJA 2003 Sch.13 paras.3(2), 8(2).

17 In any case where a court amends an SSSO or NISSO in accordance with paragraph 5 or 9 applies (other amendments), the court must provide copies of the amending order to—
(a) the offender, and
(b) the relevant officer.

Origin: CJA 2003 Sch.13 para.19(a).

18 Paragraphs 16 and 17 apply in place of—
(a) section 213 (provision of copies of suspended sentence orders), and
(b) paragraph 30 of Schedule 10 (provision of copies following amendment of suspended sentence order).

Origin: CJA 2003 Sch.13 paras.3(1) (part), 8(1) (part), 12(7) (part).

PART 5

PROVISIONS WHERE SSSO OR NISSO IS IN FORCE

Application

19 (1) -This Part of this Schedule applies while an SSSO or NISSO is in force in relation to an offender.

(2) This is subject to Part 8 of this Schedule (transfer to England and Wales).

Origin: CJA 2003 Sch.13 paras.4(1) (part), 9(1) (part).

Role of responsible officer to be carried out by relevant officer

20 - Sections 215 to 217 (role of responsible officer) apply as if any reference to the responsible officer were to the relevant officer.

Origin: CJA 2003 Sch.13 paras.4(2), 9(2).

Community requirements

21 - Schedule 3 (requirements) applies as if—

(a) - any reference to the responsible officer were to the relevant officer;

(b) - the following provisions were omitted—

(i) - paragraph 13(3) (residence requirement: hostel or institution not to be specified except on recommendation);

(ii) - paragraph 32(2) (person for electronic monitoring to be of prescribed description);

(iii) - paragraph 35 (restriction on imposing electronic monitoring requirement);

(c) - in paragraph 16(3) (mental health treatment requirement), for the definition of "in-patient treatment" there were substituted—

(i) - in relation to an SSSO—

""in-patient treatment" means treatment as a resident patient in a hospital within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003, not being a State hospital within the meaning of that Act;";

(ii) - in relation to an NISSO—

""in-patient treatment" means treatment (whether as an in-patient or an out-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, approved by the Department of Health, Social Services and Public Safety for the purpose of paragraph 4(3) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));";

(d) - in relation to an SSSO, Part 13 (attendance centre requirement) were omitted;

(e) - in relation to an NISSO, any reference in Part 13 (attendance centre requirement) to an attendance centre were to a day centre, as defined by paragraph 3(6) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)).

Origin: CJA 2003 Sch.13 paras. 4(1) (part), (2), (3)(c), (d), (4), (5), 9(1) (part), (2), (3)(c), (d) (4), (5), (6); ORA 2014 Sch.7 para.7; drafting.

PART 6

BREACH OF COMMUNITY REQUIREMENT

Application

22 This Part of this Schedule—

(a) applies where an SSSO or an NISSO is in force in respect of an offender, and

(b) includes provisions that modify, or apply in place of, certain provisions of Part 2 of Schedule 10 (breach of community requirement or conviction of further offence).

Origin: CJA 2003 Sch.13 para.10; drafting.

Breach of community requirement: duty to give warning or refer to home court

23 (1) This paragraph applies where the relevant officer is of the opinion that the offender has without reasonable excuse breached a community requirement of the order.

Origin: CJA 2003 Sch.12 para.4(1) (part), Sch.13 para.12(1), (2).

(2) If the offender has been given a relevant warning within the previous 12 months in relation to a breach of any community requirement of the order, the officer must—

(a) if the order is an SSSO, provide information to the home court with a view to it issuing a citation, or

(b) if the order is an NISSO, make a complaint to a justice of the peace in Northern Ireland.

Origin: CJA 2003 Sch.12 para.4(1), Sch.13 para.12(1), (2), (5).

(3) Otherwise the officer must—

(a) give the offender a warning under this paragraph, or

(b) if the order is an SSSO, provide information to the home court with a view to it issuing a citation, or

(c) if the order is an NISSO, make a complaint to a justice of the peace in Northern Ireland.

Origin: CJA 2003 Sch.12 para.5(1), Sch.13 para.12(1), (2), (5); PCA.

(4) A warning under this paragraph must—

(a) describe the circumstances of the breach,

(b) state that the breach is unacceptable, and

(c) inform the offender that if the offender again breaches a requirement of the order within the next 12 months, the offender will be liable to be brought before a court.

Origin: CJA 2003 Sch.12 para.4(2).

(5) As soon as practicable after giving a warning under this paragraph, the relevant officer must record that fact.

Origin: CJA 2003 Sch.12 para.4(3), Sch.13 para.12(2).

(6) -For the purposes of sub-paragraph (2), a relevant warning is a warning under—

(a) this paragraph, or

(b) paragraph 6 of Schedule 10 (corresponding provision for order not transferred to Scotland or Northern Ireland).

Origin: PCA; drafting.

Issue of citation or warrant by home court

24 - (1) Sub-paragraph (2) applies where it appears to the home court—

(a) - if that court is in Scotland, on information from the relevant officer, or

(b) - if that court is in Northern Ireland, upon a complaint being made by the relevant officer,

that the offender has breached a community requirement of the suspended sentence order without reasonable excuse.

Origin: CJA 2003 Sch.13 para.13(1).

(2) -The home court may—

(a) - if it is in Scotland—

(i) - issue a citation requiring the offender to appear before it at the time specified in the citation, or

(ii) - issue a warrant for the offender's arrest;

(b) - if it is in Northern Ireland—

(i) - issue a summons requiring the offender to appear before it at the time specified in the summons, or

(ii) - issue a warrant for the offender' arrest.

Origin: CJA 2003 Sch.13 para.13(2).

Powers of home court to determine breach or refer to original court

25 (1) -The court before which an offender appears or is brought by virtue of paragraph 24 must—

(a) - determine whether the offender has breached any community requirement of the suspended sentence order without reasonable excuse, or

(b) - require the offender to appear before the original court.

Origin: CJA 2003 Sch.13 para.14(1).

(2) -Sub-paragraphs (3) to (6) apply if the home court determines under sub-paragraph (1)(a) that the offender has breached any requirement of the order without reasonable excuse.

Origin: CJA 2003 Sch.13 para.14(2) (part).

(3) -The court must—

(a) - require the offender to appear before the original court, and

(b) - send the original court a certificate certifying that the offender has without reasonable excuse breached the requirements of the order in the respect specified.

Origin: CJA 2003 Sch.13 para.14(2)(a), (6)(a).

(4) -Sub-paragraph (5) applies when the offender appears before the original court by virtue of sub-paragraph (3).

Origin: CJA 2003 Sch.13 para.14(2)(b) (part); drafting.

(5) -Paragraph 10 or, as the case may be, 12 of Schedule 10 (functions of court on breach of community requirement) applies as if what the home court had determined under sub-paragraph (1)(a) had already been proved to the satisfaction of the original court.

Origin: CJA 2003 Sch.13 para.14(2)(b) (part); drafting.

(6) -Where an offender is required under sub-paragraph (3)(a) to appear before the original court, a certificate under sub-paragraph (3)(b) signed by the clerk of the home court is admissible before the original court as conclusive evidence of the matters stated in it.

Origin: CJA 2003 Sch.13 para.14(6)(b).

Determination by home court of breach of community requirement: further provision

26 - (1) Sub-paragraph (2) applies where an offender—

(a) - is required by any of the following community requirements of a suspended sentence order to submit to treatment—

(i) a mental health treatment requirement,

(ii) a drug rehabilitation requirement, or

(iii) an alcohol treatment requirement, and

(b) - has refused to undergo any surgical, electrical or other treatment.

Origin: CJA 2003 Sch.13 para.14(3) (part).

(2) -The offender is not to be treated for the purposes of paragraph 25 as having breached that requirement on the ground only of that refusal if, in the opinion of the court, the offender's refusal was reasonable having regard to all the circumstances.

Origin: CJA 2003 Sch.13 para.14(3) (part).

(3) -Where the court makes a determination under paragraph 25(1)(a), the evidence of one witness is sufficient.

Origin: CJA 2003 Sch.13 para.14(4).

(4) -If the order—

(a) - is an SSSO, and

(b) contains an electronic monitoring requirement,

section 245H of the Criminal Procedure (Scotland) Act 1995 (documentary evidence) applies to proceedings under paragraph 25 as it applies to proceedings under section 245F of that Act (breach of restriction of liberty order).

Origin: CJA 2003 Sch.13 para.14(5).

27 - Paragraphs 23 to 26 have effect in place of paragraphs 6 to 9 of Schedule 10 (breach or amendment of suspended sentence order).

Origin: Drafting.

Modifications of Part 2 of Schedule 10

28 (1) Part 2 of Schedule 10 (breach of community requirement and effect of further conviction), apart from paragraphs 6 to 9, applies as if—

(a) any reference to the responsible officer were to the relevant officer;

(b) any reference to a magistrates' court acting in the offender's home local justice area were to a magistrates' court acting in the same local justice area as the original court;

(c) any reference to a justice of the peace acting in the offender's home local justice area were to a justice of the peace acting in the same local justice area as the original court;

(d) any reference to the appropriate court were to the original court.

Origin: CJA 2003 Sch.13 para.12(1) (part), (2) (part), (3), (4); SI 2005/886 Sch. para.111(b); drafting.

(2) No court in England and Wales may exercise any power in relation to any breach by the offender of a community requirement of the order unless the offender has been required to appear before that court in accordance with paragraph 25(1)(b) or (3)(a) of this Schedule.

Origin: CJA 2003 Sch.13 para.12(8)(a).

PART 7

AMENDMENT OF SSSO OR NISSO: OFFENDER REMAINING IN SCOTLAND OR NORTHERN IRELAND

Application

29 This Part of this Schedule—

(a) applies where a SSSO or an NISSO is in force in respect of an offender, and

(b) includes provisions that modify, or apply in place of, certain provisions of Part 3 of Schedule 10 (amendment of suspended sentence order).

Origin: CJA 2003 Sch.13 para.10 (part); drafting.

Modifications of Part 3 of Schedule 10

30 Part 3 of Schedule 10 (amendment of suspended sentence order) applies as if—

(a) any reference to the responsible officer were to the relevant officer;

(b) any reference a magistrates' court acting in the offender's home local justice area were to a magistrates' court acting in the same local justice area as the original court;

(c) any reference to a justice of the peace acting in the offender's home local justice area were to a justice of the peace acting in the same local justice area as the original court;

(d) any reference to the appropriate court were to the original court;

(e) in paragraph 23 of Schedule 10 (amendment by reason of change of residence)—

(i) in the case of an SSSO, any reference to the offender's home local justice area were to the local authority area specified in the order, and any other reference to a local justice area were to a local authority area;

(ii) in the case of an NISSO, any reference to the offender's home local justice area were to the petty sessions district specified in the order, and any other reference to a local justice area were to a petty sessions district.

Origin: CJA 2003 Sch.13 para.12(1) (part), (2) (part), (3) (part), (4) (part), (6); SI 2005/886 Sch. para.111(b), (c); drafting.

Powers to amend suspended sentence order exercisable by home court

31 (1) The home court may exercise any power conferred by Part 3 of Schedule 10 (amendment of suspended sentence order) as if it were the original court.

Origin: CJA 2003 Sch.13 para.15(1) (part); drafting.

(2) Sub-paragraph (1) is subject to—

(a) sub-paragraph (3),

(b) paragraph 35, and

(c) Parts 2 to 4 of this Schedule.

Origin: Drafting.

(3) Where paragraph 25(8) of Schedule 10 (power to deal with offender who fails to express willingness to comply with amended treatment requirement) applies, the home court—

(a) may not exercise the power conferred by that provision, and

(b) must require the offender to appear before the original court.

Origin: CJA 2003 Sch.13 para.15(1) (part), (2).

Cases in which offender is to be required to appear before home court

32 (1) This paragraph applies in place of sub-paragraphs (4) to (6) of paragraph 25 of Schedule 10 (amendment of community requirements of suspended sentence order) in relation to any exercise by the home court of the power conferred by sub-paragraph (1) of that paragraph.

Origin: CJA 2003 Sch.13 para.15(3) (part).

(2) Before exercising the power, the home court must issue—

(a) a citation, if it is Scotland, or

(b) a summons, if it is in Northern Ireland,

requiring the offender to appear before it.

Origin: CJA 2003 Sch.13 para.15(3)(a)(i), (b)(i).

(3) If the offender does not appear in answer to a citation or summons under sub-paragraph (2), the court may issue a warrant for the offender's arrest.

Origin: CJA 2003 Sch.13 para.13(3)(a)(ii), (b)(ii).

(4) Sub-paragraph (2) does not apply where the home court exercises the power—

(a) - on the application of the offender, or

(b) - to cancel a community requirement of the suspended sentence order.

Origin: CJA 2003 Sch.13 para.15(3) (part), (4).

Modification of sections 215 to 217 and Schedule 3

33 (1) -This paragraph applies where the home court is considering amending an SSSO or an NISSO under Part 3 of Schedule 10 by virtue of this Part of this Schedule.

Origin: CJA 2003 Sch.13 para.15(5) (part).

(2) -Sections 215 to 217 (functions of responsible officer) and Schedule 3 (requirements) apply as if any reference to a provider of probation services were—

(a) - in the case of an SSSO, to a local authority in Scotland;

(b) - in the case of an NISSO, to the Probation Board for Northern Ireland.

Origin: CJA 2003 Sch.13 para.15(5) (part); SI 2008/912 Sch.1 para.19(21)(a).

Power for home court to refer application to original court

34 (1) -This paragraph applies where an application is made to the home court under Part 3 of Schedule 10 by virtue of paragraph 31 of this Schedule (powers to amend order exercisable by home court).

(2) -The home court may (instead of dealing with the application) require the offender to appear before the original court.

Origin: CJA 2003 Sch.13 para.16.

Powers exercisable by court in England and Wales only after home court consideration

35 - No court in England and Wales may exercise any power conferred by Part 3 of Schedule 10 (amendment of suspended sentence order) unless the offender has been required to appear before that court in accordance with—

(a) - paragraph 31(3)(b) of this Schedule (refusal of offender to express willingness to comply with amended treatment requirement), or

(b) - paragraph 34(2) of this Schedule (power of home court to refer application to original court).

Origin: CJA 2003 Sch.13 para.12(8)(b).

PART 8

AMENDMENT OF ORDER: RETURN TO ENGLAND AND WALES

Amendment of order: return to England and Wales

36 (1) -This paragraph applies where—

(a) - an SSSO or NISSO is in force in respect of an offender, and

(b) - the home court is satisfied that the offender is residing or proposes to reside in England and Wales.

Origin: CJA 2003 Sch.13 para.10, 20(1).

(2) The home court—
(a) may, and
(b) on the application of the relevant officer must,
amend the suspended sentence order by requiring it to be complied with in England and Wales.

Origin: CJA 2003 Sch.13 para.20(2).

Restrictions on exercise of power under this Part of this Schedule

37 (1) This paragraph applies where the SSSO or NISSO contains requirements which, in the opinion of the home court, cannot be complied with in the local justice area in which the offender is residing or proposes to reside.

(2) The court may not exercise the power conferred by paragraph 36 to amend the order unless, in accordance with paragraph 25 of Schedule 10 it—
(a) cancels those requirements, or
(b) substitutes for those requirements other requirements which can be complied with if the offender resides in that area.

Origin: CJA 2003 Sch.13 para.20(3); SI 2005/886 Sch. para.111(d).

38 (1) This paragraph applies where the SSSO or NISSO imposes a programme requirement.

(2) The home court may not exercise the power conferred by paragraph 36 to amend the order unless it appears to the court that the accredited programme specified in the requirement is available in the local justice area in England and Wales in which the offender is residing or proposes to reside.

Origin: CJA 2003 Sch.13 para.20(4); SI 2005/886 Sch. para.111(d).

Making of order under this Part of this Schedule

39 (1) This paragraph applies where the home court exercises the power conferred by paragraph 36 to amend a relevant suspended sentence order which is an SSSO or NISSO.

Origin: CJA 2003 Sch.13 para.20(1) (part).

(2) The relevant suspended sentence order as amended must specify the local justice area in which the offender resides or proposes to reside ("the new local justice area").

Origin: CJA 2003 Sch.13 para.20(5); ; SI 2005/886 Sch. para.111(e); SI 2008/912 Sch. para.19(21)(b); PCA.

(3) The home court must—
(a) provide copies of the amending order to—
(i) the offender,
(ii) the relevant officer, and
(iii) a provider of probation services operating in the new local justice area, and
(b) provide the magistrates' court acting in that area with—
(i) a copy of the amending order, and

(ii) such other documents and information relating to the case as the home court considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

This sub-paragraph applies in place of paragraph 30 of Schedule 10 (amendment of suspended sentence order: provision of copies).

Origin: CJA 2003 Sch.13 paras.12(7) (part), 20(6).

(4) The relevant suspended sentence order ceases to be an SSSO or NISSO.

Origin: CJA 2003 Sch.13 para.20(7).

PART 9

SUPPLEMENTARY

Electronic monitoring and SSSO

40 Subsections (1) and (3) of section 245C of the Criminal Procedure (Scotland) Act 1995 (provision of remote monitoring) have effect as if they included a reference to the electronic monitoring of the community requirements of a suspended sentence order made or amended in accordance with paragraph 2 or 3 of this Schedule.

Origin: CJA 2003 Sch.13 para.21.

Service of citation or warrant

41 (1) Section 4 of the Summary Jurisdiction (Process) Act 1881 (which provides, among other things, for service in England and Wales of Scottish citations or warrants) applies to any citation or warrant issued under paragraph 24(2)(a) or 32(2)(a) or (3) as it applies to a citation or warrant granted under section 134 of the Criminal Procedure (Scotland) Act 1995.

Origin: CJA 2003 Sch.13 para.22(1).

(2) A summons issued by a court in Northern Ireland under paragraph 24(2)(b) or 32(2)(b) may, in such circumstances as may be prescribed by rules of court, be served in England and Wales or Scotland.

Origin: CJA 2003 Sch.13 para.22(2).

SCHEDULE 12

Section 221

SPECIFIED OFFENCES FOR PURPOSES OF SECTION 221

PART 1

SPECIFIED VIOLENT OFFENCES

Common law offences

1 Manslaughter.

Origin: CJA 2003 Sch.15 para.1.

2 - Kidnapping.

Origin: CJA 2003 Sch.15 para.2.

3 - False imprisonment.

Origin: CJA 2003 Sch.15 para.3.

Offences against the Person Act 1861

4 - An offence under any of the following sections of the Offences against the Person Act 1861—

(a) - section 4 (soliciting murder);
(b) - section 16 (threats to kill);
(c) - section 18 (wounding with intent to cause grievous bodily harm);
(d) - section 20 (malicious wounding);
(e) - section 21 (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence);
(f) - section 22 (using chloroform etc to commit or assist in the committing of any indictable offence);
(g) - section 23 (maliciously administering poison etc so as to endanger life or inflict grievous bodily harm);
(h) - section 27 (abandoning children);
(i) - section 28 (causing bodily injury by explosives);
(j) - section 29 (using explosives etc with intent to do grievous bodily harm);
(k) - section 30 (placing explosives with intent to do bodily injury);
(l) - section 31 (setting spring guns etc with intent to do grievous bodily harm);
(m) section 32 (endangering the safety of railway passengers);
(n) - section 35 (injuring persons by furious driving);
(o) - section 37 (assaulting officer preserving wreck);
(p) - section 38 (assault with intent to resist arrest);
(q) - section 47 (assault occasioning actual bodily harm).

Origin: CJA 2003 Sch.15 paras.4 to 20.

Explosive Substances Act 1883

5 - An offence under any of the following sections of the Explosive Substances Act 1883—

(a) - section 2 (causing explosion likely to endanger life or property);
(b) - section 3 (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property);
(c) - section 4 (making or possession of explosive under suspicious circumstances)

Origin: CJA 2003 Sch.15 paras.21 to 22A; CJCA 2015 s.2(2).

Infant Life (Preservation) Act 1929

6 - An offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

Origin: CJA 2003 Sch.15 para.23.

Children and Young Persons Act 1933

7 - An offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children).

Origin: CJA 2003 Sch.15 para.24.

Infanticide Act 1938

8 - An offence under section 1 of the Infanticide Act 1938 (infanticide).

Origin: CJA 2003 Sch.15 para.25.

Firearms Act 1968

9 An offence under any of the following sections of the Firearms Act 1968—

(a) - section 16 (possession of firearm with intent to endanger life);

(b) - section 16A (possession of firearm with intent to cause fear of violence);

(c) - section 17(1) (use of firearm to resist arrest);

(d) - section 17(2) (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act);

(e) - section 18 (carrying a firearm with criminal intent).

Origin: CJA 2003 Sch.15 paras.26 to 30.

Theft Act 1968

10 - An offence under any of the following sections of the Theft Act 1968—

(a) - section 8 (robbery or assault with intent to rob);

(b) - section 9, where the offence is burglary with intent to—

(i) - inflict grievous bodily harm on a person, or

(ii) - do unlawful damage to a building or anything in it;

(c) - section 10 (aggravated burglary);

(d) - section 12A (aggravated vehicle-taking), where the offence involves an accident which caused the death of any person.

Origin: CJA 2003 Sch.15 paras.31 to 34.

Criminal Damage Act 1971

11 (1) -An offence of arson under section 1 of the Criminal Damage Act 1971.

(2) -An offence under section 1(2) (destroying or damaging property) other than an offence of arson.

Origin: CJA 2003 Sch.15 paras.35 and 36.

Taking of Hostages Act 1982

12 - An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

Origin: CJA 2003 Sch.15 para.37.

Aviation Security Act 1982

13 An offence under any of the following sections of the Aviation Security Act 1982—

(a) section 1 ((hijacking);
(b) section 2 (destroying, damaging or endangering safety of aircraft);
(c) section 3 (other acts endangering or likely to endanger safety of aircraft);
(d) section 4 (offences in relation to certain dangerous articles).

Origin: CJA 2003 Sch.15 paras.38 to 41.

Mental Health Act 1983

14 An offence under section 127 of the Mental Health Act 1983 (ill-treatment of patients).

Origin: CJA 2003 Sch.15 para.42.

Prohibition of Female Circumcision Act 1985

15 An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (prohibition of female circumcision).

Origin: CJA 2003 Sch.15 para.43.

Public Order Act 1986

16 An offence under any of the following sections of the Public Order Act 1986—

(a) section 1 (riot);
(b) section 2 (violent disorder);
(c) section 3 (affray)

Origin: CJA 2003 Sch.15 paras.44 to 46.

Criminal Justice Act 1988

17 An offence under section 134 of the Criminal Justice Act 1988 (torture).

Origin: CJA 2003 Sch.15 para.47.

Road Traffic Act 1988

18 An offence under any of the following sections of the Road Traffic Act 1988—

(a) section 1 (causing death by dangerous driving);
(b) section 3ZC (causing death by driving: disqualified drivers);
(c) section 3A (causing death by careless driving when under influence of drink or drugs).

Origin: CJA 2003 Sch.15 paras.48 to 49; CJCA 2015 Sch.6 para.11; clean sweep.

Aviation and Maritime Security Act 1990

19 An offence under any of the following sections of the Aviation and Maritime Security Act 1990—

(a) section 1 (endangering safety at aerodromes);
(b) section 9 (hijacking of ships);
(c) section 10 (seizing or exercising control of fixed platforms);
(d) section 11 (destroying fixed platforms or endangering their safety);
(e) section 12 (other acts endangering or likely to endanger safe navigation);
(f) section 13 (offences involving threats).

Origin: CJA 2003 Sch.15 paras.50 to 55.

Channel Tunnel (Security) Order 1994

20 An offence under Part II of the Channel Tunnel (Security) Order 1994 (SI 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).

Origin: CJA 2003 Sch.15 para.56.

Protection from Harassment Act 1997

21 An offence under section 4 or 4A of the Protection from Harassment Act 1997 (putting people in fear of violence and stalking involving fear of violence or serious alarm or distress).

Origin: CJA 2003 Sch.15 para.57; PFA 2012 Sch.9 para.147.

Crime and Disorder Act 1998

22 (1) An offence under section 29 of the Crime and Disorder Act 1998 (racially or religiously aggravated assaults).

(2) An offence falling within section 31(1)(a) or (b) of that Act (racially or religiously aggravated offences under section 4 or 4A of the Public Order Act 1986).

Origin: CJA 2003 Sch.15 paras.58 and 59.

Terrorism Act 2000

23 An offence under any of the following sections of the Terrorism Act 2000—

(a) section 54 (weapons training);
(b) section 56 (directing terrorist organisation);
(c) section 57 (possession of article for terrorist purposes);
(d) section 59 (inciting terrorism overseas).

Origin: CJA 2003 Sch.15 paras.59A to 59D; CJA 2009 s.138(2); clean sweep.

International Criminal Court Act 2001

24 - An offence under section 51 or 52 of the International Criminal Court Act 2001 (genocide, crimes against humanity, war crimes and related offences), other than one involving murder.

Origin: CJA 2003 Sch.15 para.60.

Anti-terrorism, Crime and Security Act 2001

25 - An offence under any of the following sections of the Anti-terrorism, Crime and Security Act 2001—

(a) - section 47 (use etc of nuclear weapons);

(b) - section 50 (assisting or inducing certain weapons-related acts overseas);

(c) - section 113 (use of noxious substance or thing to cause harm or intimidate).

Origin: CJA 2003 Sch.15 para.60A to 60C; CJA 2009 s.138(3); clean sweep.

Female Genital Mutilation Act 2003

26 - An offence under any of the following sections of the Female Genital Mutilation Act 2003—

(a) - section 1 (female genital mutilation);

(b) - section 2 (assisting a girl to mutilate her own genitalia);

(c) - section 3 (assisting a non-UK person to mutilate overseas a girl's genitalia).

Origin: CJA 2003 Sch.15 paras.61 to 63.

Domestic Violence, Crime and Victims Act 2004

27 - An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing a child or vulnerable adult to die or suffer serious physical harm).

Origin: CJA 2003 Sch.15 para.63A; DVCVA 2004 Sch.10 para.65; DVCV(A)A 2012 Sch. para.6.

Terrorism Act 2006

28 - An offence under any of the following sections of the Terrorism Act 2006—

(a) - section 5 (preparation of terrorist acts);

(b) - section 6 (training for terrorism);

(c) - section 9 (making or possession of radioactive device or material);

(d) - section 10 (use of radioactive device or material for terrorist purposes etc);

(e) - section 11 (terrorist threats relating to radioactive devices etc).

Origin: CJA 2003 Sch.15 para.63B to 63F; CJA 2009 s.138(4); clean sweep.

Modern Slavery Act 2015

29 (1) -An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).

(2) -An offence under section 2 of that Act (human trafficking) which is not within Part 2 of this Schedule.

Origin: CJA 2003 Sch.15 paras.63G and 63H; MSA 2015 s.6(2).

Ancillary offences

30 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Part of this Schedule.

(2) -An attempt to commit such an offence.

(3) -Conspiracy to commit such an offence.

(4) -Incitement to commit such an offence.

(5) -An offence under Part 2 of the Serious Crime Act 2007 related to such an offence.

Origin: CJA 2003 Sch.15 para.64; CJCA 2015 s.2(3).

31 (1) -An attempt to commit murder.

(2) -Conspiracy to commit murder.

(3) - Incitement to commit murder.

(4) -An offence under Part 2 of the Serious Crime Act 2007 related to murder.

Origin: CJA 2003 Sch.15 para.65; CJCA 2015 s.2(4).

PART 2

SPECIFIED SEXUAL OFFENCES

Sexual Offences Act 1956

32 - An offence under any of the following sections of the Sexual Offences Act 1956—

(a) section 1 (rape);
(b) section 2 (procurement of woman by threats);
(c) section 3 (procurement of woman by false pretences);
(d) section 4 (administering drugs to obtain or facilitate intercourse);
(e) section 5 (intercourse with girl under thirteen);
(f) section 6 (intercourse with girl under 16);
(g) section 7 (intercourse with a defective);
(h) section 9 (procurement of a defective);
(i) section 10 or 11 (incest;
(j) section 14 (indecent assault on a woman);
(k) section 15 (indecent assault on a man);
(l) section 16 (assault with intent to commit buggery);

(m) - section 17 (abduction of woman by force or for the sake of her property);
(n) - section 19 (abduction of unmarried girl under eighteen from parent or guardian);
(o) - section 20 (abduction of unmarried girl under sixteen from parent or guardian);
(p) - section 21 (abduction of defective from parent or guardian);
(q) - section 22 (causing prostitution of women);
(r) - section 23 (procuration of girl under 21);
(s) - section 24 (detention of woman in brothel);
(t) - section 25 (permitting girl under thirteen to use premises for intercourse;
(u) - section 26 (permitting girl under sixteen to use premises for intercourse);
(v) - section 27 (permitting defective to use premises for intercourse);
(w) - section 28 (causing or encouraging the prostitution of, intercourse with or indecent assault on girl under sixteen);
(x) - section 29 (causing or encouraging prostitution of defective);
(y) - section 32 (soliciting by men);
(z) - section 33A (keeping a brothel used for prostitution).

Origin: CJA 2003 Sch.15 para.66 to 91 and 92A; CJCA 2015 s.2(6).

Mental Health Act 1959

33 - An offence under section 128 of the Mental Health Act 1959 (sexual intercourse with patients).

Origin: CJA 2003 Sch.15 para.93.

Indecency with Children Act 1960

34 - An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child).

Origin: CJA 2003 Sch.15 para.94.

Sexual Offences Act 1967

35 - An offence under either of the following sections of Sexual Offences Act 1967—
(a) - section 4 (procuring others to commit homosexual acts);
(b) - section 5 (living on earnings of male prostitution).

Origin: CJA 2003 Sch.15 paras.95 and 96.

Theft Act 1968

36 - An offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape.

Origin: CJA 2003 Sch.15 para.97.

Criminal Law Act 1977

37 An offence under section 54 of the Criminal Law Act 1977 (inciting girl under 16 to have incestuous sexual intercourse).

Origin: CJA 2003 Sch.15 para.98.

Protection of Children Act 1978

38 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).

Origin: CJA 2003 Sch.15 para.99.

Customs and Excise Management Act 1979

39 An offence under section 170 of the Customs and Excise Management Act 1979 (penalty for fraudulent evasion of duty etc) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (indecent or obscene articles).

Origin: CJA 2003 Sch.15 para.100.

Criminal Justice Act 1988

40 An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).

Origin: CJA 2003 Sch.15 para.101.

Sexual Offences Act 2003

41 An offence under any of the following sections of the Sexual Offences Act 2003—

(a) section 1 (rape);
(b) section 2 (assault by penetration);
(c) section 3 (sexual assault);
(d) section 4 (causing a person to engage in sexual activity without consent;
(e) section 5 (rape of a child under 13);
(f) section 6 (assault of a child under 13 by penetration);
(g) section 7 (sexual assault of a child under 13);
(h) section 8 (causing or inciting a child under 13 to engage in sexual activity);
(i) section 9 (sexual activity with a child);
(j) section 10 (causing or inciting a child to engage in sexual activity).;
(k) section 11 (engaging in sexual activity in the presence of a child);
(l) section 12 (causing a child to watch a sexual act);
(m) section 13 (child sex offences committed by children or young persons);
(n) section 14 (arranging or facilitating commission of a child sex offence);
(o) section 15 (meeting a child following sexual grooming etc);
(p) section 16 (abuse of position of trust: sexual activity with a child);

(q) section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity);

(r) section 18 (abuse of position of trust: sexual activity in the presence of a child);

(s) section 19 (abuse of position of trust: causing a child to watch a sexual act);

(t) section 25 (sexual activity with a child family member);

(u) section 26 (inciting a child family member to engage in sexual activity);

(v) section 30 (sexual activity with a person with a mental disorder impeding choice);

(w) section 31 (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity);

(x) section 32 (engaging in sexual activity in the presence of a person with a mental disorder impeding choice);

(y) section 33 (causing a person with a mental disorder impeding choice to watch a sexual act);

(z) section 34 (inducement, threat or deception to procure sexual activity with a person with a mental disorder);

(aa) section 35 (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception);

(ab) section 36 (engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder);

(ac) section 37 (causing a person with a mental disorder to watch a sexual act by inducement, threat or deception);

(ad) section 38 (care workers: sexual activity with a person with a mental disorder);

(ae) section 39 (care workers: causing or inciting sexual activity);

(af) section 40 (care workers: sexual activity in the presence of a person with a mental disorder);

(ag) section 41 (care workers: causing a person with a mental disorder to watch a sexual act);

(ah) section 47 (paying for sexual services of a child);

(ai) section 48 (causing or inciting child prostitution or pornography);

(aj) section 49 (controlling a child prostitute or a child involved in pornography);

(ak) section 50 (arranging or facilitating child prostitution or pornography);

(al) section 52 (causing or inciting prostitution for gain);

(am) section 53 (controlling prostitution for gain);

(an) section 57 (trafficking into the UK for sexual exploitation);

(ao) section 58 (trafficking within the UK for sexual exploitation);

(ap) section 59 (trafficking out of the UK for sexual exploitation);

(aq) section 59A (trafficking for sexual exploitation);

(ar) section 61 (administering a substance with intent);

(as) section 62 (committing an offence with intent to commit a sexual offence);

(at) section 63 (trespass with intent to commit a sexual offence);

(au) section 64 (sex with an adult relative: penetration);

(av) section 65 (sex with an adult relative: consenting to penetration);
(aw) section 66 (exposure);
(ax) section 67 (voyeurism);
(ay) section 69 (intercourse with an animal);
(az) section 70 (sexual penetration of a corpse).

Origin: CJA 2003 Sch.15 paras.102 to 152.

Modern Slavery Act 2015

42 An offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).

Origin: CJA 2003 Sch.15 para.152A; MSA 2015 s.6(3).

Ancillary offences

43 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in this Part of this Schedule.

(2) An attempt to commit such an offence.

(3) Conspiracy to commit such an offence.

(4) Incitement to commit such an offence.

(5) An offence under Part 2 of the Serious Crime Act 2007 related to such an offence.

Origin: CJA 2003 Sch.15 para.153; CJCA 2015 s.2(7).

PART 3

INTERPRETATION

44 For the purposes of—
(a) paragraph 23 (offences under the Terrorism Act 2000),
(b) paragraph 25 (offences under the Anti-terrorism, Crime and Security Act 2001, and
(c) paragraph 28 (offences under the Terrorism Act 2006),
where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken to have been committed on the last of those days.

Origin: CJA 2009 Sch.22 para.37(2).

SCHEDULE 13

Section 222

SCHEDULE 13 OFFENCES

PART 1

SERIOUS VIOLENT OFFENCES

1 Manslaughter.

Origin: CJA 2003 Sch.15 para.1.

2 Kidnapping.

Origin: CJA 2003 Sch.15 para.2.

3 False imprisonment.

Origin: CJA 2003 Sch.15 para.3.

4 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).

Origin: CJA 2003 Sch.15 para.4.

5 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).

Origin: CJA 2003 Sch.15 para.6.

6 An offence under section 21 of that Act (attempting to choke, suffocate or strangle in order to commit or assist in committing an indictable offence).

Origin: CJA 2003 Sch.15 para.8.

7 An offence under section 22 of that Act (using chloroform etc to commit or assist in the committing of any indictable offence).

Origin: CJA 2003 Sch.15 para.9.

8 An offence under section 28 of that Act (causing bodily injury by explosives).

Origin: CJA 2003 Sch.15 para.12.

9 An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm).

Origin: CJA 2003 Sch.15 para.13.

10 An offence under section 32 of that Act (endangering the safety of railway passengers).

Origin: CJA 2003 Sch.15 para.16.

11 An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).

Origin: CJA 2003 Sch.15 para.21.

12 An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).

Origin: CJA 2003 Sch.15 para.22.

13 An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances) committed on or after 13 April 2015.

Origin: CJA 2003 Sch.15 para.22A; CJCA 2015 s.2(2), (10); SI 2015/778 art.3.

14 An offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

Origin: CJA 2003 Sch.15 para.23.

15 An offence under section 1 of the Infanticide Act 1938 (infanticide).

Origin: CJA 2003 Sch.15 para.25.

16 An offence under section 16 of the Firearms Act 1968 (possession of firearm with intent to endanger life).

Origin: CJA 2003 Sch.15 para.26.

17 An offence under section 17(1) of that Act (use of firearm to resist arrest).

Origin: CJA 2003 Sch.15 para.28.

18 An offence under section 17(2) of that Act (possession of firearm at time of committing or being arrested for offence specified in Schedule 1 to that Act).

Origin: CJA 2003 Sch.15 para.29.

19 An offence under section 18 of that Act (carrying a firearm with criminal intent).

Origin: CJA 2003 Sch.15 para.30.

20 An offence under section 8 of the Theft Act 1968 (robbery or assault with intent to rob).

Origin: CJA 2003 Sch.15 para.31.

21 An offence under section 10 of that Act (aggravated burglary).

Origin: CJA 2003 Sch.15 para.33.

22 An offence of arson under section 1 of the Criminal Damage Act 1971.

Origin: CJA 2003 Sch.15 para.35.

23 An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.

Origin: CJA 2003 Sch.15 para.36.

24 An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

Origin: CJA 2003 Sch.15 para.37.

25 An offence under section 1 of the Aviation Security Act 1982 (hijacking).

Origin: CJA 2003 Sch.15 para.38.

26 An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).

Origin: CJA 2003 Sch.15 para.39.

27 An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).

Origin: CJA 2003 Sch.15 para.40.

28 An offence under section 134 of the Criminal Justice Act 1988 (torture).

Origin: CJA 2003 Sch.15 para.47.

29 An offence under section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes).

Origin: CJA 2003 Sch.15 para.50.

30 An offence under section 9 of that Act (hijacking of ships).

Origin: CJA 2003 Sch.15 para.51.

31 An offence under section 10 of that Act (seizing or exercising control of fixed platforms).

Origin: CJA 2003 Sch.15 para.52.

32 An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).

Origin: CJA 2003 Sch.15 para.53.

33 An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

Origin: CJA 2003 Sch.15 para.54.

34 An offence under section 13 of that Act (offences involving threats).

Origin: CJA 2003 Sch.15 para.55.

35 An offence under Part II of the Channel Tunnel (Security) Order 1994 (S. I. 1994/570) (offences relating to Channel Tunnel trains and the tunnel system).

Origin: CJA 2003 Sch.15 para.56.

36 An offence under section 54 of the Terrorism Act 2000 (weapons training) committed on or after 13 April 2015.

Origin: CJA 2003 s.225(2)(a), s.226(2)(a), Sch.15 para.59A; CJA 2009 s.138(2); CJCA s.1(2), (4); SI 2015/778 art.3, Sch.1 para.1.

37 An offence under section 56 of that Act (directing terrorist organisation) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.59B; CJA 2009 s.138(2), s.182(2)(b), Sch.22 para.37(1) (part).

38 An offence under section 59 of that Act (inciting terrorism overseas) committed on or after 12 January 2010 for which the maximum penalty on indictment is life imprisonment.

Origin: CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.59D; CJA 2009 s.138(2), s.182(2)(b), Sch.22 para.37(1) (part).

39 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.60A; CJA 2009 s.138(3), s.182(2)(b), Sch.22 para.37(1) (part).

40 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.60B; CJA 2009 s.138(3), s.182(2)(b), Sch.22 para.37(1) (part).

41 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.63B; CJA 2009 s.138(4), s.182(2)(b), Sch.22 para.37(1) (part).

42 An offence under section 6 of that Act (training for terrorism) committed on or after 13 April 2015.

Origin: CJA 2003 s.225(2)(a), s.226(2)(a); Sch.15 para.63C; CJA 2009 s.138(4); CJCA 2015 s.1(3), (4); SI 2015/778 art.3, Sch.1 para.1.

43 An offence under section 9 of that Act (making or possession of radioactive device or material) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.63D; CJA 2009 s.138(4), s.182(2)(b), Sch.22 para.37(1) (part).

44 An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.63E; CJA 2009 s.138(4), s.182(2)(b), Sch.22 para.37(1) (part).

45 An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc) committed on or after 12 January 2010.

Origin: CJA 2003 Sch.15 para.63F; CJA 2009 s.138(4), s.182(2)(b), Sch.22 para.37(1) (part).

46 An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).

Origin: CJA 2003 Sch.15 para.63G; MSA 2015 s.6(2).

47 An offence under section 2 of that Act (human trafficking) which is not within Part 2 of this Schedule.

Origin: CJA 2003 Sch.15 para.63H; MSA 2015 s.6(2).

48 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Part of this Schedule.

(2) An attempt to commit such an offence.

(3) Conspiracy to commit such an offence.

(4) Incitement to commit such an offence.

(5) An offence under Part 2 of the Serious Crime Act 2007 related to such an offence.

Origin: CJA 2003 Sch.15 para.64; CJCA 2015 s.2(3).

49 (1) An attempt to commit murder.

(2) A conspiracy to commit murder.

(3) Either of the following offences committed on or after 13 April 2015—

(a) incitement to commit murder;

(b) an offence under Part 2 of the Serious Crime Act 2007 related to murder.

Origin: CJA 2003 Sch.15 para.65; CJCA 2015 s.2(4), (10); SI 2015/778 art.3.

PART 2

SERIOUS SEXUAL OFFENCES

50 An offence under section 1 of the Sexual Offences Act 1956 (rape).

Origin: CJA 2003 Sch.15 para.66.

51 An offence under section 5 of that Act (intercourse with girl under thirteen).

Origin: CJA 2003 Sch.15 para.70.

52 An offence under section 10 of that Act (incest by a man) with a girl under 13 and so charged in the indictment.

Origin: SOA 1956 Sch.2 para.14(a); CJA 2003 Sch.15 para.74.

53 An offence under section 25 of that Act (permitting girl under thirteen to use premises for intercourse).

Origin: CJA 2003 Sch.15 para.86.

54 An offence under section 1 of the Sexual Offences Act 2003 (rape).

Origin: CJA 2003 Sch.15 para.102.

55 An offence under section 2 of that Act (assault by penetration).

Origin: CJA 2003 Sch.15 para.103.

56 An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) to which subsection (4) of that section applies (activity involving penetration).

Origin: SOA 2003 s.4(4); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.105.

57 An offence under section 5 of that Act (rape of a child under 13).

Origin: CJA 2003 Sch.15 para.106.

58 An offence under section 6 of that Act (assault of a child under 13 by penetration).

Origin: CJA 2003 Sch.15 para.107.

59 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity) to which subsection (2) of that section applies (activity involving penetration).

Origin: SOA 2003 s.8(2); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.109.

60 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) to which subsection (3) of that section applies (activity involving penetration).

Origin: SOA 2003 s.30(3); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.123.

61 An offence under section 31 of that Act (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity) to which subsection (3) of that section applies (activity involving penetration).

Origin: SOA 2003 s.31(3); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.124.

62 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) to which subsection (2) of that section applies (activity involving penetration).

Origin: SOA 2003 s.34(2); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.127.

63 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception) to which subsection (2) applies (activity involving penetration).

Origin: SOA 2003 s.35(2); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.128.

64 An offence under section 47 of that Act (paying for sexual services of a child) committed against a person aged under 13 years where subsection (6) of that section applies (activity involving penetration).

Origin: SOA 2003 s.47(3); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.135.

65 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) to which subsection (3) applies (offence committed by kidnapping or false imprisonment).

Origin: SOA 2003 s.48(3); CJA 2003 s.225(2)(a), s.226(1)(b), Sch.15 para.145.

66 An offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).

Origin: CJA 2003 Sch.15 para.152A; MSA 2015 s.6(3).

67 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in this Part of this Schedule.

(2) An attempt to commit such an offence, other than an attempt to commit an offence under section 1, 5 or 10 of the Sexual Offences Act 1956.

(3) Conspiracy to commit an offence specified in this Part of this Schedule.

(4) Incitement to commit such an offence.

(5) An offence under Part 2 of the Serious Crime Act 2007 related to such an offence.

Origin: SOA 1956 Sch.2 paras.1(b), 2(b), 14(b); CAA 1981 s.4(5)(a); CJA 2003 Sch.15 para.153; CJCA 2015 s.2(7).

SCHEDULE 14 - Section 234

DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE FOR - MURDER ETC -

Interpretation

1 In this Schedule—

"child" means a person under 18 years;

"mandatory life sentence" means a mandatory life sentence passed in circumstances where the sentence is fixed by law.

Origin: CJA 2003 Sch.21 para.1; drafting.

Starting points

2 - (1) If—

(a) - the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when the offence was committed,

the appropriate starting point is a whole life order.

Origin: CJA 2003 Sch.21 para.4(1).

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

(a) - the murder of two or more persons, where each murder involves any of the following—

(i) - a substantial degree of premeditation or planning,

(ii) - the abduction of the victim, or sexual or sadistic conduct,

(b) - the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

(c) - the murder of a police officer or prison officer in the course of his or her duty, where the offence was committed on or after 13 April 2015,

(d) - a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

(e) - a murder by an offender previously convicted of murder.

Origin: CJA 2003 Sch.21 para.4(2); CTA 2008 s.75(2)(c); CJCA 2015 s.27(2), (4); SI 2015/778 art.3 Sch.1 para.23.

3 - (1) If—

(a) - the case does not fall within paragraph 2(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) - the offender was aged 18 or over when the offence was committed,

the appropriate starting point, in determining the minimum term, is 30 years.

Origin: CJA 2003 Sch.21 para.5(1).

(2) Cases that (if not falling within paragraph 2(1)) would normally fall within sub-paragraph (1)(a) include—

(a) in the case of a offence committed on or after 13 April 2015, the murder of a police officer or prison officer in the course of his or her duty,

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

(d) a murder intended to obstruct or interfere with the course of justice,

(e) a murder involving sexual or sadistic conduct,

(f) the murder of two or more persons,

(g) a murder that is aggravated by racial or religious hostility or by hostility related to sexual orientation,

(h) in the case of an offence committed on or after 3 December 2012, a murder that is aggravated by hostility related to disability or transgender identity,

(i) a murder falling within paragraph 2(2) committed by an offender who was aged under 21 when the offence was committed.

Origin: CJA 2003 Sch.21 paras.2, 3, 5(2); LASPOA 2012 s.65(9); CJCA 2015 s.27(4); SI 2015/778 art.3 Sch.1 para.23.

(3) An offence is aggravated in any of the ways mentioned in sub-paragraph (2)(g) or (h) if section 64 requires the court to treat the fact that it is so aggravated as an aggravating factor.

Origin: CJA 2003 Sch.21 paras.2, 3; LASPOA 2012 s.65(7), (8); drafting.

4 (1) If—

(a) the case does not fall within paragraph 2(1) or 3(1),

(b) the offence falls within sub-paragraph (2), and

(c) the offender was aged 18 or over when the offence was committed,

(d) the offence was committed on or after 2 March 2010,

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

Origin: CJA 2003 Sch.21 para.5A(1); SI 2010/197 art.2(2), 3.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to—

(a) commit any offence, or

(b) have it available to use as a weapon,

and used that knife or other weapon in committing the murder.

Origin: CJA 2003 Sch.21 para.5A(2); SI 2010/197 art.2(2).

5 If the offender was aged 18 or over when the offence was committed and the case does not fall within paragraph 2(1), 3(1) or 4(1), the appropriate starting point, in determining the minimum term, is 15 years.

Origin: CJA 2003 Sch.21 para.6; SI 2010/197 art.2(3).

6 If the offender was aged under 18 when the offence was committed, the appropriate starting point, in determining the minimum term, is 12 years.

Origin: CJA 2003 Sch.21 para.7.

Aggravating and mitigating factors

7 - Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

Origin: CJA 2003 Sch.21 para.8.

8 - Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

Origin: CJA 2003 Sch.21 para.9.

9 - Aggravating factors (additional to those mentioned in paragraph 2(2), 3(2) and 4(2)) that may be relevant to the offence of murder include—

(a) - a significant degree of planning or premeditation,

(b) - the fact that the victim was particularly vulnerable because of age or disability,

(c) - mental or physical suffering inflicted on the victim before death,

(d) - the abuse of a position of trust,

(e) - the use of duress or threats against another person to facilitate the commission of the offence,

(f) - the fact that victim was providing a public service or performing a public duty, and

(g) - concealment, destruction or dismemberment of the body.

Origin: CJA 2003 Sch.21 para.10; SI 2010/197 art.2(4).

10 Mitigating factors that may be relevant to the offence of murder include—

(a) - an intention to cause serious bodily harm rather than to kill,

(b) - lack of premeditation,

(c) - the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957) lowered the offender's degree of culpability,

(d) - the fact that the offender was provoked (for example, by prolonged stress) in a way not amounting to a defence of provocation in the case of a murder committed before 4 October 2010,

(e) - the fact that the offender acted to any extent in self-defence or, in the case of a murder committed on or after 4 October 2010, in fear of violence,

(f) - a belief by the offender that the murder was an act of mercy, and

(g) - the age of the offender.

Origin: CJA 2003 Sch.21 para.11; CJA 2009, Sch.21 para.52; SI 2010/816 art.7(4).

11 - Nothing in this Schedule restricts the application of—

(a) - section 63 (previous convictions),

(b) - section 62 (bail), or

(c) section 67 (guilty plea),

or of section [section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006.]

Origin: CJA 2003 Sch.21 para.12; AFA Sch.16 para.236.

Offences committed before 18 December 2003

12 (1) This paragraph applies where the offence was committed before 18 December 2003.

Origin: CJA 2003 s.336(2), Sch.22 para.9.

(2) If the court makes a minimum term order, the minimum term must, in the opinion of the court, be no be greater than the period which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify to the offender as the minimum period which, in the view of the Secretary of State should be served before the prisoner's release on licence.

Origin: CJA 2003 Sch.22 para.10(a).

(3) The court may not make a whole life order unless it is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify the prisoner that the Secretary of State did not intend that the prisoner should ever be released on licence.

Origin: CJA 2003 Sch.22 para.10(b).

SCHEDULE 15

Section 279

AMENDMENTS OF THE SENTENCING CODE AND RELATED AMENDMENTS OF OTHER LEGISLATION

[To be added]

SCHEDULE 16

Section 280

POWERS TO AMEND THE SENTENCING CODE

[To be added]

SCHEDULE 17

Section 281

TRANSITIONAL PROVISIONS AND SAVINGS

[To be added]

SCHEDULE 18

Section 282

CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

[To be added]

Appendix 3: Draft Pre-Consolidation Amendment Bill

The draft pre-consolidation amendment Bill can also be found on the project's page on the Law Commission website:

http://www.lawcom.gov.uk/project/sentencing-code/.

Draft Sentencing (Pre-consolidation Amendments) Bill

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1 Consolidation of sentencing legislation: amendment of law for old offences
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5 Commencement, extent and short title

Schedule 1 — Section 1: exceptions
Schedule 2 — Sentencing consolidation: pre-consolidation amendments

A

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TO

Make provision for amendments to give effect to Law Commission recommendations relating to commencement of enactments relating to sentencing law and to make other pre-consolidation amendments of sentencing law.

BE 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:—

1 Consolidation of sentencing legislation: amendment of law for old offences

(1) In this section—

"repealed provision" means—

(a) an enactment, to the extent that it is to be repealed or revoked by the sentencing consolidation;

(b) a provision made under such an enactment;

"transition time", in relation to a repealed provision, means a time that is specified in, or determined in accordance with, an enactment relating to the coming into force of the repealed provision or any other enactment;

"trigger event", in relation to an offence, means the commission of the offence or any event related to the commission of the offence, including any event—

(a) connected with, or which constitutes any part of, the commission of the offence, or

(b) related to the investigation of, or proceedings related to, the offence.

(2) Subsection (3) applies if a person is convicted of an offence on or after the consolidation date.

(3) Where—

(a) the application to the offence of a repealed provision depends on the time at which a particular trigger event occurred in relation to a particular transition time, and

(b) the transition time fell after the trigger event occurred,

the repealed provision has effect as if the transition time had instead fallen before the trigger event occurred.

(4) Subsection (3) is subject to—

(a) Schedule 1 (exceptions);

(b) any provision made by regulations made by the Secretary of State for the purpose of securing that subsection (3) does not affect the application of particular repealed provisions.

(5) The following have effect subject to subsections (3) and (4)—

(a) a commencement or transitional provision relating to the coming into force of a repealed provision or any other enactment;

(b) a saving subject to which a repealed provision, or any other enactment, has previously been repealed or revoked.

(6) In this section—

"repealed provision" does not include a provision to the extent that it is not in force immediately before the consolidation date, except to the extent that it will come into force on or after that date by virtue of provision passed or made before that date;

a reference to the application of a repealed provision includes a reference to whether or not it applies (or applies for a particular purpose), and to the form in which it applies (or applies for a particular purpose);

references to a repealed provision or to any commencement or transitional provision or saving include references to a provision passed or made after the passing of this Act.

2 Pre-consolidation amendments relating to sentencing

(1) - Schedule 2 contains pre-consolidation amendments of sentencing legislation.

(2) - The Secretary of State may by regulations make such further amendments of sentencing legislation as in the Secretary of State's opinion facilitate, or are otherwise desirable in connection with, the consolidation of the whole or a substantial part of the Acts relating to sentencing (with or without other sentencing legislation).

(3) - In exercising the power under this section, the Secretary of State may have regard in particular to the desirability of removing differences between provisions relating to—

(a) - forfeiture;

(b) - powers of different courts to deal with offenders subject to particular sentences;

(c) - powers of different courts to provide for when sentences are to take effect.

(4) - The Secretary of State may by regulations amend or modify any provision of sentencing legislation which—

(a) - confers power to make legislation, and

(b) is subject to a relevant restriction,

so as to amend, modify or remove that restriction.

A "relevant restriction" is one by virtue of which legislation made in exercise of the power is to come into force only for cases in which commission or

conviction of an offence, or any other event, occurs after the time when the legislation is made or comes into force, or any other particular time.

3 Pre-consolidation amendments: interpretation

(1) - In this Act—

"the Acts relating to sentencing" means—

(a) - the Powers of Criminal Courts (Sentencing) Act 2000;

(b) - Part 12 of the Criminal Justice Act 2003;

(c) - the following Acts so far as relating to the sentencing of offenders—

(i) - the Serious Organised Crime and Police Act 2005;

(ii) - the Criminal Justice and Immigration Act 2008;

(iii) - the Coroners and Justice Act 2009;

(iv) - the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

(v) - the Offender Rehabilitation Act 2014;

(vi) the Criminal Justice and Courts Act 2015;

and any other enactment relating to the sentencing of offenders, whenever passed;

"the consolidation date" means the date on which the sentencing consolidation is to come into force (except so far as it restates legislation that is not in force immediately before that date);

"enactment" includes an enactment contained in subordinate legislation;

"the sentencing consolidation" means, if an Act or group of Acts of a kind mentioned in section 5(1) is passed, that Act or group of Acts;

"sentencing legislation" means any enactment relating to the sentencing of offenders, including—

(a) any power to make any such legislation;

(b) any provision amending, repealing or revoking another provision of sentencing legislation;

"the sentencing of offenders" includes anything done by a court when dealing with an offender for an offence.

(2) - References in this Act to a person's being convicted include—

(a) - a special verdict (within the meaning of section 1 of the Criminal Procedure (Insanity) Act 1964) being returned, and

(b) - a finding mentioned in section 5(1)(b) of that Act being made of the person's having done the act or made the omission charged (following a finding of being under a disability).

4 Pre-consolidation amendments: regulations

(1) - Any power to make regulations under section 1 or 2 is exercisable by statutory instrument.

(2) - Any such regulations may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.

5 Commencement, extent and short title

(1) - Sections 1 and 2 are not to come into force unless—

(a) a single Act, or

(b) a group of two or more Acts,

is passed consolidating the whole or a substantial part of the Acts relating to sentencing (with or without other sentencing legislation).

(2) If the sentencing consolidation is passed, those sections, and any regulations made under either of them, come into force immediately before the consolidation date.

(3) [Extent: to be added]

(4) This Act may be cited as the Sentencing (Pre-consolidation Amendments) Act [2018].

SCHEDULES

SCHEDULE 1

Section 1

SECTION 1: EXCEPTIONS

Nothing in section 1 alters the effect of any of the following—

[To be added]

SCHEDULE 2

Section 2

SENTENCING CONSOLIDATION: PRE-CONSOLIDATION AMENDMENTS

[To be added]