Law Commission
Reforming the law

The Sentencing Code
Disposals relating to children and young persons

Consultation Paper No 234

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The Sentencing Code

Disposals relating to children and young persons: Consultation Paper

23 March 2018

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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 in relation to certain provisions related to the sentencing of children and young persons.

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 23 March 2018 until 27 April 2018.

Comments may be sent:

By email:	sentencing@lawcommission.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:	020 3334 0200

If you send your comments by post, it would be helpful if, whenever possible, you could also send them electronically.

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.

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Glossary

Bill

A Bill is a proposal for a new law, or a proposal to change an existing law that is presented for debate before Parliament. A Bill can be amended during its process through Parliament and is known as an Act when it receives Royal Assent and becomes law. However, as explained below (see **Commencement** below), a provision in an Act does not have effect unless it has been brought into force.

Child

The term “child” is used in the Children and Young Person Act 1933 to refer to someone under the age of 14 and is used in this Consultation Paper to the same effect. The term “children” should be read accordingly.

Clean sweep

The clean sweep is a particular innovation of the Sentencing Code. An issue with the current law is that changes to the law are brought into force in many different ways, with the changes often only applying to offences committed after the coming into force of the particular law. This means that the old law which has been repealed must be “saved” for certain older cases which may still be before the courts. Over time, this has caused there to be many layers of old law still “saved”. The clean sweep fixes this by extending repeals and commencements to all cases, so that the new law applies to all cases and the old law has no application in any case sentenced after the commencement of the Sentencing Code.

Commencement

When primary legislation is enacted by Parliament and receives Royal Assent, it does not necessarily have effect as law immediately. Before legislation can have effect, it must be brought into force. Provisions can be brought into force at different times and for different purposes. The coming into force of a legislative provision (that is, it having effect) is described as its commencement. See **Commencement provisions** below for details of how legislation is brought into force.

Commencement provisions

In order to give legislation effect, it must be brought into force (see **Commencement** above). If an Act makes no provision for its coming into force, it will come into force at the beginning of the day on which the Act receives Royal Assent. This is unusual in modern legislation however and most Acts make specific provision for when they will come into force – these provisions are known as commencement provisions. A commencement provision typically provides either that the legislation will come into force on a certain date or after a certain period of time has elapsed, or alternatively on the instruction of a government minister.

Consecutive/concurrent sentences

Where two or more sentences are imposed on an offender they can be imposed either consecutively or concurrently. Concurrent sentences are served simultaneously, for example two concurrent sentences of two years result in a total sentence of two years. Where

sentences are imposed consecutively, the offender will serve one sentence and then serve the next upon the expiry of the former. For example, two consecutive sentences of two years result in a total sentence of four years.

Consequential amendments

Often when changes are made to the law, such as the introduction of a new sentencing disposal, there is a need for a number of other legislative provisions to be updated to reflect this change so that the law can continue to operate properly. These subsequent changes are known as consequential amendments: they are amendments made in consequence of a new piece of law.

Consolidation Bills

Often the law on a particular topic is contained in more than one Act of Parliament. Consolidation Bills simply restate the current law, bringing the provisions contained in different Acts into one piece of legislation. A consolidation does not change the effect of the existing law, although such an Act occasionally contains minor corrections and improvements.

Current law

The law in force at the beginning of the consultation exercise.

Draft Sentencing Code

The draft Sentencing Code is the subject of this consultation exercise. It is the draft consolidation Bill which when enacted will be the Sentencing Code.

Groups of Parts, Parts, Chapters

An Act or Bill is split into Groups of Parts, Parts and Chapters. These allow sections that are thematically linked to be compiled in a single place, and to aid navigation.

Index offence

The offence for which an offender is being sentenced.

Non-recent offence

Non-recent offences are those where the period of time between commission and conviction is greater than would normally arise. These are sometimes called “historic offences”. Under the current law, the provisions that apply to these offences are likely to be different to those that apply to offences committed more recently due to the effect of transitional provisions.

Origins

These can be found in the version of the **draft Sentencing Code** contained in Appendix 2. We have provided references to origins to indicate the location in the current law of a particular provision in the draft Sentencing Code. In some cases there is no single origin and multiple origins are indicated. This occurs where the drafting has brought together multiple provisions and re-drafted them in one provision. Where the drafting used in the draft Sentencing Code has been the result of a **pre-consolidation amendment** (see below) which changed the existing legislation, the origin of the clause will include a reference to “PCA”. Where a clause is not solely the product of consolidation because Parliamentary Counsel (see below) has

created a provision or part of a provision to improve the law, this is indicated by the word "drafting" in the origins.

Parliamentary Counsel

Parliamentary Counsel are specialist government lawyers who are responsible for drafting primary legislation.

Parliamentary procedure

Parliamentary procedure regulates the proceedings of the Houses of Parliament. It includes proceedings governed by certain Acts of Parliament, rulings made by the Speaker in the House of Commons and by the Procedure Committee in the House of Lords, Standing Orders, and established understandings and conventions which have not been codified. There is a special procedure for **consolidation Bills** (see above) which allows the Bill to progress through Parliament more quickly. This is because as a consolidation restates the law, the provisions have already been the subject of debates in both Houses of Parliament when the provisions were originally enacted.

Pre-consolidation amendment ("PCA")

Pre-consolidation amendments are amendments to legislation that need to be made before the consolidation Bill is introduced to Parliament. They are amendments made to the legislation for the purposes of facilitating the consolidation of the law, and are commenced immediately before the consolidation is enacted (therefore only having effect for the purposes of the consolidation). They are generally limited to correcting minor errors and streamlining the law in the area being consolidated. A consolidation can also make changes to the law by virtue of the Consolidation of Enactments (Procedure) Act 1949 or a Law Commission recommendation.

Pre-legislative scrutiny

Ordinarily this phrase refers to the detailed examination of an early draft of a Bill that is carried out by a parliamentary select committee before the final version is drawn up by the government. Pre-legislative scrutiny can, however, include scrutiny by expert bodies prior to introduction to Parliament. For the **draft Sentencing Code** (see above), pre-legislative scrutiny included the 6 months of open public consultation conducted by the Law Commission in determining the content and layout of the Bill.

Sentencing Code

The Sentencing Code is a consolidation of the existing legislation governing sentencing procedure, bringing together provisions from the Powers of Criminal Courts (Sentencing) Act 2000 and Parts of the Criminal Justice Act 2003 among others. Once enacted and brought into force, the Sentencing Code will provide the first port of call for legislation concerning sentencing procedure.

Transitional provisions

When the law is changed by Parliament, transitional provisions provide for how the law should apply to cases that straddle the two regimes. These provisions ensure that there is a smooth transition between two different legal regimes, for example, making clear whether certain cases are dealt with under the old law, or the new law, potentially applying either with

modification. The issue of transitional provisions is closely connected to **commencement** (see above) and the way in which new laws are given effect.

Transition date

The transition date is the date specified by transitional provisions before, or after, which the old law ceases to apply and the new law begins to apply.

Young person

The term “young person” is used in the Children and Young Persons Act 1933 to refer to a person aged 14 or over but under 18 and is used in this Consultation Paper to the same effect.

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Chapter 1: The Sentencing Code

INTRODUCTION

1.1 In July 2017, we published a consultation paper on our proposed Sentencing Procedure Code (the "main consultation").[1] That consultation paper provided consultees with an opportunity to scrutinise the draft Sentencing Code Bill but, as we noted in that paper, it was not possible at the time for it to deal with all aspects of the sentencing of children and young persons. As explained below, there were a small number of provisions relating to the imposition of certain sentencing orders able to be imposed on offenders aged under 18 at the date of conviction which were not included in the draft Bill at that stage. This short consultation paper supplements the main consultation and draft Bill and deals with those provisions, which relate only to children and young persons, that were omitted from the main consultation.

1.2 The decision to omit those provisions from the main consultation exercise was necessary because at the time the consultation paper and draft Bill for the purposes of the main consultation were being prepared, the Charlie Taylor review of the Youth Justice System in England and Wales was ongoing.[2] There was a real prospect that at least some of the recommendations that that review might produce could lead to new legislation.[3] We decided therefore that, in the interests of using resources most effectively and avoiding any duplication, we should exclude from the draft Sentencing Code as published in July 2017 those provisions that were at risk of being altered. We were clear at that time that our intention was to include those provisions in the final version of the Sentencing Code. There has been no new legislation as a result of that review and therefore we are now conducting a supplementary consultation exercise in order to ensure that all provisions in the draft Bill receive public scrutiny, particularly by stakeholders who regularly use the provisions. In this consultation, we ask a number of specific questions in relation to the operation of the provisions, but as with the main consultation, we also seek views on their arrangement and drafting.

1.3 This chapter summarises the Sentencing Code project, the contents of the draft Bill, the decision to conduct the project as a consolidation exercise enabling the enactment of the Bill through the consolidation procedure, and the main consultation exercise. Chapter 2 deals with the detailed questions in relation to the sentencing provisions relating to children and young persons which will form part of the Code and on which this consultation paper seek views.

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1 The Sentencing Code, Law Commission Consultation Paper No 232 (27 July 2017).

2 Review of the Youth Justice System in England and Wales, Ministry of Justice, Cm 9298, (December 2016).

3 The government response to Charlie Taylor's Review of the Youth Justice System, Ministry of Justice, Cm 9382 (December 2016).

THE SENTENCING CODE PROJECT

Problems with the current law

1.4 Owing to continual developments in penal policy (most particularly over the past 30 years), there has been a steady stream of legislation relating to sentencing. The proliferation, on an almost annual basis, of new variations and types of sentencing orders, combined with the way that the law is drafted and brought into force, has resulted in the legislation relating to sentencing procedure being dispersed across dozens of different pieces of legislation with no clear or logical structure.

1.5 Our compilation of the sentencing law in force as of August 2015 was over 1300 pages long and contained provisions from Acts as varied as the Justices of the Peace Act 1361, the Company Directors Disqualification Act 1986 and the Dangerous Dogs Act 1991.[4] In cases which involve offences committed several years before trial, or even decades earlier, reference must be made to the historic sentencing regimes in place at the time the offence was committed, in addition to the current sentencing procedure law. This historic legislation is often technical and complex, with its effect and operation being difficult to decipher. Sometimes even the existence of such laws is not readily apparent to the sentencing judge or practitioners in the case.

1.6 A consequence of this state of affairs is that the law on sentencing is overwhelmingly complex and difficult to understand for practitioners and judges, as well as lay people. The extraordinary number of statutory provisions relating to sentencing, and the lack of any over-arching structure within which they sit, means it is almost impossible to identify and navigate the relevant legislation.

1.7 This complexity means that errors are frequently made when the courts impose a sentence. An analysis conducted in 2012 of 262 randomly selected sentencing cases in the Court of Appeal (Criminal Division) demonstrated that the complexity of the legislation is resulting in an extraordinary number of sentences that had been wrongfully passed: there were 95 unlawful sentences in the sample.[5] These were not sentences that were considered to be only of inappropriate severity, i.e. those which the Court of Appeal (Criminal Division) concluded ought to be reduced on the basis they were manifestly excessive or increased on the basis that they were unduly lenient, but cases in which the type, or part of the type, of sentence(s) imposed was simply wrong in law.

The project to date

1.8 The present state of affairs is simply unacceptable. Under the terms of reference agreed with the Ministry of Justice in 2015, we agreed to:

(1) Consider the codification of the law governing sentencing procedure. Sentencing procedure is to be understood as the process applicable from verdict to the end of the sentence imposed.

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4 Sentencing Law in England and Wales: Legislation Currently in Force (2015), available as a full electronic .pdf and in individual parts from http://www.lawcom.gov.uk/project/sentencing-code/.

5 R Banks, *Banks on Sentence* (8th ed 2013), vol 1, p xii. Those 262 cases consisted of every criminal appeal numbered 1600 to 1999 in 2012, excluding "those not published, those relating to conviction, non-counsel cases and those that were interlocutory etc."

(2) Design a sentencing procedure Code, embodied in one Act with a clear framework and accessible drafting, providing the courts with a single point of reference, capable of accommodating amendment and adapting to changing needs without losing structural clarity.

(3) Keep in mind the principles of good law: that it should be necessary, clear, coherent, effective and accessible. In short, to make legislation which works well for the users of today and tomorrow.

(4) Ensure that the Code would not restrict Parliament and the Government's capacity to effect changes in sentencing policy.

(5) Exclude:

(a) the penalties available to the court in relation to an offence; and

(b) sentencing guidelines

except insofar as some consideration of them is unavoidable to achieve the wider aim of a single, coherent Code.

1.9 The Sentencing Code aims to:

(1) ensure the law relating to sentencing procedure is readily comprehensible and operates within a clear and logical framework;

(2) increase public confidence in the criminal justice system; and

(3) ensure the criminal justice system operates as efficiently as possible.

1.10 The project began with a consultation on our compilation of the current law of sentencing which ran to over 1,300 pages.[6] Consultees agreed, subject to a few minor revisions, that we had accurately and exhaustively stated the current law of sentencing procedure.[7] This confirmed restatement of the present law formed the basis from which to draft the new Code.

1.11 We have engaged extensively with stakeholders to ensure that the structure of the Code Bill meets the needs of practitioners and judges.

1.12 Beyond simply bringing this body of legislation into one Act and clarifying and streamlining the current law, we were keen to break the cycle of creating layers of historic sentencing procedure legislation and to remove the need for judges, practitioners and other users of legislation to make reference to historic law and transitional provisions.[8] We devised an innovative approach to dealing with changes to

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6 Sentencing Law in England and Wales: Legislation Currently in Force (2015), available as a full electronic .pdf and in individual parts from http://www.lawcom.gov.uk/project/sentencing-code/.

7 Sentencing Law in England and Wales: Legislation Currently in Force – Interim Report (2016), available at http://www.lawcom.gov.uk/app/uploads/2016/10/Sentencing_Interim_Report_Oct-2016.pdf.

8 Where a change is made to legislation 'transitional provisions' provide clarity in relation to cases which straddle the old and the new law. They provide whether the old or the new law is applied to such cases, as well as providing any necessary modifications. These provisions are commonly contained in secondary

the law, which would substantially simplify the sentencing process. We proposed that judges would apply the new Code to all offenders whose convictions occur after the Sentencing Code has come into force (except in limited circumstances where it is necessary to respect the fundamental human rights of offenders).[9] This is in contrast to the current law which requires reference to be made to repealed but partially saved procedural provisions in the majority of non-recent cases. We are referring to this change as the "clean sweep" as we are "sweeping away" the historic layers of sentencing procedure legislation which are no longer required.

1.13 We consulted on the "clean sweep" policy.[10] Consultees unanimously supported the policy and we subsequently published a report with recommendations.[11] The key recommendations were:

(1) A Sentencing Code should be enacted that brings all of the primary legislative material with which a court might be concerned during the sentencing process into a single enactment.

(2) The Sentencing Code should effect a "clean sweep" of the legislation, removing the need to make reference to historic law and transitional provisions by applying the current law to all cases except where limited exceptions that are necessary to respect the fundamental rights of offenders apply.[12]

(3) The Sentencing Code should apply to all cases where the offender was convicted after its coming into force, no matter when the offence was committed.

1.14 In July 2017, we published a consultation paper and draft Bill, providing consultees with the opportunity to scrutinise a piece of draft legislation. During the six-month consultation period, we attended a number of events, including public lectures to practitioners, academics, special interest groups and members of the public. We also met with judges, government lawyers and representatives of the legal professions. In total, we spoke to over 1,400 individuals about the Sentencing Code project, and received comments and suggestions about our proposals. These will lead to amendments to the final Bill.

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legislation and their presence is frequently not obvious. For more information see D Greenberg, *Craies on Legislation* (11th ed 2017) paras 10.1.26-10.1.28.

9 Such as where applying the current law to the offender would result in an offender being subject to a penalty greater than the maximum that was available at the time of the offence, or a minimum sentence, or 'recidivist premium' (a provision requiring the court to treat the offender more harshly if the offender has previous convictions), that has come into force since the offence was committed. Examples are provided in *A New Sentencing Code for England and Wales* (2016) Law Com No 365 at 5.12 to 5.17.

10 Sentencing Procedure Issues Paper 1: Transition (2015), available at http://www.lawcom.gov.uk/wp-content/uploads/2015/06/Sentencing-Procedure-Issues-Paper-Transition-online.pdf. The recommendations in this paper are explained in more detail below in Chapters 3 to 4.

11 A New Sentencing Code for England and Wales (2016) Law Com No 365.

12 These limited exceptions are twofold. First, where to apply the new law would result in a penalty being imposed that would be more severe than the maximum which could have been imposed at the time of the offence. Secondly, where it would result in a new minimum sentence, or requirement to treat a previous conviction as an aggravating factor in sentence, that did not exist at the time of the offence, applying to the offender.

1.15 In Summer 2018, having analysed consultation responses from both the main consultation and this consultation, we will be publishing a final report and final draft Bill ready to be implemented. See paragraph 1.26 below for an explanation of the process of implementation.

1.16 To summarise therefore, during this project we have published the following papers:

(1) Sentencing Procedure Issues Paper 1: Transition (the "transition consultation");[13]

(2) Sentencing Law in England and Wales: Legislation Currently in Force (the "current law consultation");[14]

(3) A New Sentencing Code for England and Wales (the "transition report");[15]

(4) Sentencing Law in England and Wales: Legislation Currently in Force – Interim Report (the "current law report");[16] and

(5) The Sentencing Code: Volumes 1 and 2 (the "main consultation").[17]

THE CONTENTS OF THE SENTENCING CODE

1.17 The Sentencing Code will be a single source for all those provisions of primary legislation concerning sentencing procedure which a court conducting a sentencing exercise would need to exercise its functions properly. This includes those provisions which impose a duty on the court or on a court officer, or those which provide the court with a discretionary power. The Sentencing Code stops short of including those matters which a court may find it useful to be aware of, but which do not actually in themselves inform the court of its powers or duties.

1.18 Most of the provisions included in the Code are provisions in the current law which will be repealed and re-drafted in full with the same legal effect as the current law. There are, however, some provisions which, because of their relevance to matters beyond sentencing cannot be repealed and re-drafted in the Code as to do so would disrupt the coherence of the statute in which they are currently placed. In such instances, we have opted to 'signpost' the provision. A signpost in the Code will alert the user to the existence of a relevant provision which is located in another Act, rather like a cross reference in a book.[18]

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13 Sentencing Procedure Issues Paper 1: Transition (2015), available at http://www.lawcom.gov.uk/wp-content/uploads/2015/06/Sentencing-Procedure-Issues-Paper-Transition-online.pdf.

14 Sentencing Law in England and Wales: Legislation Currently in Force (2015), available as a full electronic .pdf and in individual parts from http://www.lawcom.gov.uk/project/sentencing-code/.

15 A New Sentencing Code for England and Wales (2016) Law Com No 365.

16 Sentencing Law in England and Wales: Legislation Currently in Force – Interim Report (2016), available at http://www.lawcom.gov.uk/app/uploads/2016/10/Sentencing_Interim_Report_Oct-2016.pdf.

17 The Sentencing Code, Law Commission Consultation Paper No 232 (27 July 2017).

18 For a more detailed explanation of signposts in the Sentencing Code with specific examples, see The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 2.57 to 2.91.

1.19 The Sentencing Code does not, save for the "clean sweep", make any significant changes of policy. This is due to its nature as a consolidation Bill. What a consolidation Bill is, and how that impacts upon the project, is discussed at paragraph 1.22 below.

1.20 The Sentencing Code will include provisions detailing the type of sentence and other disposals available to the court and the necessary procedure for sentencing hearings. In outline, the Code will be structured as follows:

(1) The First Group of Parts sets out the Sentencing Code's commencement and provides an overview of the Bill.

(2) The Second Group of Parts concerns provisions which are of general application, including committals for sentence, purposes of sentencing and determining the seriousness of an offence.

(3) The Third Group of Parts lists the various disposals available to sentencing courts. This includes custodial sentences, community orders, minimum sentence provisions and provisions concerning the administration of sentences such as the deduction of time spent on bail subject to a qualifying curfew.

(4) The Fourth Group of Parts details further powers relating to sentencing including certain ancillary orders such as the criminal behaviour order.

(5) The Fifth Group of Parts contains general provisions such as supplementary and interpretative provisions, the mechanism for referring a sentence back to the court following a failure to fulfil an agreement to provide assistance to the prosecution or where a subsequent agreement to provide such assistance has been entered into, and the variation of sentence in the Crown Court.

1.21 The majority of the provisions on which we seek views in this consultation are contained in the Third Group of Parts as they are all disposals exclusively available to sentencing courts in relation to children and young persons.[19] In the main consultation we consulted on a small number of custodial sentences available for children and young persons. All other provisions relevant to the sentencing of children and young persons, such as the provisions relating to the committal for sentence in sections 3B, 3C and 4A of the Powers of Criminal Courts (Sentencing) Act 2000, were included in the draft Bill as published in July 2017.

CONSOLIDATION

1.22 As explained in the main consultation, the Sentencing Code will take the form of a consolidation Bill. It will therefore proceed through the consolidation process.[20] This decision was taken in part to reduce the burden on valuable Parliamentary time, and to maximise its prospects of enactment. The process of consolidation is described by *Craies on Legislation* as:

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19 For a full list of the provisions subject to this consultation, see paragraph 2.2 below.

20 See The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) para 2.9 for more detail.

> [The replacement of] the existing law on a particular matter with a new Act which makes no substantive change but presents the entire material in a newly organised structure and in language that is both modern and internally consistent.[21]

1.23 A consolidation Bill combines a number of existing Acts of Parliament on the same subject into a single Act so as to improve the accessibility, clarity and certainty of the law without altering its substance or effect.[22] Drafting the Sentencing Code as a consolidation Bill allows it to take advantage of the special procedure by which such Bills are enacted. This procedure takes up minimal time in the debating chambers of the Houses of Parliament, with parliamentary scrutiny instead provided by a Joint Committee of the two Houses.[23] This is a standard procedure for consolidation Bills; full debate in Parliament is not necessary because the provisions being enacted are all ones that have previously been subject to Parliamentary debate in the course of their original enactment, and a consolidation Bill cannot effect policy reform.

1.24 This procedure means there are limits on the extent of the reforms that can be achieved by the Sentencing Code. The Sentencing Code will not codify the common law relating to sentencing or enact policy reform of the law in this area as was originally contemplated as part of this project. This means that, for example, amending maximum sentences or minimum sentences, repealing or significantly amending the availability of sentencing orders and interfering with judicial discretion are outside of the scope of the project. As noted at paragraph 1.8 above, such changes fall outside our terms of reference and could not in any event have formed part of the project.

1.25 The Sentencing Code is not, however, a *mere* consolidation of the law on sentencing. As we have already set out, it will go beyond mere consolidation by implementing the "clean sweep" of historic legislation, reflecting the recommendations made in the transition report.[24] This will significantly simplify the sentencing process, resulting in increased efficiency and fewer errors.[25] Further, the Sentencing Code will make a number of streamlining changes in the interests of clarity and certainty. For example, it will improve the language used throughout the law and for the first time create a coherent structure for the law of sentencing procedure.

1.26 To achieve this in a consolidation Bill the Sentencing Code will require two "paving provisions" to be included in a government Bill which will precede the main consolidation: one to give effect to the "clean sweep" of historic sentencing law; and another to provide the Secretary of State with the power to make a number of pre-consolidation amendments to the law to enable the consolidation to proceed. Any pre-

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21 D Greenberg, *Craies on Legislation* (11th ed, 2017) para 1.9.1.

22 Form and Accessibility of the Law Applicable in Wales: A Consultation Paper (2015) Law Commission Consultation Paper No 223, paras 7.11-7.15.

23 The Joint Committee on Consolidation Bills. For more information, see http://www.parliament.uk/business/committees/committees-a-z/joint-select/consolidation-committee/ (last visited 1 June 2017); D Greenberg, *Craies on Legislation* (11th ed 2017) paras 5.3.1-5.3.4; and Form and Accessibility of the Law Applicable in Wales: A Consultation Paper (2015) Law Commission Consultation Paper No 223, paras 7.11-7.15.

24 *A New Sentencing Code for England and Wales* (2016) Law Com No 365.

25 The benefits of the clean sweep are explored in more detail in The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 3.1 to 3.58.

consolidation amendments made to the law under such powers will be limited to minor streamlining and tidying changes that are in the interests of the consolidation of sentencing law. Again, this is entirely standard procedure for a consolidation Bill.

CONSULTATION

1.27 The main consultation paper dealt with certain provisions applicable to children and young persons such as committals for sentence, remittal to the youth court, various forms of detention and the general provisions applicable to children and young persons under the age of 18.

1.28 As noted earlier in this chapter, certain provisions were deliberately omitted from that consultation and draft Bill. This was because at the time of its publication it was unclear whether new legislation was imminent to implement recommendations from the Charlie Taylor Review of the Youth Justice System in England and Wales. The provisions omitted from the main consultation were those relating to:

(1) Referral Orders;

(2) Reparation Orders;

(3) Orders capable of being imposed upon parents or guardians consequent on a finding of guilt in relation to a child or young person for whom they have parental responsibility;

(4) Youth Rehabilitation Orders; and

(5) Detention and Training Orders.

1.29 This consultation invites views on the re-drafted versions of those provisions which we intend to incorporate into the Code. We invite consultees to scrutinise closely the draft provisions, checking for any errors or omissions. We also encourage readers to engage with the accompanying explanatory material in Chapter 2 of this consultation paper and the consultation questions it contains. Additionally, we welcome views on any aspect of those provisions in relation to their structure, clarity and ease of use. We are not, however, seeking views on the policy underlying those provisions as this is beyond the scope of the project, as outlined at 1.23 above.

1.30 Chapter 2 of this consultation paper discusses the re-drafted provisions relating to the sentencing of children and young persons, their structure and place in the Sentencing Code and the decisions that have been taken in their re-drafting. It also asks a number of consultation questions on specific proposed technical amendments to the provisions.

1.31 There are two appendices to this consultation paper:

(1) Appendix 1 is a table explaining the pre-consolidation amendments that have been made to these provisions with which this consultation is concerned.

(2) Appendix 2 contains the full Sentencing Code as published in July 2017 (with some minor amendments) and the re-drafted provisions concerning the sentencing of children and young persons which are the subject of this consultation; and

1.32 Consultation on the provisions concerning the sentencing of children and young persons will be open between 23 March 2018 and 27 April 2018. The short consultation period recognises the limited material on which we are seeking consultees' views and the limited nature of the policy change involved in the new drafting. It also reflects the need to give Parliamentary Counsel sufficient time to amend the draft Code following consultees' views prior to the publication of the Report and full Code in Summer 2018. This short consultation supplements the primary consultation on the draft Sentencing Code which was open for a six-month period from 27 July 2017 to 26 January 2018.

THE CRIMINAL TEAM MEMBERS WORKING ON THE PROJECT

1.33 The following members of the criminal law team have worked on this consultation paper: David Connolly (team manager); Lyndon Harris (team lawyer); and Sebastian Walker (research assistant).

1.34 We are grateful to the Office of the Parliamentary Counsel who have been responsible for preparing the draft Sentencing Code.

Chapter 2: The draft provisions

2.1 Most of the draft provisions that make up the subject of this consultation paper will be located in the Third Group of Parts of the Sentencing Code Bill (Parts 6 to 10). This is because the majority of the relevant provisions are primary disposals for a sentencing court. Additionally, there are provisions which apply to adults and children and young persons located in other parts of the Code. Below we list all of the provisions which were not consulted on in the main consultation and which apply specifically to children and young persons. Those included in the main consultation were either highly unlikely to be affected by the Charlie Taylor Review or were variants of equivalent sentencing provisions applicable to adults. The provisions subject to consultation in this exercise are therefore those which only apply to children and young persons and which appeared likely to be affected by the Charlie Taylor Review.

2.2 The provisions subject to this consultation are:

(1) Clause 35(4) (financial circumstances orders)

(2) Clause 42(4) (statutory surcharge)

(3) Clauses 80 to 105 (referral orders)

(4) Clauses 106 to 113 (reparation orders)

(5) Clause 125 (payment of fines by parents/guardians)

(6) Clause 136 (limit on amount of compensation order in magistrates' court)

(7) Clause 137 (payment of compensation orders by parents/guardians)

(8) Clauses 164 to 190 (youth rehabilitation orders)

(9) Clauses 226 to 241 (detention and training orders)

(10) Clauses 340 to 350 (parenting orders)

(11) Clauses 351 and 352 (binding over of parent or guardian)

(12) Clauses 355 to 357 (payment of fine, costs, surcharge or compensation by parents/guardians)

(13) Clauses 360 to 362 (provisions concerning warrants, remands and adjournments in relation to further proceedings under the Code)

(14) Schedule 3 (youth offender contracts)

(15) Schedule 4 (referral orders: further court proceedings)

(16) Schedule 5 (reparation orders: revocation and amendment of reparation orders)

(17) Schedule 6 (youth rehabilitation orders: requirements)

(18) Schedule 7 (youth rehabilitation orders: breach, revocation and amendment)

(19) Schedule 8 (youth rehabilitation orders: transfer to Northern Ireland)

(20) Schedule 12 (detention and training orders: breach of supervision)

2.3 In this Chapter we discuss how the various provisions have been drafted and structured and detail some of the key decisions made in the drafting process. We also ask a number of consultation questions.

2.4 As with the main consultation, however, we are also seeking feedback on how these provisions have been structured, and their position within the Sentencing Code, and whether the provisions reflect the current law, bearing in mind those pre-consolidation amendments that have been proposed, and the effect of the clean sweep.

Consultation Question 1.

Do consultees agree that the draft provisions in Appendix 2 reflect the current law in relation to sentencing orders concerning the sentencing of children and young persons, bearing in mind the pre-consolidation amendments that have been proposed, and the effect of the clean sweep?

RE-SENTENCING

2.5 The most significant amendment that has been made to the sentencing provisions concerning children and young persons relates to the powers of the court to re-sentence those who have breached previously imposed sentencing orders or have committed a criminal offence during the currency of such an order. In the main consultation we noted that we had amended the powers to re-sentence community orders in the Sentencing Code to provide greater consistency to the courts' powers. In particular we stated that the Sentencing Code would ensure that where an offender serving a community order is re-sentenced under the Sentencing Code,[26] the court will have the powers under the Code as at the time of the re-sentencing rather than being limited to the powers it had at the time of the original sentencing hearing.[27] This follows the policy of the clean sweep – that courts wherever possible should be applying the modern law of sentencing and not needing to make reference to historic versions of those provisions. While this will in most cases have little or no impact, where there is a change in the law, for instance, the repeal and replacement of a requirement under a community order, this policy removes the need for the court to refer to historic versions of legislation which have been repealed but saved for older cases. This is therefore an application of our

[26] Where the original order was imposed for an offence for which the offender was convicted on or after the commencement of the Code, see The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) Chapter 4.

[27] See The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 7.11 to 7.15.

clean sweep commencement policy. The position for children and young persons, however, is more complex. Generally, the current law directs the re-sentencing court to use the powers that were available when the child or young person was first sentenced. This also ensures that when being re-sentenced, the child or young person is treated as if at the age they were when first sentenced. Our proposal to substitute the powers for those available to a sentencing court at the date of re-sentencing would, without more, require the re-sentencing court to re-sentence the offender by treating them as their age at the re-sentencing hearing. That is an undesirable outcome and so we are introducing an additional element to ensure that the offender is re-sentenced as at their age at the original sentencing hearing.

2.6 There are two ways in which an offender can breach an order: (1) failing to comply with the requirements of the order, for instance a curfew imposed under a youth rehabilitation order; and (2) committing another offence during the currency of the order. In both cases we are only concerned with the exercise of the power to amend the order or to re-sentence the offender for the original offence: where the breach has been triggered by the commission of a new offence that offence will be sentenced under the Sentencing Code as normal.

2.7 There are principally three variables to consider when determining the policy for re-sentencing children and young persons who have breached a previously imposed sentence:

(1) whether the law is that applicable at the original sentencing hearing or the re-sentencing hearing ("the temporal source");

(2) whether, for the purposes of re-sentencing, the person is dealt with as at their age at the date of the re-sentencing hearing, or as if still the age they were at the date of conviction ("the age of the offender"); and

(3) whether the court's powers are those of the convicting court or the re-sentencing court ("the jurisdictional source").

2.8 In relation to the first variable, namely the temporal source of the courts' powers, the Code approaches the issue of re-sentencing of adults by providing that the powers available to the court are those available to a sentencing court at the date of the breach hearing. This is in line with the approach taken in the Code generally, namely that a re-sentencing court should not have to make reference to historic layers of sentencing law; to be required to do so would undermine the clean sweep policy. Again, this may not be material in many cases, however in some cases it can alter the availability of a particular sentence, for instance where the person has crossed a relevant age threshold or where there has been a change in the law of sentencing procedure.

2.9 The re-sentencing provisions concerning children and young persons, subject to one exception, provide the re-sentencing court (with minor variations) with the power to deal with the offender, for the offence in respect of which the order was made, in any way in which the court could *originally* have dealt with the child or young person for that

offence.[28] The exception is the power under section 13 of the Powers of Criminal Courts (Sentencing) Act 2000 to re-sentence an offender where they commit a further offence during the period of a conditional discharge. Section 13 provides the court with the power to 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 had the court *just* convicted the offender of the offence.

2.10 Save for that exception, the effect of the current law is that where any amendments have been made to the provisions relating to those orders between the original conviction and the re-sentencing exercise, the more modern law, i.e. the law at the date of the breach hearing, as amended is not available upon re-sentencing. For example, if a new kind of youth rehabilitation order requirement was introduced between the date of the original conviction and the date of re-sentencing – that requirement could not be introduced on re-sentencing under the current law, as it was not available to the court at the time of the original sentencing hearing.

2.11 In order to be consistent with the clean sweep policy, the Sentencing Code amends these provisions so that in all cases the court has the powers it would have if the offender had *just* been convicted by or before them. For example, if a new youth rehabilitation requirement were introduced between the date of the original conviction and the date of re-sentencing, that requirement could be imposed as part of a youth rehabilitation order made on re-sentencing, notwithstanding that the requirement was not available the original sentencing court. Further, the requirement which was previously, but no longer, available could not be imposed at the re-sentencing hearing.

2.12 In relation to the second variable, namely the age of the offender for the purposes of re-sentencing, the clear policy underpinning the current law is that young offenders who have breached sentencing orders should be dealt with for the breach as though they are the age at which the original sentence was imposed. This can be justified by reference to the general approach taken to the sentencing of children and young persons, that sentences should be restorative, promote reintegration, and recognise the diminished culpability of children and young persons; and that children and young persons should be given an opportunity to address their behaviour – but not penalised by the imposition of adult penalties because they failed to.[29] It further reflects the general approach taken to the sentencing of children and young persons by the criminal justice system to changes of age: that the fact that an offender has crossed a relevant age threshold between the commission of the offence and their sentencing should not prevent their sentencing from being informed by their age and relative youth at the time of the offence.[30]

2.13 In many cases, this distinction may not be material owing to the short time period which has elapsed between the date of conviction and the date of the breach hearing: the court's sentencing powers will only be affected when an offender crosses a relevant

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28 See paragraphs 5(4) and (5), and 14(3) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000; and paragraphs 6(2)(c), 8(2)(c), 11(2)(b), 12(2)(b), 16(4)(b), 18(4) and 19(3) of Schedule 2 to the Criminal Justice and Immigration Act 2008.

29 For more on the principles relevant to the sentencing of children and young persons, see Sentencing Council, *Sentencing Children and Young People: Definitive Guideline* (1 June 2017).

30 See *R v Bowker* [2008] 1 Cr. App. R. (S.) 72, [2007] EWCA Crim 1608.

age threshold (in all cases this requires the offender's birthday to fall between the date of conviction and the date of the breach hearing). In some cases, however, this can have significant effects, for example, affecting the type of custodial sentence that may be imposed, or even whether a custodial sentence is available.

2.14 As we indicated above, we are minded to amend the re-sentencing provisions concerning the sentencing of children and young persons; we propose to amend the temporal source so that they provide the court with the powers it would have if the offender had *just* been convicted by or before that court. Without further action however, this would have unintended consequences. By providing the court with the powers it would have if the offender had *just* been convicted, the offender is to be treated for the purposes of the re-sentencing as if they were convicted at their age at the date of re-sentencing (rather than by reference to their age at their original conviction as under the current law). For example, where an offender aged 16 or 17 at the original conviction subsequently breaches the order imposed and is dealt with for the breach after they have attained the age of 18, this would have the effect of treating the young person as an adult for the purposes of determining the court's sentencing powers in respect of the breach. That would have the effect of, for example, making a youth rehabilitation order unavailable and making a community order available: the converse of the situation at the original sentencing hearing. That is clearly undesirable and would represent a significant change in the law.

2.15 The question then arises as to how the Sentencing Code should deal with offenders who have crossed a relevant age threshold between conviction and a hearing at which they are to be re-sentenced. Many of the provisions concerning the sentencing of children and young persons are, in the current law, drafted on the basis that re-sentencing and punishment for breach hearings will be conducted by reference to the age of the offender at the date of the offender's conviction, rather than their age at the date of the re-sentencing. For example, the powers to re-sentence an offender for wilfully and persistently failing to comply with a youth rehabilitation order allow the court to impose a youth rehabilitation order with intensive supervision and surveillance; in the case of a particularly persistent offender, a four month detention and training order may be imposed, even where the offence is not itself punishable with imprisonment.[31] Similarly, sections 104(5) and 105(2) of the Powers of Criminal Courts (Sentencing) Act 2000 allow the courts to order further youth detention where an offender subject to a detention and training order breaches their supervision requirement or commits a further offence during the currency of the order. This is so even where the offender is now aged 18 or over and such a sentence would not otherwise be available.

2.16 If the re-sentencing powers for children and young persons were adjusted so that offenders were re-sentenced by reference to their age at that re-sentencing hearing, rather than their age at conviction significant consequential re-drafting and policy changes would have to be made. These changes would be inappropriate in the context of the Sentencing Code project and its status as a consolidation and would be a matter for Government and subsequently, Parliament, to consider.

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[31] See paragraphs 6(2)(c), and (12) to (15), and 8(2)(c) and (11) to (14) of Schedule 2 to the Criminal Justice and Immigration Act 2008.

2.17 Accordingly, all re-sentencing provisions concerning children and young persons have been amended so that the Code will provide the court with the powers it would have if the offender had just been convicted by or before that court *at the age at which the offender was originally convicted for the offence*.

2.18 In relation to the third variable, namely the jurisdictional source of the re-sentencing court's powers, the current law provides for the powers on re-sentencing to be those of the court which made the original order. The difference here is that the youth court has different sentencing powers to the Crown Court; for example, the youth court can impose a custodial sentence of up to two years, and can impose a referral order, where the Crown Court can impose a custodial sentence of any length (up to the maximum available for the offence) and cannot impose a referral order. This may be material where a case has moved from the magistrates' court to the Crown Court between the conviction (the convicting court) and re-sentencing (the re-sentencing court). As the child or young person is being re-sentenced for their offence, it would not be fair to provide the enlarged powers of the Crown Court upon re-sentencing where the original order was made by the youth court, or in exercise of magistrates' court powers. We do not propose to change this in the Code.

2.19 The change can be illustrated by looking at some examples of the present re-sentencing powers, compared to the re-sentencing powers as re-drafted in the Sentencing Code.

Example 1

Take an offender convicted on 1 July 2020 (after the commencement of the Sentencing Code) at the age of 14, sentenced on 8 July 2020 to a youth rehabilitation order, and who appears before the court to be dealt with for the breach of that youth rehabilitation order on 8 July 2021 at age 15.

Between the original sentencing hearing, and the breach of the youth rehabilitation order, a new youth rehabilitation requirement is introduced – allowing an offender subject to a youth rehabilitation order to be required to submit to regular alcohol testing.

Under the current law the court cannot impose this new requirement when re-sentencing the offender, as the court is restricted to exercising the original sentencing courts powers, and at the original sentencing hearing this requirement was not available.

Under the Sentencing Code, however, the court would be able to impose this new requirement, as it would be provided with the same sentencing powers as if the offender had just been convicted by or before the re-sentencing court.

In both situations, however, that the offender is now age 15, rather than 14, will be ignored. The court, both before and after the Sentencing Code, will only have the powers they would have if the offender was aged 14. Accordingly, a detention and training order, for example, will still only be available if the offender is, in the opinion of the court, a persistent offender.[32]

[32] See section 100(2) of the Powers of Criminal Courts (Sentencing) Act 2000.

Before the Sentencing Code			
Power to re-sentence	**Temporal source**	**Offender's age**	**Jurisdictional source**
Referral orders	Powers available at conviction	Age at conviction	Convicting court
Reparation orders	Powers available at conviction	Age at conviction	Convicting court
Youth rehabilitation orders	Powers available at conviction	Age at conviction	Convicting court
Conditional discharge	Powers available at re-sentencing	Age at re-sentencing	Convicting court

After the Sentencing Code			
Power to re-sentence	**Temporal source**	**Offender's age**	**Jurisdictional source**
Referral orders	Powers available at re-sentencing	Age at conviction	Convicting court
Reparation orders	Powers available at re-sentencing	Age at conviction	Convicting court
Youth rehabilitation orders	Powers available at re-sentencing	Age at conviction	Convicting court
Conditional discharge	Powers available at re-sentencing	Age at conviction	Convicting court

Re-sentencing of persons convicted as adults

2.20 The re-sentencing powers for persons convicted as adults in the draft Sentencing Code result in offenders being re-sentenced as if they were convicted at their age at the re-sentencing hearing, not their age when they were convicted for the original offence. It would be possible for us to bring the adult powers at re-sentencing into line with those for children and young persons as outlined above. For adults, however, any change in the offender's age (i.e. the difference between sentencing the offender as at the age at the original conviction or as at the age at the re-sentencing hearing) has far less impact. It affects only the availability of certain custodial sentences (whether an offender receives a sentence of detention in a young offender institution or imprisonment) and attendance centre requirements.

2.21 Further, the current law, in contrast to that relating to children and young persons, is not consistent in how it treats adults on re-sentencing. A number of the powers to re-sentence adults already provide the court with their powers as if the offender had just been convicted by them – with no saving for any difference of age. This is arguably supported by the policy reasons for not making attendance centre requirements available for those aged over 25: they are aimed at young offenders and their needs and are ill-suited to adults aged over 25.

2.22 Other provisions also result in those offenders convicted aged under 21, but over 18, being treated as if over 21 in the progression of their sentence. See section 99 of the Powers of Criminal Courts (Sentencing) Act 2000 which gives the Secretary of State the power to deem an offender serving a sentence of detention in a young offender institution to be serving a sentence of imprisonment when they turn 21.

2.23 Accordingly, we have concluded that adults ought to be dealt with at the breach hearing by reference to their age at the breach hearing; this is in contrast to the approach taken in respect of children and young persons. To do otherwise, we consider, would create an unnecessary level of complexity for adult re-sentencing cases. It would make the provisions relating to adult re-sentencing more difficult to read, and would require the court to continually check that they have adjusted their powers for the age the adult was at their original conviction even where the practical difference is minimal. This could potentially lead to an increased number of technical errors.

2.24 The most frequent example would be offenders who were convicted aged 18 to 20 but re-sentenced to custody aged 21 or over. The court would need to remember to sentence such offenders to detention in a young offender institution, rather than imprisonment. If they did not, an appeal would be needed to correct this technical error notwithstanding that the effect of section 99 of the Powers of Criminal Courts (Sentencing) Act 2000 is that the sentences are for all practical effects and purposes the same.

AMENDMENT

2.25 A related issue is that concerning the powers to amend orders imposed on conviction. Powers to amend orders in the current law, just as with powers to re-sentence the offender, frequently vary and are located across different statutes. Some provide the court with the power to amend the order to impose anything which the court could include if it were now making the order. Others allow the court only to amend the order to impose anything which could have been imposed at the time of making the order. In this respect the same temporal, age, and jurisdictional issues arise as with re-sentencing[33] and we propose to adopt the same solutions:

(1) that the court when amending an order imposed on a child or young person can amend the order exercising any of its sentencing powers as at the amendment

[33] For more on these issues see paragraph 2.7 above.

hearing but as if the offender was still the age they were at their original conviction; and

(2) that the court when amending an adult order has its modern sentencing powers, and does not need to consider the age of the offender at the original conviction.

WARRANTS, REMANDS AND ADJOURNMENT

2.26 In the current law there is an undesirable variation and ambiguity in the provisions relating to:

(1) the arrest of children and young people where a warrant has been issued in connection with a sentence imposed upon them (because they have failed to comply with it, or have failed to attend a hearing in connection with it); and

(2) the place to which children and young people are remanded where a hearing relating to a sentence imposed upon them is adjourned.

2.27 In particular, there is variation and ambiguity as to:

(1) whether a child or young person may be taken to a "place of safety" where there is a need to detain them before they can be brought before the relevant court;

(2) where a child or young person may be remanded to if, on their arrest, they cannot be brought before the relevant court immediately; and

(3) where a child or young person may be remanded to, where the court adjourns a hearing relating to a previously imposed sentence.

2.28 These variations and ambiguities are particularly concerning because the effect of them is that children and young persons may be detained or remanded in places inappropriate for their age, including in some cases prison; and at odds with the general policy of the law in this regard.

2.29 One problem is that in a number of cases there is simply no power for the magistrates' court to remand the offender, to adjourn, or to detain a child or young person in a place of safety.

2.30 A more significant issue stems from whether section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 applies to children and young persons who are remanded on their arrest, where they cannot be brought before the relevant court immediately; or where the court adjourns a hearing relating to a previously imposed sentence.

2.31 Section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 applies where:

(1) a court deals with a child or young person charged with or convicted of one or more offences by remanding the child or young person; and

(2) the child or young person is not released on bail.

2.32 Where section 91 applies, the remand of a child or young person will be to local authority accommodation, unless the conditions in section 91(4) are met. If those conditions are met the child may instead be remanded to youth detention accommodation (in accordance with section 102 of that Act). Where section 91 applies, there is no need for the legislation to make explicit provision as to the place of custody where a child or young person is remanded, unless there is an intention to achieve a different policy objective.

2.33 In all the cases discussed here the child or young person has been convicted of an offence. However, it is not clear whether section 91 applies to hearings resulting from a failure to comply with the sentence imposed upon the child or young person for their conviction (rather than from the conviction itself).

2.34 A number of the provisions seem to proceed on the basis that section 91 does not apply. These provide explicit powers to remand an offender to local authority accommodation (and modify section 21 of the Children Act 1989 to ensure that the local authority provides such accommodation). Such a provision would have been unnecessary if section 91 (or its predecessor section 23 of the Children and Young Persons Act 1969) was considered to apply. The provisions do not adopt a consistent approach here however.

2.35 Further problems arise from the fact that some of the powers of remand are themselves explicit powers to remand an offender to local authority accommodation. They would therefore seem to preclude the remand of a child or young person to youth detention accommodation (in accordance with section 102 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).

2.36 The result is that in a number of cases there is, at the very least, ambiguity as to whether section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 applies.

2.37 Proceeding on the basis that section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 does not apply to these cases, the current position is as follows:

Order	**Provision for place of safety on arrest**	**Remand where cannot be brought before relevant court**	**Remand on adjournment**
Youth Rehabilitation Order	Yes[34]	Remand to local authority accommodation only[35]	Remand in custody (Young Offender Institution; Secure

[34] Paragraph 21(2)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2008.

[35] Paragraph 21(7)(a)(ii) and (9)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2008 (upon which section 128 of the Magistrates' Courts Act 1980 operates to provide a power to remand on bail also)

			Training College; and Secure College) only[36]
Referral Order	Yes[37]	Remand to local authority accommodation, or custody (Young Offender Institution; Secure Training College; and Secure College)[38]	Remand in custody (Young Offender Institution; Secure Training College; and Secure College) only[39]
Reparation Order	Yes[40]	Remand to local authority accommodation only[41]	Remand in custody (Young Offender Institution; Secure Training College; and Secure College) only[42]
Conditional Discharge	No	No power provided for remand	No power provided to remand or adjourn
Detention and Training Order	No	No power provided for remand	No power provided to remand or adjourn[43]

2.38 The result is that in some cases, a child or young person could be remanded only to custody, rather than local authority accommodation, or that an offender who poses a significant risk could not be remanded to youth detention accommodation. This is inconsistent with what appears to be the policy underpinning section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

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36 Paragraph 22(2)(b) of Schedule 2 to the Criminal Justice and Immigration Act 2008 (upon which section 128 of the Magistrates' Courts Act 1980 operates to provide a power to remand in custody – custody is defined for youths in section 43 of the Prison Act 1952).

37 Paragraph 4(1) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000.

38 Paragraph 4(3) to (5) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (applying section 128 of the Magistrates' Courts Act 1980 which provides a power to remand in custody – custody is defined for youths in section 43 of the Prison Act 1952).

39 Paragraph 9ZA(2)(b) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 (upon which section 128 of the Magistrates' Courts Act 1980 operates to provide a power to remand in custody – custody is defined for youths in section 43 of the Prison Act 1952).

40 Paragraph 6(4)(a) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000.

41 Paragraph 6(5)(b) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000.

42 Paragraph 6A(2)(b) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 (upon which section 128 of the Magistrates' Courts Act 1980 operates to provide a power to remand in custody – custody is defined for youths in section 43 of the Prison Act 1952).

2.39 Accordingly, we propose to amend the position in the following way:

Order	Provision for place of safety on arrest	Remand where cannot be brought before relevant court	Remand on adjournment
Youth Rehabilitation Order	Yes	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances
Referral Order	Yes	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances
Reparation Order	Yes	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances
Conditional Discharge	Yes	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances
Detention and Training Order	Yes	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances	S. 91 LASPOA 2012 applies: remand to local authority accommodation, but youth detention accommodation in exceptional circumstances

2.40 This will ensure that all children and young people dealt with by the criminal justice system are remanded to local authority accommodation, and only in exceptional circumstances to youth detention accommodation in accordance with the policy

underpinning section 91. It also allows for the significant simplification of the provisions relating to arrest under a warrant, adjournments and the place of remand for children and young persons subject to youth sentences.

2.41 Clauses 360 to 362 provide an illustration of this approach although they have not yet been extended to hearings as a result of a conditional discharge or a detention and training order.

REFERRAL ORDERS

2.42 Part 6 of the Sentencing Code deals with orders relating to conduct. Chapter 1 of this Part contains those provisions relating to the availability, and effect of, referral orders. Schedule 3 contains those provisions relating to the terms of a programme of behaviour agreed between an offender and a youth offender panel, and the requirements such programmes may include. Schedule 4 contains those provisions relating to further court proceedings resulting from referral orders.

2.43 This Chapter reproduces those provisions currently found in sections 16 to 32 of the Powers of Criminal Courts (Sentencing) Act 2000 and Schedule 1 to that Act. While the Chapter substantially re-structures those provisions, and makes some streamlining changes, in most cases these changes do not affect the legal effect of the provision. We nevertheless believe that they improve the clarity and accessibility of the law, and provide the Sentencing Code with valuable consistency. Where particularly notable changes have been made, these are discussed in the following paragraphs.

Consultation Question 2.

Do consultees agree with the proposed structure of the clauses relating to referral orders (clauses 80 to 105 and Schedules 3 and 4?

Power and duties to impose referral orders

2.44 Clause 81 sets out the conditions that must be met before a referral order is available – removing the concept of "discretionary referral conditions". We consider that the distinction between conditions that must be met before the provisions relating to referral orders are applicable to a court, and the discretionary referral conditions that must be satisfied before the court can make a referral order was unhelpful and confusing. The concept of "compulsory referral conditions" is retained in clause 82. These changes do not alter the effect of the law.

2.45 A number of more minor changes have been made to the language and structure of the provisions in this Chapter to provide greater clarity as to the effect of the law, and to ensure consistency throughout the Sentencing Code. Again, these make no substantive change.

Youth offender contracts

2.46 Clause 93 gives effect to Schedule 3 which makes provision as to the terms of a programme of behaviour agreed between an offender and a youth offender panel, and

the requirements such programmes may include. These provisions, were previously found in section 23(2) to (4) of the Powers of Criminal Courts (Sentencing) Act 2000. They have been moved into their own Schedule to provide consistency with the other provisions relating to available requirements in the Sentencing Code such as Schedule 6 (those requirements available as part of a youth rehabilitation order) and Schedule 9 (those requirements available as part of a community order or suspended sentence order). It is hoped that the re-drafting will also make the relevant provisions clearer, as well as making the main provisions relating to referral orders simpler to understand by de-cluttering the main part of the Sentencing Code.

Further court proceedings

2.47 Clause 101 gives effect to Schedule 3 which makes provision for the procedure to be followed on a referral of an offender or an offender's parent or guardian back to court by a youth offender panel, and the further conviction of an offender subject to a referral order. This Schedule rewrites those provisions that were previously found in Schedule 1 of the Powers of Criminal Courts (Sentencing) Act 2000. What were Parts 1 and 1ZA of that Schedule have been merged in the re-drafting. While originally the two parts served different purposes – Part 1ZA dealing with referrals under section 27B of the Powers of Criminal Courts (Sentencing) Act 2000 for the purpose of the extension of the order; and Part 1 dealing with all other referrals back to the appropriate court for the purpose of revoking and re-sentencing the order – the introduction of paragraph 6A (the power to impose a fine or extend a referral order) into Part 1 removed much of justification for this structural distinction.

2.48 The powers to re-sentence an offender subject to a referral order where they are referred back to the court by the youth offender panel, or convicted of a further offence, currently in paragraphs 5(4) and (5), and 14(3) of Schedule 1 to the Powers of Criminal Courts (Sentencing) Act 2000 have both been amended. In line with our re-sentencing policy discussed at paragraph 2.5 above, these powers have been amended so that offenders will be re-sentenced using the courts modern powers, rather than those that existed at the time of the conviction, but are still re-sentenced by reference to their age at the date of the original conviction.

PARENTAL ORDERS

2.49 The current law provides for a number of orders capable of being imposed upon parents or guardians consequent on a finding of guilt in relation to a child or young person for whom they have parental responsibility. These are:

(1) parental payment orders (sections 136 to 138 of the Powers of Criminal Courts (Sentencing) Act 2000);

(2) parental bind overs (section 150 of the Powers of Criminal Courts (Sentencing) Act 2000); and

(3) parenting orders (sections 8 to 10 of the Crime and Disorder Act 1998).

Parental payment orders

2.50 The provisions relating to parental payment orders, currently contained in sections 136 to 138 of the Powers of Criminal Courts (Sentencing) Act 2000, have been significantly re-structured in the Sentencing Code.

2.51 Section 136 of the Powers of Criminal Courts (Sentencing) Act 2000 provides the court with the power to make a financial circumstances order in respect of a parent or guardian where the court has the power to order the parent or guardian to pay a financial penalty under section 137 of that Act. This power has been re-drafted in clauses 35 and 36 in Chapter 1 of Part 3. These clauses also contain the general power to make a financial circumstances order in relation to an offender before the court.

2.52 Section 137 of the Powers of Criminal Courts (Sentencing) Act 2000 currently provides the court with the power, or duty, to make a parental payment order where the court imposes a fine, costs or compensation order on a child or young person who has been convicted of an offence. A parental payment order is an order that the financial penalty should be paid by the parent or guardian of the child or young person, rather than the child or young person themselves. Section 137 also provides the power, or duty, to make a parental payment order where a fine or surcharge is ordered to be paid under a number of provisions listed in subsections (1A) and (2) of that section. However, there are no signposts or indications to the court in those provisions to the existence of this power, or duty.

2.53 The provision has been re-drafted so that clause 355 provides that the power, or duty, to make a parental payment order applies wherever an enactment provides that it does. An illustration of how the new clause works is provided by its application to compensation orders. Clause 137 provides that the power, or duty, to make a parental payment order applies where a child or young person is convicted of an offence, and sets out the relevant modifications that apply to the making of a compensation order in such a case. The same approach is adopted for fines in clause 125, for surcharges in clause 42(4), and for costs in clause 356. Provisions have also been inserted into all the relevant powers listed in subsection (2) of section 137 to that effect (see, for example, paragraph 9 of Schedule 7 and paragraph 2(8) of Schedule 5).

2.54 Clause 357 provides the court with the power to determine financial circumstances for the purposes of an order under clause 355 where a parent or guardian has failed to co-operate with investigations into their financial circumstances. Where the current law applies section 165 of the Criminal Justice Act 2003 with modifications, this provision reproduces the provisions as applied.

Consultation Question 3.

Do consultees consider that the substantial re-drafting of sections 137 and 138 of the Powers of Criminal Courts (Sentencing) Act 2000 makes the effect of the law clearer?

Parental bind overs

2.55 The courts' powers to bind over an offender to keep the peace have only been signposted in the Sentencing Code. While they are often used in the disposal of criminal cases, they can be imposed on any individual who is before the court, including witnesses giving evidence, and complainants.[44] However, the power to bind over a parent or guardian contained in section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 is only exercisable upon the conviction of a person aged under 18, and this provision has accordingly been reproduced in clause 351. A number of minor linguistic changes have been made to this clause to ensure consistency of language in the Sentencing Code and to provide greater clarity.

Parenting orders

2.56 Parenting orders under section 8 of the Crime and Disorder Act 1998 are available when:

(1) a child safety order is made in respect of a child or the court determines on an application under section 12(6) of the Powers of Criminal Courts (Sentencing) Act 2000 that a child has failed to comply with any requirement included in such an order;

(2) a parental compensation order is made in relation to a child's behaviour under section 13A of the Crime and Disorder Act 1998;

(3) an injunction is granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, an order is made under section 22 of that Act or a sexual harm prevention order is made in respect of a child or young person;

(4) a child or young person is convicted of an offence; or

(5) a person is convicted of an offence under section 443 (failure to comply with school attendance order) or section 444 (failure to secure regular attendance at school of registered pupil) of the Education Act 1996.

2.57 Within the scope of the Sentencing Code are those provisions of primary legislation which a court conducting a sentencing exercise would need in order to exercise its functions properly. Civil ancillary orders have been excluded from the Sentencing Code and only those orders available on conviction, a special verdict,[45] and in very limited circumstances, on acquittal[46] are reproduced in the Sentencing Code.[47] Accordingly, in consolidating the provisions relating to children and young persons there were two options. These were to leave all forms of parenting order in the Crime and Disorder Act 1998 and to signpost the power (and duty) to make them in the Sentencing Code; or to

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44 For more detail see The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) para 2.84.

45 Finding of not guilty by reason of insanity, or finding of unfitness to plead and that the accused had done the act or made the omission charged; see sections 4A and 5 of the Criminal Procedure (Insanity) Act 1964.

46 Namely restraining orders under section 5A of the Protection from Harassment Act 1997.

47 For more detail on the scope of the Sentencing Code project see The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) chapter 2.

split the provisions so that parenting orders on the conviction of a child or young person, and on the conviction of an offence under sections 443 and 444 of the Education Act 1996 are reproduced in the Sentencing Code. We have taken the latter approach and have rewritten the provisions relating to parenting orders made under section 8(1)(c) and (d) of the Crime and Disorder Act 1998 in the Sentencing Code. The rationale for this being that it is possible to split these provisions relatively easily, and that it is more helpful to a sentencing court to have the provisions in the Code than merely a signpost.

Consultation Question 4.

Do consultees agree with the decision to re-draft the provisions relating to parenting orders made under section 8(1)(c) and (d) of the Crime and Disorder Act 1998 in the Sentencing Code, rather than to signpost them?

2.58 Part 11 of the Sentencing Code deals with behaviour orders. Chapter 3 of this Part contains the provisions relating to parenting orders made under section 8(1)(c) and (d) of the Crime and Disorder Act 1998. These provisions were previously contained in sections 8 to 10 of the Crime and Disorder Act 1998. Clause 340 provides the definition of a parenting order. Clauses 341, 342, 343 and 345 deal with parenting orders for children and young persons convicted under age 18, parenting orders made where criminal behaviour orders made on a child or young person under age 18, parenting order made where parent or guardian fails to attend a meeting of a youth offender panel, and parenting orders for parents or those with parental responsibility or care of the child or young person who are convicted of offences under section 443 or 444 of the Education Act 1996 separately. These clauses set out the availability of, and duty to order, a parenting order and the detail of what such an order can include. While this involves some replication it is hoped it makes the provision for each easier to read and understand by making it capable of being understood on its own terms. Clauses 346 to 350 deal with the procedure for making a parenting order, the ability to discharge and revoke such orders, and their enforcement.

2.59 We have provisionally made a pre-consolidation amendment to repeal section 10(5) of the Crime and Disorder Act 1998 which creates an express power to appeal against a parenting order made against a parent or guardian for an offence under section 443 or 444 of the Education Act 1996. The wording of this subsection implies that such an order would not constitute a sentence passed on him or her for the offence. The disparity between the existence of the express provision in this context, but not in relation to other behaviour orders in the Sentencing Code such as criminal behaviour orders, would create an implication that such orders are not sentences and that there is no right of appeal against them. We consider that a parenting order made by virtue of section 8(1)(d) of the Crime and Disorder Act 1998 would clearly constitute a sentence for the purposes of section 108 of the Magistrates' Courts Act 1980 (right of appeal against sentence from the magistrates' court to the Crown Court) and section 9 of the Criminal Appeal Act 1968 (right of appeal against sentence from the Crown Court to the Court of Appeal). This express right of appeal can therefore be safely omitted without effecting a change to the law. Parenting orders made by virtue of section 8(1)(d) of the Crime and Disorder Act 1998 are, in contrast to orders made under section 8(1)(c), orders made on conviction when dealing with an offender as required by section

108(3) of the Magistrates' Courts Act 1980 and section 50 of the Criminal Appeal Act 1968. In this respect we consider parenting orders are analogous to anti-social behaviour orders made on conviction under section 1C of the Crime and Disorder Act 1998 (now repealed), or financial reporting orders under section 76 of the Serious Organised Crime and Police Act 2005 (now repealed) which were both held by the Court of Appeal in *P*[48] and *Adams*[49] to clearly constitute a sentence for the purposes of appeal provisions.

Consultation Question 5.

Do consultees agree that parenting orders made by virtue of section 8(1)(d) of the Crime and Disorder Act 1998 constitute sentences for the purposes of section 108 of the Magistrates' Courts Act 1980 and section 9 of the Criminal Appeal Act 1968?

REPARATION ORDERS

2.60 Part 6 of the Sentencing Code deals with orders relating to conduct. Chapter 2 of this Part contains those provisions relating to the availability, and making, of reparation orders. Schedule 5 contains those provisions relating to the breach, revocation and amendment of reparation orders.

Imposing reparation orders

2.61 Chapter 2 of Part 9 of the Sentencing Code contains those provisions relating to the availability, and making, of reparation orders. These provisions were previously found in sections 73 and 74 of the Powers of Criminal Courts (Sentencing) Act 2000 and have been substantially re-structured to ensure consistency in the Sentencing Code and to provide greater clarity to users of the provisions.

Reparation orders: breach

2.62 Schedule 5 contains those provisions relating to the breach, revocation and amendment of reparation orders. These provisions were previously contained in paragraphs 2, 5, 6 and 6A of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000. They have been substantially re-structured and streamlined as far as is possible with the other provisions relating to breach of orders in the Sentencing Code.

2.63 The powers to re-sentence an offender subject to a reparation order previously found in paragraph 2(2) and (4) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 have been amended. Under the current law, these provisions provide the court with the power to deal with the offender for the offence that it or the original sentencing court would have had at the date the original sentence was imposed. As discussed at paragraph 2.5 above, these powers to re-sentence have all been amended so that the courts always have their modern sentencing powers – the powers the re-sentencing court or the original sentencing court would have if the offender had just been convicted by or before the re-sentencing court rather than the powers it would have had at the

48 [2004] 2 Cr App R (S) 63, [2004] EWCA Crim 287.

49 [2009] 1 WLR 301, [2008] EWCA Crim 914.

original sentencing hearing. Offenders will still, however, be re-sentenced by reference to their age at conviction.

2.64 In a similar application of the clean sweep principle the powers to amend a reparation order in paragraph 5(1) of Schedule 8 to the Powers of Criminal Courts (Sentencing) Act 2000 have been amended. The courts have been provided with the powers they would have to amend the order if the offender had just been convicted, but at the age at which they were originally convicted.

Consultation Question 6.

Do consultees have any comments on the re-structuring of the provisions relating to reparation orders?

YOUTH REHABILITATION ORDERS

2.65 Part 9 of the Sentencing Code deals with community sentences. Chapter 1 of this Part contains those provisions relating to the availability, and making, of youth rehabilitation orders. Schedule 6 contains those provisions relating to the various requirements that can be imposed as part of a youth rehabilitation order. Schedule 7 contains those provisions relating to the breach, revocation and amendment of youth rehabilitation orders, and the effect of a subsequent conviction for an offender subject to a youth rehabilitation order. Schedule 8 contains those provisions relating to the transfer of a youth rehabilitation order to Northern Ireland.

Imposing youth rehabilitation orders

2.66 Chapter 1 of Part 9 of the Sentencing Code contains those provisions relevant to the availability, and making, of youth rehabilitation orders; youth rehabilitation orders with intensive supervision and surveillance; and youth rehabilitation orders with fostering. These provisions have been significantly re-structured in the drafting to make their effect clearer and to provide them with a logical structure. All provisions relating to the imposition of a youth rehabilitation order are now found in this chapter. The provisions relating to the available requirements under a youth rehabilitation order are in Schedule 6. The provisions relating to the breach, revocation and amendment of youth rehabilitation orders are in Schedule 7. Finally, the provisions relating to the transfer of youth rehabilitation orders to Northern Ireland are in Schedule 8. Previously many of these provisions were split between sections 1 to 8 of the Criminal Justice and Immigration Act 2008 and Parts 1, 3 and 4 of Schedule 1 to that Act.

Consultation Question 7.

Do consultees have any comments on the structure of the re-drafted provisions relating to youth rehabilitation orders?

2.67 Clauses 164, 166 and 167 provide the definitions of youth rehabilitation orders; youth rehabilitation orders with intensive supervision and surveillance; and youth rehabilitation orders with fostering, respectively. Clause 168 provides the conditions that must be met before a youth rehabilitation order is available, and clause 169 provides the additional conditions that must be met before a youth rehabilitation order with intensive supervision and surveillance or fostering can be imposed.

2.68 As noted above, our general rule is that we will not apply the clean sweep to a provision where its effect would be to potentially have resulted in an offender being subject to a more severe penalty than that which was available at the time of the commission of the offence.[50] Under the current law, youth rehabilitation orders are only available to those offenders who committed their offence after 30 November 2009.[51] Because youth rehabilitation orders are available even where the offence for which they are being imposed is not punishable with imprisonment, the result of the general rule appears to be that we cannot apply the clean sweep. However, because the age of criminal responsibility in England and Wales is 10,[52] any offender who committed their offence before 30 November 2009 would now be at least aged 18 when convicted. The Sentencing Code does not therefore need to preserve this transitional provision. Any offender who committed an offence before 30 November 2009 who is convicted after the Sentencing Code is commenced could never have a youth rehabilitation order imposed upon them, as they would be aged 18 or over when convicted.

2.69 In line with the re-drafting of the provisions relating to the available requirements for community orders and suspended sentence orders, clause 165 provides the list of available requirements that can be imposed as part of a youth rehabilitation order. It also provides signposts to where further information is available in relation to a youth rehabilitation requirement, the restrictions on availability and the restrictions or obligations in relation to imposing the requirement.

2.70 Clause 176 is largely a product of the approach taken to re-drafting the duties in section 156 of the Criminal Justice Act 2003 to obtain pre-sentence reports and to take into account all such information about the circumstances of the offence as is available to the court.[53] It is hoped that the re-drafting not only makes these duties more apparent to the courts (and less likely to be forgotten) but that it makes their effect clearer.

2.71 As was noted in the main consultation,[54] sentencing provisions which have been enacted but remain uncommenced have been re-drafted in a separate Schedule in the draft Sentencing Code where they will remain until they are commenced. When commenced, they will be inserted into the body of the Sentencing Code. Accordingly, section 151 of the Criminal Justice Act 2003, as amended by section 11 of the Criminal

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50 See paragraph 1.13 above.

51 By virtue of paragraph 1 of Schedule 27 to the Criminal Justice and Immigration Act 2008 and article 2 of the Criminal Justice and Immigration Act 2008 (Commencement No.13 and Transitory Provision) Order 2009 (SI 2009 No 3074).

52 Section 50 of the Children and Young Persons Act 1933.

53 As to which see The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 5.29 to 5.30.

54 See The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 3.55 to 3.58.

Justice and Immigration Act 2008, and section 161 of the Criminal Justice Act 2003 as they relate to youth rehabilitation orders have not been re-drafted in this Chapter at present. Once they are commenced, however, these provisions will be inserted into the body of the Code.

Youth rehabilitation order requirements

2.72 Schedule 6 of the Sentencing Code contains those provisions relating to the youth rehabilitation requirements that can be imposed as part of a youth rehabilitation order. These provisions were previously found in Part 2 of Schedule 1 to the Criminal Justice and Immigration Act 2008. Wherever possible the requirements have been recast to highlight the matters that the court needs to specify in the order. Minor streamlining and consistency changes have also been made throughout this Schedule.

2.73 The provisions relating to activity requirements have been substantially re-drafted in paragraphs 1 to 9 of Schedule 6 so as to make clearer what must be specified in relation to each type of activity requirement. Similarly, in Part 12 of Schedule 6 the provisions relating to mental health treatment requirements have been recast to make clearer the different types of mental health treatment requirements that can be imposed, and what they entail. This is in line with the re-drafting of such requirements for community orders and suspended sentence orders in Schedule 9.

Consultation Question 8.

Do consultees have any views as to the re-drafting of the provisions concerning the requirements capable of being imposed under a youth rehabilitation order?

Youth rehabilitation orders: breach

2.74 Schedule 7 of the Sentencing Code contains those provisions relating to the breach, revocation and amendment of a youth rehabilitation order, and the effect of a subsequent conviction for an offender subject to a youth rehabilitation order. These provisions were previously found in Schedule 2 to the Criminal Justice and Immigration Act 2008. A number of minor linguistic and streamlining changes have been made to these provisions to make the law clearer and, where appropriate, to ensure consistency with the similar provisions relating to community orders and suspended sentence orders.

2.75 Under paragraphs 6(1) and 8(2) of Schedule 2 to the Criminal Justice and Immigration Act 2008 the court has a discretion as to whether or not to exercise its powers of re-sentencing. This is in contrast to the corresponding provisions for community orders in respect of those aged 18 or over at conviction. We have not sought to change the effect of the law here as the underlying policy reason seems to be to afford the courts more flexibility in how they can respond to a child or young person (in contrast to an adult).

2.76 Under paragraphs 6(2)(a) and 8(2)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2008, a court may deal with an offender who breaches their youth rehabilitation order by ordering them to pay a fine. The maximum fine that can be imposed for the breach of the order is £2500 if the breach of the order occurred on or

after 3 December 2012. If the breach occurred before that date the maximum fine that can be imposed is £250 if the offender is aged under 14, and £1000 if aged 14 or over.[55] As the Sentencing Code will apply only to offenders convicted after its commencement, the clean sweep does not apply to this provision, as no offender can be sentenced under the Code for a breach of an order imposed before it was commenced.[56]

2.77 However, a question arises as to whether or not to apply the clean sweep to paragraph 10(4) of the Criminal Justice and Immigration Act 2008, which provides that any subsequent amendments to the level of fine that can be imposed for a breach of a youth rehabilitation order may not have effect in relation to a youth rehabilitation order made in respect of an offence committed before that amendment. To do so would not constitute the imposition of a greater penalty than that which was available at the time of the commission of the offence as more onerous youth rehabilitation order requirements could always instead be imposed in response to the breach.

2.78 This is evidenced by the approach that was taken with the amendments to the fine level effected by section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. These were applied to any breach of a youth rehabilitation order which took place on or after the date of amendment, regardless of when the offence for which the youth rehabilitation order was imposed was committed.[57] We propose to apply the principles of the clean sweep to paragraph 10(4) of the Criminal Justice and Immigration Act 2008 by adopting the normal approach to commencing amendments to the Sentencing Code (so that any new increase in fine level applies to any conviction on or after the change is brought into force). This will expand the power in paragraph 10(4) of the Criminal Justice and Immigration Act 2008 by allowing any future amendments to apply to any conviction on or after the change is made (rather than only to offences committed on or after the amendment). This would still, however, take a more restrictive approach to change than that which was adopted by section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012[58] and would be Article 7 compliant.

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55 By virtue of SI 2012 No 2906, art 4.

56 See for more detail The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 4.22 to 4.80.

57 See SI 2012 No 2906, art 4.

58 Although of course it would always be open to government to commence the provisions by reference to a trigger event other than conviction.

Example 2

The current maximum fine that can be imposed by the magistrates' court or Crown Court on the breach of a youth rehabilitation order is £2500. If an order was made by the Secretary of State under paragraph 10 of Schedule 2 to the Criminal Justice and Immigration Act 2008 to increase the maximum fine to, for example, £3000 (to reflect a change in the value of money) that order could have effect only for offences committed on or after that amendment.

This means that for offences committed before the amendment the maximum fine would remain £2500, and a £3000 fine would not be available. This would require courts to have reference to historic versions of sentencing law when sentencing an offender for the breach of their youth rehabilitation order, even if the offender was convicted after the commencement of the Sentencing Code. The court would have to have reference to both the date of the commission of the offence and the date of their conviction to determine the law that applies to the offence.

By amending paragraph 10(4) of Schedule 2 to the Criminal Justice and Immigration Act 2008 so that any amendments can have effect for any conviction on or after the amendment, this need to make reference to historic sentencing law is removed in a majority of cases. In any case where the offender was convicted after the amendment the new £3000 maximum would be available, regardless of the date of the commission of the offence. The court would only need to have reference to a single date, the date of the offender's conviction, when applying the Sentencing Code. This greatly simplifies the law.

Consultation Question 9.

Do consultees agree with the decision to amend paragraph 10(4) of the Criminal Justice and Immigration Act 2008 so that any subsequent amendments to the level of fine that can be imposed for a breach of a youth rehabilitation order may have effect in relation to any conviction on or after that amendment?

Powers to re-sentence

2.79 The powers to re-sentence an offender subject to a youth rehabilitation order currently found in paragraphs 6(2)(c), 8(2)(c), 11(2)(b), 12(2)(b), 16(4)(b), 18(4) and 19(3) of Schedule 2 to the Criminal Justice and Immigration Act 2008 have been amended. Currently these provisions provide the court with the powers to deal with the offender for the offence that it or the original sentencing court would have had at the date the original sentence was imposed. As discussed at paragraph 2.5 above, these powers to re-sentence have all been amended so that the courts always have their modern sentencing powers – the powers the re-sentencing court or the original sentencing court would have if the offender had just been convicted by or before the re-sentencing court (rather than the powers they would have had at the original sentencing hearing). Offenders will still, however, be re-sentenced by reference to their age at conviction.

Powers to amend a youth rehabilitation order

2.80 Paragraphs 6(2)(b), 8(2)(b), 13(4)(b) and 14(4)(b) of Schedule 2 to the Criminal Justice and Immigration Act 2008 provide the courts with the power to amend a youth rehabilitation order where the offender has breached their youth rehabilitation order, or an application has been made by the offender or the responsible officer for the order to be amended. Paragraphs 6(2)(b) and 8(2)(b) provide the courts with the power to amend the youth rehabilitation order "so as to impose any requirement which could have been included in the order when it was made". Paragraphs 13(4)(b) and 14(4)(b) provide the courts with the power to amend the youth rehabilitation order to replace any requirement "with a requirement of the same kind which could have been included in the order when it was made".

2.81 Both powers limit the court on amendment to the powers of the original sentencing court. If, for example, a new requirement was introduced between the original sentencing exercise and the hearing at which the order is being amended, that new requirement could not be imposed by the amending court as it was not available when the order was made. Similarly, if the powers of the court to impose a type of requirement was amended between the original sentencing exercise and the amendment hearing that amendment to the powers of the court in imposing that type of requirement would not, under the current law, have effect for the court when amending the order. If for example, the maximum number of hours that could be imposed under an unpaid work requirement was reduced from 240 hours to 220, under the current law the court could amend a youth rehabilitation order to impose an unpaid work requirement of 240 hours, despite the amendment to the law, as it would be exercising the powers of the original sentencing court.

2.82 These powers currently create a need for courts to be aware of, and identify, historic sentencing provisions. This creates an unnecessary complexity and risk of error for the courts and is a departure from the general policy of the Sentencing Code and the "clean sweep": that wherever possible sentencing courts should need to have recourse only to current sentencing law. They have therefore been amended in the re-drafting so that the courts may amend youth rehabilitation orders to include any requirement of the type the court could impose if the offender had just been convicted by or before them (at the age at which they were convicted).

Youth rehabilitation orders: transfer to Northern Ireland

2.83 Schedule 8 of the Sentencing Code contain those provisions relating to the transfer of youth rehabilitation orders to Northern Ireland. These provisions were previously found in Schedule 3 to the Criminal Justice and Immigration Act 2008.

2.84 A number of minor linguistic changes have been made to this Schedule to make the provisions easier to understand. Additionally, we have corrected a number of obvious errors in the legislation. When changes are made to the law (for example to introduce a new sentencing order or to repeal a body such as the probation board), often other related legislation requires amendment as a consequence (for example to substitute a reference to a youth community order with a youth rehabilitation order in other pieces of legislation). These are known as consequential amendments. Occasionally, some of these consequential amendments are not made, in error. A number of consequential amendments have not been made to Schedule 3, following changes to the law in

Northern Ireland, and these have been rectified here. None of these change the effect of the law.

2.85 Paragraph 12 of Schedule 3 to the Criminal Justice and Immigration Act 2008 grants the court in Northern Ireland the power to exercise, in relation to a youth rehabilitation order, any power which it could exercise in relation to a corresponding order made by a court in Northern Ireland, subject to a few specified exceptions. One of those exceptions is that in the case of youth rehabilitation order which imposes a curfew requirement the court cannot vary the order to impose a curfew period longer than the period that "the court which made the order could have specified".[59] In doing so it limits the Northern Ireland court's power to amend a curfew requirement to the maximum period available to the original sentencing court in England and Wales at the time of sentence.

2.86 In this respect if an amendment is made to the maximum curfew period between the offender's conviction and the amendment of the order by the court in Northern Ireland (either to increase or decrease the maximum limit), that amendment will not have effect for the court in Northern Ireland. That court will continue to have to refer to the historic version of the sentencing law that was in force at the time of the original sentencing hearing. This is clearly not desirable and is not in line with our policy as to amendment, and re-sentence. This provision has therefore been amended in the Sentencing Code so that in all cases the Northern Ireland court must not exceed the current curfew period, not simply the historic curfew period.

DETENTION AND TRAINING ORDERS

2.87 Part 10 of the Sentencing Code deals with custodial sentences. Chapter 2 of this Part contains those provisions relating to the availability and effect of those custodial sentences available for offenders convicted aged under 18. The main consultation paper published in July 2017 contained on publication those provisions relating to custodial sentences available only for under 18s but which were variants of adult custodial sentences: those provisions relating to extended sentences of detention under section 226B of the Criminal Justice Act 2003 and sentences of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. It did not, however, include those provisions relating to detention and training orders – a variant of custodial sentence available only for those convicted aged under 18. This Chapter now contains those provisions. Schedule 12 of the Sentencing Code contains those provisions relating to the breach of the supervision requirements of a detention and training order, and the commission of further offences during such an order.

Consultation Question 10.

Do consultees have any comments on the revised structure of the provisions concerning detention and training orders?

[59] Paragraph 12(c) of Schedule 3 to the Criminal Justice and Immigration Act 2008.

Imposing detention and training orders

2.88 The provisions relating to the availability and making of a detention and training order, previously in sections 100 and 101 of the Powers of Criminal Courts (Sentencing) Act 2000 have been substantially re-drafted in the Sentencing Code. It is hoped that the new drafting, which splits the sections into multiple clauses, makes the effect of these provisions much clearer, as well as providing valuable consistency with the approach adopted throughout the Sentencing Code in relation to disposals.

2.89 Clause 229(2) ensures that the maximum length of a detention and training order does not exceed the maximum period of imprisonment that could be imposed on an offender aged 21 or over for the offence. This provision was previously found in section 101(2) of the Powers of Criminal Courts (Sentencing) Act 2000. A pre-consolidation amendment has been made here to clarify the maximum term that can be imposed in the case of a summary only offence (which cannot, except in limited circumstances, be sentenced in the Crown Court). This pre-consolidation amendment does not make a change to the law but it is hoped it makes clearer the intended effect of the provision.

2.90 Clause 231 provides for the maximum total term of consecutive detention and training orders. Section 101(4) of the Powers of Criminal Courts (Sentencing) Act 2000, in the current law, prohibits the making of detention and training orders that would result in an offender being subject to such orders for a term exceeding 24 months. Section 101(5) of the Powers of Criminal Courts (Sentencing) Act 2000 similarly ensures that where an offender would be subject to detention and training orders for a term exceeding 24 months, any period of time exceeding 24 months is remitted.

2.91 In many ways the two clauses seem to serve the same purpose, one explicitly forbidding the court from imposing detention and training orders that would exceed 24 months, and the other preventing an offender in practice from ever having to serve detention and training orders for a period exceeding 24 months. An argument therefore exists for the omission of one. We originally considered it would be desirable to repeal section 101(4) of the Powers of Criminal Courts (Sentencing) Act 2000, rather than section 101(5) of that Act as section 101(5) avoids the need for appeals. Without excess periods automatically being remitted where an offender is subject to detention and training orders exceeding 24 months in contravention of section 101(4) an appeal or slip rule hearing is required to correct the illegal sentence – it cannot be dealt with administratively.

2.92 The question is, however, whether section 101(4) serves a valuable purpose in principle by explicitly preventing courts from imposing a detention and training order the effect of which would be to make an offender subject to detention and training orders for a period exceeding 24 months. An argument can be made that it does. It serves a pedagogical purpose in ensuring that courts do not impose detention and training orders that exceed 24 months. This not only helps to ensure that those subject to detention and training orders are not misled as to the period for which they will actually be subject to such orders, but also ensures that the courts are aware of the effect of their sentences, and the alternatives they may wish to consider.

2.93 An argument can also be made, however, that the retention of section 101(4) of the Powers of the Criminal Courts (Sentencing) Act 2000 is undesirable:

(1) It creates the possibility of leaving the court powerless in some limited situations. For example, if an offender was subject to two detention and training orders totalling 22 months (18 and 4 respectively), and the court wished to impose an additional period, as the minimum period is four months, the court would be unable to do so under the current law – even though in practice what would occur as a result of section 101(5) is that the excess two months would be remitted for the purpose of the serving of the sentence.

(2) It may mean that the court cannot mark the seriousness of the offence for the purposes of the offender's antecedent history. It also prevents the court from complying with the general provisions pertaining to the seriousness of the offence. Section 101(4) as currently drafted means that the court cannot mark an offence with a detention and training order which would result in the offender being subject to detention and training orders for more than 24 months – even if the imposition of such an order would be the only sentence that is commensurate with the seriousness of the offence. This has the effect of potentially misleading a future court as to the nature and seriousness of the offence in question, in circumstances where the court is considering the offender's antecedent history.

Consultation Question 11.

Do consultees consider that section 101(4) of the Powers of Criminal Courts (Sentencing) Act 2000 serves a useful purpose in light of section 101(5) of that Act, or do they think it should be repealed?

2.94 Sections 102, 103 and 106B of the Powers of Criminal Courts (Sentencing) Act 2000 have been re-drafted in clauses 234, 235 and 240 despite mostly being concerned with release and post-sentence supervision. The Sentencing Code does not generally include those provisions which govern the release of offenders from custody, probation or license arrangements[60] because those provisions are required for the administration of sentence rather than the exercise of passing sentence.[61] While consistency militated in favour of these provisions being excluded in line with the decision not to re-write Chapter 6 of Part 12 of the Criminal Justice Act 2003, it was felt that in contrast to other custodial sentences, the supervision period is an inherent part of a detention and training order distinct from administrative supervision on release from a sentence of detention. To separate them from the other substantive provisions relating to detention and training orders would leave both sets of provisions incomplete and further, to not re-draft the provisions would have left them alone in the otherwise repealed Powers of Criminal Courts (Sentencing) Act 2000.

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60 See The Sentencing Code – Volume 1: Consultation Paper, Law Commission Consultation Paper No 232 (27 July 2017) paras 2.107 to 2.108 for more detail.

61 See *R v Round* [2010] 2 Cr App R (S) 45 where the Court of Appeal (Criminal Division) noted that sentencing judges should not take account of early release, and licence when imposing sentence and *R v Bright* [2008] 2 Cr App R (S) 102 where the Court of Appeal (Criminal Division) confirmed that an error in explaining the effect of early release provisions upon the offender's sentence in no way invalidates the sentence.

2.95 The clean sweep has not been applied to clause 240(1) and so a detention and training order of less than 24 months imposed in respect of an offence committed before 1 February 2015 will not receive further post-sentence supervision. This decision was taken because we consider that to do so could make the offender subject to a more severe penalty than was available at the time of the commission of the offence – in violation of Article 7 of the European Convention on Human Rights. Although ordinarily changes to release provisions do not engage Article 7[62] post-sentence supervision can be distinguished from normal changes to release provisions in that it specifically provides for a period of supervision longer than the sentence imposed. Further, in relation to offences where the maximum period of imprisonment is less than two years the retrospective imposition of further supervision would result in restrictions of liberty beyond the maximum penalty available for the offence. We consider that there is an argument that post-sentence supervision is a penalty for the purposes of Article 7, rather than a purely preventative and rehabilitative measure.[63] While section 256AA(5) of the Criminal Justice Act 2003 provides that the purpose of the supervision period is "the rehabilitation of the offender", domestic classifications of provisions are not determinative.[64] Post-sentence supervision requirements can impose significant restrictions on an offender's liberty, and in practice post-sentence supervision is very similar to release on licence: breach of the requirements can result in further detention in default under section 256AC of the Criminal Justice Act 2003; and post-sentence supervision requires both a criminal conviction and the imposition of custody. It is also notable that the decision was taken to commence these provisions prospectively only on introduction.

2.96 In line with the rest of the Sentencing Code where the clean sweep is disapplied, the transitional provision has been preserved in subsection (1) of clause 240, and unlike the current law, there is no need to make reference to statutory instruments to determine the date from which the provision applies.

Consultation Question 12.

Do consultees agree with the decision to disapply the clean sweep in relation to clause 240(1)?

Breach of supervision requirements and further offences during order

2.97 Clause 236 gives effect to Schedule 12 which makes provision about the breach of the supervision requirements of a detention and training order, and the effect of the commission of a further offence during the term of a detention and training order. This material was previously contained in sections 104, 104A, 104B and 105 of the Powers of Criminal Courts (Sentencing) Act 2000. As these provisions deal with the breach of

62 See the decision of the House of Lords in *R (Uttley) v Secretary of State for the Home Department* [2004] 1 WLR 2278.

63 A distinction developed by the Grand Chamber of the European Court of Human Rights in *Welch v United Kingdom* (1995) 20 EHRR 247 at [25] to [36].

64 See *Welch v United Kingdom* (1995) 20 EHRR 247 at [26] to [28].

existing orders, in line with the rest of the Sentencing Code they have been re-drafted in a Schedule.

Consultation Question 13.

Do consultees agree with the decision to re-draft sections 104, 104A, 104B and 105 of the Powers of Criminal Courts (Sentencing) Act 2000 in a Schedule to the Sentencing Code, in line with the approach taken to other provisions relating to breaches of orders?

Chapter 3: Consultation Questions

Consultation Question 1.

Do consultees agree that the draft provisions in Appendix 2 reflect the current law in relation to sentencing orders concerning the sentencing of children and young persons, bearing in mind the pre-consolidation amendments that have been proposed, and the effect of the clean sweep?

Consultation Question 2.

Do consultees agree with the proposed structure of the clauses relating to referral orders (clauses 80 to 105 and Schedules 3 and 4?

Consultation Question 3.

Do consultees consider that the substantial re-drafting of sections 137 and 138 of the Powers of Criminal Courts (Sentencing) Act 2000 makes the effect of the law clearer?

Consultation Question 4.

Do consultees agree with the decision to re-draft the provisions relating to parenting orders made under section 8(1)(c) and (d) of the Crime and Disorder Act 1998 in the Sentencing Code, rather than to signpost them?

Consultation Question 5.

Do consultees agree that parenting orders made by virtue of section 8(1)(d) of the Crime and Disorder Act 1998 constitute sentences for the purposes of section 108 of the Magistrates' Courts Act 1980 and section 9 of the Criminal Appeal Act 1968?

Consultation Question 6.

Do consultees have any comments on the re-structuring of the provisions relating to reparation orders?

Consultation Question 7.

Do consultees have any comments on the structure of the re-drafted provisions relating to youth rehabilitation orders?

Consultation Question 8.

Do consultees have any views as to the re-drafting of the provisions concerning the requirements capable of being imposed under a youth rehabilitation order?

Consultation Question 9.

Do consultees agree with the decision to amend paragraph 10(4) of the Criminal Justice and Immigration Act 2008 so that any subsequent amendments to the level of fine that can be imposed for a breach of a youth rehabilitation order may have effect in relation to any conviction on or after that amendment?

Consultation Question 10.

Do consultees have any comments on the revised structure of the provisions concerning detention and training orders?

Consultation Question 11.

Do consultees consider that section 101(4) of the Powers of Criminal Courts (Sentencing) Act 2000 serves a useful purpose in light of section 101(5) of that Act, or do they think it should be repealed?

Consultation Question 12.

Do consultees agree with the decision to disapply the clean sweep in relation to clause 240(1)?

Consultation Question 13.

Do consultees agree with the decision to re-draft sections 104, 104A, 104B and 105 of the Powers of Criminal Courts (Sentencing) Act 2000 in a Schedule to the Sentencing Code, in line with the approach taken to other provisions relating to breaches of orders?

Appendix 1: Table of Pre-Consolidation Amendments

The below table describes the pre-consolidation amendments which are proposed to the youth justice provisions that are the subject of this consultation. The following amendments will apply to provisions of the existing law prior to their consolidation within the Sentencing Code.

Clause	Origin	Before	After	Reason
42(4)	PCC(S)A 2000 s 137(1A)	Where but for this subsection a court would order a child or young person to pay a surcharge under section 161A of the Criminal Justice Act 2003, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied– …	Where but for this subsection a court would order **a person convicted as** a child or young person to pay a surcharge under section 161A of the Criminal Justice Act 2003, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied– …	Consistency with PCC(S)A 2000 s.137(1) and the general approach to sentencing by reference to age at conviction adopted in *Ghafoor* [2003] EWCA Crim 1857; [2003] 1 Cr App R (S) 84 – allowing the order to be imposed on the parent or guardian where the offender was convicted as a child or young person.
81(1)	PCC(S)A 2000 s 16(1)	This section applies where a youth court or other magistrates' court is dealing with a person aged under 18 for an offence and— …	This section applies where a youth court or other magistrates' court is dealing with a person **for an offence where the person was aged under 18 at the time of conviction of the offence** and— …	Consistency with the general approach to sentencing by reference to age at conviction adopted in *Ghafoor* [2003] EWCA Crim 1857; [2003] 1 Cr App R (S) 84.

Clause	Origin	Before	After	Reason
94(4)	PCC(S)A 2000 s 24(5)	Subsections (3) and (4) above have effect subject to— (a) any order under paragraph 9ZD , 11 or 12 of Schedule 1 to this Act extending the length of the period for which the contract has effect; and (b) subsection (6) below.	Subsections (3) and (4) above have effect subject to— (a) any order under paragraph **6A,** 9ZD **or 10** of Schedule 1 to this Act extending the length of the period for which the contract has effect; and (b) subsection (6) below.	To fix missed consequential amendments to Schedule 1 of the PCC(S)A 2000, repealing paragraphs 11 and 12, and inserting new powers to extend a referral order.
107(4)	PCC(S)A 2000 s 73(4B)	(4B) Where a youth rehabilitation order is revoked under subsection (4A), paragraph 24 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation order) applies to the revocation.	(4B) For the powers of the court to revoke the youth rehabilitation order, see Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation order).	This amendment has been made to clarify that section 73(4B) only provides a signpost to the required steps when revoking an order, and that section 73(4A) does not provide the court with a new power to revoke youth rehabilitation order.
108(2)	PCC(S)A 2000 s 73(5)	Before making a reparation order, a court shall obtain and consider a written report by an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team indicating—	Before making a reparation order, a court shall obtain and consider a written report, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team indicating—	Repeals spent references to local probation boards abolished by section 11 of the Offender Management Act 2007.

Clause	Origin	Before	After	Reason
109(7)(c)	PCC(S)A 2000 s 74(3)(a)	any conflict with the offender's religious beliefs or with the requirements of any youth community order to which he may be subject; and	any conflict with the requirements of any **other court order** to which the offender may be subject.	Extension of duty to avoid conflict with orders to ensure it applies to all other court orders to which the offender is subject or are going to be imposed..
111(2)	PCC(S)A 2000 s 74(8)(b)	shall be made within a period of three months from the date of the making of the order.	shall be made within a period of three months **beginning with the day on which the order is made**.	Change from “from” to “beginning with” to ensure that the day on which the order is made is included, and to provide clarity.
113	PCC(S)A 2000 s 73(5)	Before making a reparation order, a court shall obtain and consider a written report by an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team indicating—	Before making a reparation order, a court shall obtain and consider a written report, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team indicating—	Repeals spent references to local probation boards abolished by section 11 of the Offender Management Act 2007.

Clause	Origin	Before	After	Reason
173(1)	CJIA 2008 Sch 1 para 31(1)	This paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.	This paragraph applies where the court is dealing with an offender **for** two or more offences.	This change ensures that the court imposing multiple youth rehabilitation orders at any one time is subject to the restrictions in paragraph 31 of Schedule 1 to the Criminal Justice and Immigration Act 2008 even where the offences for which the orders are made are not associated.
176(9)	CJIA 2008 Sch1 para 29(1)	Before making— (a) a youth rehabilitation order imposing two or more requirements, or (b) two or more youth rehabilitation orders in respect of associated offences, the court must consider whether, in the circumstances of the case, the requirements to be imposed by the order or orders are compatible with each other.	Before making— (a) a youth rehabilitation order imposing two or more requirements, the court must consider whether, in the circumstances of the case, the requirements to be imposed by the order are compatible with each other.	These references now unnecessary following PCA to paragraph 29(3) of Schedule 1 to the Criminal Justice and Immigration Act 2008.

Clause	Origin	Before	After	Reason
176(10)	CJIA 2008 Sch1 para 29(3)(c)	any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject.	any conflict with the requirements of **other court order** to which the offender may be subject.	Extension of duty to avoid conflict with orders to ensure it applies to all other court orders to which the offender is subject or are going to be imposed.
181(1) and (2)	CJIA 2008 Sch 1 para 34(1)	The court by which any youth rehabilitation order is made must forthwith provide copies of the order— …	**(A1) This section applies when a court makes a youth rehabilitation order.** **(1) The proper officer of the court** must provide copies of the order— …	Amendment requires the proper officer of the court to provide copies of the order, rather than the placing the duty on the court itself. This brings this provision into line with the duties imposed by paragraphs 27 of Schedule 8 and 22 of Schedule 12 to the Criminal Justice Act 2003 which are imposed on the proper officer of the court. It also omits forthwith.

Clause	Origin	Before	After	Reason
181(4)	CJIA 2008 Sch 1 para 34(3)	The court making the order must—	The **proper officer of the** court must—	Amendment requires the proper officer of the court to provide copies of the order, rather than the placing the duty on the court itself. This brings this provision into line with the duties imposed by paragraphs 27 of Schedule 8 and 22 of Schedule 12 to the Criminal Justice Act 2003 which are imposed on the proper officer of the court.
181(4)	CJIA 2008 Sch 1 para 34(4)	Where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement.	Where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the **proper officer of the court** by which the order is made must also provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement.	Amendment requires the proper officer of the court to provide copies of the order, rather than the placing the duty on the court itself. This brings this provision into line with the duties imposed by paragraphs 27 of Schedule 8 and 22 of Schedule 12 to the Criminal Justice Act 2003 which are imposed on the proper officer of the court. It also omits forthwith.

Clause	Origin	Before	After	Reason
181(5)	CJIA 2008 Sch 1 para 34		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.	Amendment provides the definition of the proper officer necessary for other changes to paragraph 34 of Schedule 1 to the Criminal Justice and Immigration Act 2008
183(1)	CJIA 2008 s 5(1)	Where a youth rehabilitation order has effect, it is the duty of the responsible officer— …	Where a youth rehabilitation order **is in force**, it is the duty of the responsible officer— …	Change from “has effect” to “in force” for consistency throughout the Sentencing Code.
183(4)(c)	CJIA 2008 s 5(3)(c)	any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject.	any conflict with the requirements of **other court order** to which the offender may be subject.	Extension of duty to avoid conflict with orders to ensure it applies to all other court orders to which the offender is subject or are going to be imposed.
185	CJIA 2008 Sch1 para 35			PCAs to replace references to “orders” to “regulations” for consistency with the rest of the Sentencing Code.

Clause	Origin	Before	After	Reason
189(3)	CJIA 2008 Sch 1 para 32(4)	Subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order ceases to be in force on the end date.	Subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order **ends with** the end date.	Change in language for consistency throughout the Sentencing Code.
190	CJIA 2008 s 8			PCA to replace references to “orders” to “regulations” for consistency with the rest of the Sentencing Code.
229(2)	PCC(S)A 2000 s 101(2)	The term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21 or over) impose for the offence.	**In the case of a summary offence, the maximum term of a detention and training order may not exceed the maximum term of imprisonment that may be imposed (in the case of an offender aged 21 or over) for the offence.** **In any other case t**he term of a detention and training order may not exceed the maximum term of imprisonment that the Crown Court could (in the case of an offender aged 21 or over) impose for the offence.	PCA to clarify the maximum limit for a summary only offence – as the Crown Court cannot ordinarily deal with such offences.

Clause	Origin	Before	After	Reason
229(4)	PCC(S)A 2000 s 101		**(2B) Unless the court provides otherwise under subsection (3) below, a detention and training order takes effect at the beginning of the day on which it is made.**	Insertion of clause to clarify that a detention and training order takes effect at the beginning of the day its imposed unless it is imposed consecutively to another sentence.
237(2)	PCC(S)A 2000 s 106(4)	Subject to subsection (5) below, where at any time an offender is subject concurrently— (a) to a detention and training order, and (b) to a sentence of detention in a young offender institution, he shall be treated for the purposes of sections 102 to 105 above and of section 98 above (place of detention), Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the one of them that was imposed on the later occasion.	Subject to subsection (5) below, where at any time an offender is subject concurrently— (a) to a detention and training order, and (b) to a sentence of detention in a young offender institution, he shall be treated for the purposes of sections 102 to 105 above and of section 98 above (place of detention), Chapter IV of this Part (return to detention) and Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall) as if he were subject only to the **sentence of detention in a young offender institution.**	PCA to ensure that where the sentences are imposed at the same time, or in a differnet order the offender is always subject to the sentence of detention in a young offender institution (for which the offender must have been convicted after the offence for which the detention and training order is imposed). This change also conforms this provision with section 106A(7) of the Powers of Criminal Courts (Sentencing) Act 2000.

Clause	Origin	Before	After	Reason
239	PCC(S)A 2000 s 106(6)	Where, by virtue of any enactment giving a court power to deal with a person in a way in which a court on a previous occasion could have dealt with him, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person shall be treated as if he had been sentenced to detention in a young offender institution for the same term.	Where, by virtue of any enactment giving a court power to deal with a person in a way in which a court on a previous occasion could have dealt with him, **or could deal with the person for an offence if the person were the same age as when convicted of it**, a detention and training order for any term is made in the case of a person who has attained the age of 18, the person shall be treated as if he had been sentenced to detention in a young offender institution for the same term.	PCA to ensure that section 106(6) continues to achieve the correct effect following the modifications to the youth justice re-sentencing provisions.
240(4)	PCC(S)A 2000 s 106B(4)	"The supervisor", in relation to the offender, must be— (a) an officer of a provider of probation services, or (b) a member of the youth offending team established by the local authority in whose area the offender resides for the time being.	"The supervisor", in relation to the offender, must be— (a) an officer of a provider of probation services, or (b) a member of **a** youth offending team established by the local authority in whose area the offender resides for the time being.	Change made to reflect the fact that a local authority can establish multiple youth offending teams for a single area under section 39 of the Crime and Disorder Act 1998.

342(8)	CDA 1998 s 10(1)	An appeal shall lie— (a) to the county court against the making of a parenting order by virtue of paragraph (a) of subsection (1) of section 8 above; and (b) to the Crown Court against the making of a parenting order by virtue of paragraph (b) of that subsection.	**(A1) Where a parenting order is made by virtue of paragraph (b) of subsection (1) of section 8 (by virtue of an order being made under section 22 of the Anti-Social Behaviour, Crime and Policing Act 2014), the person in respect of whom it is made has the same right of appeal against the making of the order as if—** **(a) that person had committed the offence for which the criminal behaviour order was imposed, and** **(b) the order were a sentence passed on that person for the offence.** (1) An appeal shall lie— (a) to the county court against the making of a parenting order by virtue of paragraph (a) of subsection (1) of section 8 above; and (b) to the Crown Court against the making of a parenting order by virtue of paragraph (b) of that subsection **(except where a parenting order was made by virtue of an order being made under section 22 of the Anti-Social Behaviour, Crime and Policing Act 2014)**.	Provides the parent with the same power to appeal against the order as if the order was made on the conviction, rather than for the purposes of addressing the behaviour the criminal behaviour order was made to address.

Clause	Origin	Before	After	Reason
357(4)	CJA 2003 s 165(3)	Where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 139 of the Sentencing Act (powers of Crown Court in relation to fines) or section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default) it must reduce the term by the corresponding proportion.	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 section 139 of the Sentencing Act (powers of Crown Court in relation to fines) or section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default) it must reduce the term by the corresponding proportion.	Inserts reference to a term of detention in default fixed for those aged 18 to 20.
360(7)			If the relevant court is a magistrates' court— (a) the alternative court may— (i) direct that the offender be released forthwith, or (ii) remand the offender, and (b) section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) applies as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the relevant court.	Ensures that in all cases remand is not limited only to custody or to local authority accommodation.

Clause	Origin	Before	After	Reason
362			In section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail), after subsection (1) insert— "(1A) This section also applies where a court remands a child in any proceedings under any of the following provisions of the Sentencing Code— (a) section 360 (child arrested under warrant and remanded by one court to be dealt with by another court); (b) Part 1 of Schedule 4 (referral orders: further court proceedings), (c) Schedule 5 (breach, revocation and amendment of reparation orders); (d) Schedule 7 (breach, revocation or amendment of youth rehabilitation orders, and effect of further conviction)."	Ensures that in all the relevant cases section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 applies where children and young persons are remanded.
Para 5(3) of Sch 4	PCC(S)A 2000 Sch 1 para 5(3)	The revocation under sub-paragraph (2) above of a referral order has the effect of revoking any related order under paragraphs 9ZD or 10 below.	The revocation under sub-paragraph (2) above of a referral order has the effect of revoking any related order under paragraphs **6A,** 9ZD or 10 below.	Amendment ensures that all related extension orders are revoked.

Clause	Origin	Before	After	Reason
Para 5(4) of Sch 4	PCC(S)A 2000 Sch 1 para 5(5)(a)	may deal with him in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order; and	may deal with him in any way in which (assuming section 16 of this Act had not applied) **it could deal with the offender if it had just convicted the offender of that offence (but as if the offender were the same age as when in fact convicted)**; and	Amends the court's power to re-sentence so that it has its current sentencing powers (in line with the clean sweep approach), rather than those available at the time of the original sentencing.
Paras 8(4) and 9(3) of Sch 4	PCC(S)A 2000 Sch 1 para 9	The discharge under paragraph 7(3) or 8 above of a referral order has the effect of discharging any related order under paragraphs 9ZD or 10 below.	The discharge under paragraph 7(3) or 8 above of a referral order has the effect of discharging any related order under paragraphs **6A,** 9ZD or 10 below.	Amendment ensures that all related extension orders are discharged.
Para 14(2) of Sch 4	PCC(S)A 2000 Sch 1 para 14(3)	Where any order is revoked by virtue of sub-paragraph (2) above, the court may, if appears to the court that it would be in the interests of justice to do so, deal with the offender for the offence in respect of which the revoked order was made in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order.	Where any order is revoked by virtue of sub-paragraph (2) above, the court may, if appears to the court that it would be in the interests of justice to do so, deal with the offender for the offence in respect of which the revoked order was made in any way in which (assuming section 16 of this Act had not applied) **it could deal with the offender if it had just convicted the offender of that offence (but as if the offender were the same age as when in fact convicted).**	Amends the court's power to re-sentence so that it has its current sentencing powers (in line with the clean sweep approach), rather than those available at the time of the original sentencing.

Clause	Origin	Before	After	Reason
Para 14(3) of Sch 4	PCC(S)A 2000 Sch 1 para 14(2A)	The revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph 9ZD or 10.	The revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph **6A,** 9ZD or 10.	Amendment ensures that all related extension orders are revoked.
Para 1(2) of Sch 5	PCC(S)A 2000 Sch 8 para 2(1)	This paragraph applies if while a reparation order is in force in respect of an offender it is proved to the satisfaction of (a) a youth court acting in the local justice area in which the offender resides, or (b) if it is not known where the offender resides, a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act, on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order.	This paragraph applies if while a reparation order is in force in respect of an offender it is proved to the satisfaction of (a) a youth court or, **if the offender is aged 18 or over, a magistrates' court other than a youth court**, acting in the local justice area in which the offender resides, or (b) if it is not known where the offender resides, a youth court **if the offender is aged 18 or over, a magistrates' court other than a youth court**, acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act, on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order.	This amendment ensures that if the offender is now aged over 18 his case is heard in a magistrates' court, consistent with other youth justice sentencing provisions.

Clause	Origin	Before	After	Reason
Para 2(2)(b) of Sch 5	PCC(S)A 2000 Sch 8 para 2(2)(b)	(b) if the reparation order was made by a magistrates' court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or	(b) if the reparation order was made by a magistrates' court, may revoke the order and 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 that offence (but as if the offender were the same age as when in fact convicted)**; or	Amends the court's power to re-sentence so that it has its current sentencing powers (in line with the clean sweep approach), rather than those available at the time of the original sentencing.
Para 2(3) of Sch 5	PCC(S)A 2000 Sch 8 para 2(3)	Where a court deals with an offender under sub-paragraph (2)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving— (a) particulars of the offender's failure to comply with the requirement in question; and (b) such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.	Where a court deals with an offender**'s case** under sub-paragraph (2)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving— (a) particulars of the offender's failure to comply with the requirement in question; and (b) such other particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.	This change has been made for consistency with the rest of the provisions relating to committals in the Sentencing Code.

Para 3(2) of Sch 5	PCC(S)A 2000 Sch 8 para 2(4)	Where— (a) by virtue of sub-paragraph (2)(c) above the offender is brought or appears before the Crown Court, and (b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question, that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.	(4) Where— (a) by virtue of sub-paragraph (2)(c) above the offender is brought or appears before the Crown Court, and (b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question, that court may deal with him, 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 that offence (but were the same age as when in fact convicted**). **4A) But if the reparation order was made by the Crown Court 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 (4) 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 (but as if the**	Amends the court's power to re-sentence so that it has its current sentencing powers (in line with the clean sweep approach), rather than those available at the time of the original sentencing. This amendment also ensures that the Crown Court is always limited to magistrates' court powers, where the offender was originally sentenced in the exercise of such powers.

Clause	Origin	Before	After	Reason
			offender were the same age as when in fact convicted).	
Para 5(4)(b) and (5) of Sch 5	PCC(S)A 2000 Sch 8 para 5(1)(b)	make an order amending it— (i) by cancelling any provision included in it; or (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.	make an order amending it— (i) by cancelling any provision included in it; or (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which **it could include in a reparation order if it were now making such an order in respect of the offence for which the order was made, if the offender had just been convicted by it of that offence (but were the same age as when in fact convicted).**	This change ensures that the court always has its current sentencing powers on the amendment of a reparation order.
Para 8(3) of Sch 6	CJIA 2008 Sch 1 para 8(4)	A court may not include an activity requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion.	A court may not include an activity requirement in a youth rehabilitation order if compliance with that requirement would **require** the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion.	Amendment to clarify intended effect of the law.

Clause	Origin	Before	After	Reason
Para 13(2) of Sch 6	CJIA 2008 Sch 1 para 11(4)	A court may not include a programme requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.	A court may not include a programme requirement in a youth rehabilitation order if compliance with that requirement would **require** the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.	Amendment to clarify intended effect of the law.
Para 19(1) of Sch 6	CJIA 2008 Sch 1 para 14(4)	Before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).	Before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about **each** place proposed to be specified **under sub-paragarph (1)** (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).	Amendment to reflect the fact that a curfew period can specify multiple places.

Clause	Origin	Before	After	Reason
Para 26(6) of Sch 6	CJIA 2008 Sch 1 para 18(5)	If at any time during the period specified under sub-paragraph (1), the responsible officer notifies the offender— (a) that no suitable local authority foster parent is available, and (b) that the responsible officer has applied or proposes to apply under Part 3 or 4 of Schedule 2 for the revocation or amendment of the order, the fostering requirement is, until the determination of the application, to be taken to require the offender to reside in accommodation provided by or on behalf of a local authority.	If at any time during the period specified under sub-paragraph (1), the responsible officer notifies the offender— (a) that no suitable local authority foster parent is available, and (b) that the responsible officer has applied or proposes to apply under Part 3 or 4 of Schedule 2 for the revocation or amendment of the order, the fostering requirement **has effect, until the application is determined, as a requirement for** the offender to reside in accommodation provided by or on behalf of a local authority.	Change to provide consistent and modern language in the Sentencing Code.
Para 28(4) of Sch 6	CJIA 2008 Sch 1 para 20(2)(a)	treatment as a resident patient in a care home within the meaning of the Care Standards Act 2000 (c. 14), an independent hospital or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;	treatment as a resident patient in **a hospital or care home specified in the order which is** a care home within the meaning of the Care Standards Act 2000 (c. 14), an independent hospital or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;	Amendment to clarify that the hospital or care home must be specified in the order.

Clause	Origin	Before	After	Reason
Para 41(2) of Sch 6	CJIA 2008 Sch 1 para 26(5)	The person who is made responsible for the monitoring must be of a description specified in an order made by the Secretary of State.	The person who is made responsible for the monitoring must be of a description specified in **regulations** made by the Secretary of State.	PCA to replace references to “orders” to “regulations” for consistency with the rest of the Sentencing Code.

Para 6(5) and (6) of Sch 7	CJIA 2008 Sch 1 para 6(2)	The court may deal with the offender in respect of that failure in any one of the following ways— (a) by ordering the offender to pay a fine of an amount not exceeding £2,500, (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made— (i) in addition to, or (ii) in substitution for, any requirement or requirements already imposed by the order; (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).	The court may deal with the offender in respect of that failure in any one of the following ways— (a) by ordering the offender to pay a fine of an amount not exceeding £2,500, (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which**, if the court had just convicted the offender of the offence in respect of which the order was made, the court could include in a youth rehabilitation order in respect of that offence (if the offender were the same age as when in fact convicted of the offence)—** (i) in addition to, or (ii) in substitution for, any requirement or requirements already imposed by the order; (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could **deal with the offender if the offender had just been convicted by it of that**	This change ensures that the court always has its current sentencing powers on the amendment or re-sentencing of a youth rehabilitation order.

Clause	Origin	Before	After	Reason
			offence (but were the same age as when in fact convicted of the offence).	

Para 7(2) and (3) of Sch 7	CJIA 2008 Sch 2 para 8(2)	(2) The Crown Court may deal with the offender in respect of that failure in any one of the following ways— (a) by ordering the offender to pay a fine of an amount not exceeding £2,500, (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made— (i) in addition to, or (ii) in substitution for, any requirement or requirements already imposed by the order; (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.	(2) The Crown Court may deal with the offender in respect of that failure in any one of the following ways— (a) by ordering the offender to pay a fine of an amount not exceeding £2,500, (b) by amending the terms of the youth rehabilitation order so as to impose any requirement **which, if the offender had just been convicted on indictment of the offence in respect of which the order was made, the Crown Court could include in a youth rehabilitation order in respect of that offence (if the offender were the same age as when in fact convicted of the offence)—** (i) in addition to, or (ii) in substitution for, any requirement or requirements already imposed by the order; (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court**, or, if the youth rehabilitation order was made by the Crown Court in circumstances where its powers to deal with the offender for the offence were**	This amendment ensures that the court always has its current sentencing powers on the amendment or re-sentencing of a youth rehabilitation order. This amendment also ensures that the Crown Court is always limited to magistrates' court powers, where the offender was originally sentenced in the exercise of such powers.

Clause	Origin	Before	After	Reason
			those (however expressed) which would have been exercisable by a magistrates' court on convicting the offender of the offence, a magistrates' court, could deal with the offender for that offence if the offender had just been convicted by or before it of the offence (but were the same age as when in fact convicted of the offence).	
Para 10(2) of Sch 7	CJIA 2008 Sch 2 para 23	Subsection (4), and the provisions mentioned in subsection (6), of section 1 apply in relation to a power conferred by paragraph 6(2)(b) , 8(2)(b) , 13(4)(b) or 14(4)(b) to impose a requirement as they apply in relation to any power conferred by section 1 or Part 1 of Schedule 1 to make a youth rehabilitation order which includes such a requirement.	**Paragraphs 6(2)(b), 8(2)(b), 13(4)(b) and 14(4)(b) have effect in relation to the imposition of any requirement under any of those paragraphs subject to any provision that applies to the court in making a youth rehabilitation order as if the court were imposing that requirement on making the order.**	An amendment has been made to make the relevant provisions subject to any provision that applies to the court in making a youth rehabilitation order. This makes the intent of the list of sections clearer, and ensures it is not missed by future amendments.

Clause	Origin	Before	After	Reason
Para 12(3) of Sch 7	CJIA 2008 Sch 2 para 11(6)	No application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.	No application may be made under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.	This amendment ensures that the responsible officer nor the offender can make an application while an appeal is pending. This is consistent with the position in relation to community orders.
Para 12(4) and (5) of Sch 7	CJIA 2008 Sch 2 para 20(2)	Sub-paragraph (1) does not apply where a court proposes to make an order— (a) revoking a youth rehabilitation order, (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.	Sub-paragraph (1) does not apply where a court proposes to **exercise those powers only to make an order doing one or more of the following**— (a) revoking a youth rehabilitation order, (b) cancelling a requirement of a youth rehabilitation order, **(ba) replacing a requirement of a youth rehabilitation order with one of a shorter duration, or** (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.	This amendment was made to reflect that a court cannot reduce the duration of a requirement without replacing it, and to clarify that the provision applies only where the court plans to only revoke an order (not where it revokes and re-sentences).

Clause	Origin	Before	After	Reason
Para 13(2) of Sch 7	CJIA 2008 Sch 2 para 12(5)	No application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.	No application may be made under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.	This amendment ensures that the responsible officer nor the offender can make an application while an appeal is pending. This is consistent with the position in relation to community orders.
Para 13(3) and (4) of Sch 7	CJIA 2008 Sch 2 para 20(2)	Sub-paragraph (1) does not apply where a court proposes to make an order— (a) revoking a youth rehabilitation order, (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.	Sub-paragraph (1) does not apply where a court proposes to **exercise those powers only to make an order doing one or more of the following**— (a) revoking a youth rehabilitation order, (b) cancelling a requirement of a youth rehabilitation order, **(ba) replacing a requirement of a youth rehabilitation order with one of a shorter duration, or** (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.	This amendment was made to reflect that a court cannot reduce the duration of a requirement without replacing it, and to clarify that the provision applies only where the court plans to only revoke an order (not where it revokes and re-sentences).

Clause	Origin	Before	After	Reason
Para 14(3) and (4) of Sch 7	CJIA 2008 Sch 2 paras 13(4)(b) and 14(4)(b)	by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.	by replacing any of those requirements with a requirement of the same kind **which, if the offender had just been convicted before it of the offence in respect of which the order was made, the court could include in a youth rehabilitation order in respect of that offence (if the offender were the same age as when in fact convicted of the offence)**.	This amendment ensures that the court always has its current sentencing powers on the amendment of a youth rehabilitation order.
Para 14(5) of Sch 7	CJIA 2008 Sch 2 para 20(2)	Sub-paragraph (1) does not apply where a court proposes to make an order— (a) revoking a youth rehabilitation order, (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.	Sub-paragraph (1) does not apply where a court proposes to **exercise those powers only to make an order doing one or more of the following**— (a) revoking a youth rehabilitation order, (b) cancelling a requirement of a youth rehabilitation order, **(ba) replacing a requirement of a youth rehabilitation order with one of a shorter duration, or** (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.	This amendment was made to reflect that a court cannot reduce the duration of a requirement without replacing it, and to clarify that the provision applies only where the court plans to only revoke an order (not where it revokes and re-sentences).

Para 16(6) of Sch 7	CJIA 2008 Sch 2 para 16(4)(b)	deal with the offender, for the offence in respect of which the order was made, in any way in which that court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).	deal with the offender, for the offence in respect of which the order was made, in any way in which that court could **deal with the offender for that offence if the offender had just been convicted by or before it of the offence (but were the same age as when in fact convicted of the offence).** **(4A) Where—** **(a) it falls to the Crown Court to exercise the power in sub-paragraph (4)(b), and** **(b) the Crown Court made the youth rehabilitation order in circumstances 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 (4)(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 (but as if the**	This amendment ensures that the court always has its current sentencing powers on the re-sentencing of a youth rehabilitation order. This amendment also ensures that the Crown Court is always limited to magistrates' court powers, where the offender was originally sentenced in the exercise of such powers.

Clause	Origin	Before	After	Reason
			offender were the same age as when in fact convicted).	
Para 18(4) of Sch 7	CJIA 2008 Sch 2 para 17	Where— (a) a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender, and (b) on the application of the offender or the responsible officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may, in relation to the order, extend the period of 12 months specified in paragraph 10(6) of Schedule 1.	Where— (a) a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender, and (b) on the application of the offender or the responsible officer, it appears to the appropriate court **(within the meaning of paragraph 16A)** that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may, in relation to the order, extend the period of 12 months specified in paragraph 10(6) of Schedule 1.	Amendment to clarify the definition of appropriate court.

Clause	Origin	Before	After	Reason
Para 20(2) of Sch 7	CJIA 2008 Sch 2 para 18(4)	Where the convicting court revokes the order under sub-paragraph (3), it may deal with the offender, for the offence in respect of which the order was made, in any way in which it could have dealt with the offender for that offence (had the offender been before that court to be dealt with for the offence).	Where the convicting court revokes the order under sub-paragraph (3), it may deal with the offender, for the offence in respect of which the order was made, in any way in which it could **deal with the offender if the offender had just been convicted by it of that offence (but were the same age as when in fact convicted of the offence).**	This amendment ensures that the court always has its current sentencing powers on the re-sentencing of a youth rehabilitation order.
Para 20(3) of Sch 7	CJIA 2008 Sch 2 para 20(1)	(1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court— (a) must summon the offender to appear before the court, and (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.	(1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court— (a) must summon the offender to appear before the court, and (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest. … **(3) This paragraph also does not apply where a court proposes to exercise its powers under Part 5 of this Schedule where the offender is before the court.**	This amendment ensures that if the offender is already before the court, because the court has just convicted him or he has been committed for sentence, that the court does not have to issue a summons for their appearance.

Clause	Origin	Before	After	Reason
Para 21(6) of Sch 7	CJIA 2008 Sch 2 para 20(1)	(1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court— (a) must summon the offender to appear before the court, and (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.	(1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court— (a) must summon the offender to appear before the court, and (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest. … **(3) This paragraph also does not apply where a court proposes to exercise its powers under Part 5 of this Schedule where the offender is before the court.**	This amendment ensures that if the offender is already before the court, because the court has just convicted him or he has been committed for sentence, that the court does not have to issue a summons for their appearance.

Clause	Origin	Before	After	Reason
Para 22(2) of Sch 7	CJIA 2008 Sch 2 para 19(3)	(3) Where the Crown Court revokes the order under sub-paragraph (2), the Crown Court may deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could have dealt with the offender for that offence.	(3) Where the Crown Court revokes the order under sub-paragraph (2), the Crown Court may deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could **deal with the offender for that offence if the offender had just been convicted before it of that offence (but were the same age as when in fact convicted of that offence).** **(3A) If the youth rehabilitation order was made by the Crown Court in circumstances 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) 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 (but as if the offender were the same age as when in fact convicted).**	This amendment ensures that the court always has its current sentencing powers on the re-sentencing of a youth rehabilitation order. This amendment also ensures that the Crown Court is always limited to magistrates' court powers, where the offender was originally sentenced in the exercise of such powers.

Clause	Origin	Before	After	Reason
Para 22(3) of Sch 7	CJIA 2008 Sch 2 para 20(1)	(1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court— (a) must summon the offender to appear before the court, and (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest.	(1) Subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court— (a) must summon the offender to appear before the court, and (b) if the offender does not appear in answer to the summons, may issue a warrant for the offender's arrest. … **(3) This paragraph also does not apply where a court proposes to exercise its powers under Part 5 of this Schedule where the offender is before the court.**	This amendment ensures that if the offender is already before the court, because the court has just convicted him or he has been committed for sentence, that the court does not have to issue a summons for their appearance.

Clause	Origin	Before	After	Reason
Para 23(8) of Sch 7	CJIA 2008 Sch 2 para 24(2)	Where under sub-paragraph (1)(c) the proper officer of the court provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court such documents and information relating to the case as appear likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.	Where under sub-paragraph (1)(c) the proper officer of the court provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court such documents and information relating to the case as **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.	This amendment clarifies who must consider the documents and information to be likely to be of assistance.
Para 1(2) of Sch 8	CJIA 2008 Sch 3 para 1(4)	The condition in this sub-paragraph is satisfied if suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by order.	The condition in this sub-paragraph is satisfied if suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by **regulations.**	PCA to replace references to “orders” to “regulations” for consistency with the rest of the Sentencing Code.
Para 2(1) of Sch 8	CJIA 2008 Sch 3 para 2(4)	The condition in this sub-paragraph is satisfied if suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by order.	The condition in this sub-paragraph is satisfied if suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland or any other body designated by the Secretary of State by **regulations**.	PCA to replace references to “orders” to “regulations” for consistency with the rest of the Sentencing Code.

Clause	Origin	Before	After	Reason
Para 3 of Sch 8	CJIA 2008 Sch 3 para 16(1)	Paragraph 15(b) does not enable the relevant court in England or Wales to amend the youth rehabilitation order unless it appears to the court that the conditions in paragraph 2(2)(a) and (b) are satisfied in relation to any requirement to be imposed.	**Where the offender resides in Northern Ireland paragraph** 15(b) does not enable the relevant court in England or Wales to amend the youth rehabilitation order unless it appears to the court that the conditions in paragraph 2(2)(a) and (b) are satisfied in relation to any requirement to be imposed.	PCA so that the court is not required to ensure that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland where the offender no longer lives there.
Para 6(1) of Sch 8	CJIA 2008 Sch 3 paras 1(5) and 2(5)	The condition in this sub-paragraph is satisfied in relation to an order that will impose a requirement mentioned in sub-paragraph (6) if— (a) arrangements exist for persons to comply with such a requirement in the petty sessions district in Northern Ireland in which the offender resides, or will be residing when the amendment to the order takes effect, and (b) provision can be made for the offender to comply with the requirement under those arrangements.	The condition in this sub-paragraph is satisfied in relation to an order that will impose a requirement mentioned in sub-paragraph (6) if— (a) arrangements exist for persons to comply with such a requirement in the **administrative court division in Northern Ireland specified under section 2 of the Justice Act (Northern Ireland) 2015 (c. 9 (N.I.))** in which the offender resides, or will be residing when the amendment to the order takes effect, and (b) provision can be made for the offender to comply with the requirement under those arrangements.	Change made to reflect the abolition and replacement of petty sessions districts in Northern Ireland by the Justice Act (Northern Ireland) 2015.

Clause	Origin	Before	After	Reason
Para 8 of Sch 8	CJIA 2008 Sch 3 para 5(2)	The following provisions of Schedule 1 are omitted— (a) in paragraph 8(3)(a) (activity requirement: further provisions), the words “a member of a youth offending team or”, (b) paragraphs 8(3)(c), 10(3)(b) and 12(3)(a) (availability of arrangements in local area: activity requirement, unpaid work requirement and attendance centre requirement), (c) paragraph 16(7) (residence requirement: restriction on requiring residence at hostel or institution), and (d) paragraphs 18(7), 22(4)(a) , 23(3)(a) and 26(6) and (7) (availability of arrangements in local area: fostering requirement, drug treatment and testing requirements and electronic monitoring requirement).	The following provisions of Schedule 1 are omitted— (a) in paragraph 8(3)(a) (activity requirement: further provisions), the words “a member of a youth offending team or”, (b) paragraphs 8(3)(c), 10(3)(b) and 12(3)(a) (availability of arrangements in local area: activity requirement, unpaid work requirement and attendance centre requirement), (c) paragraph 16(7) (residence requirement: restriction on requiring residence at hostel or institution), and (d) paragraphs 22(4)(a), 23(3)(a) and 26(6) and (7) (availability of arrangements in local area: drug treatment and testing requirements and electronic monitoring requirement).	Amendment to omit reference to fostering requirements as fostering requirements are not available in the case of a youth rehabilitation order in Northern Ireland.

Clause	Origin	Before	After	Reason
Para 8 of Sch 8	CJIA 2008 Sch 3 para 5(5) and (6A)	(5) The references to a local authority in paragraph 25 of that Schedule (education requirement) (except in sub-paragraph (6) of that paragraph) have effect as references to an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986 (SI 1986/594 (NI 3)). … (6A) The reference in the second column of the Table in paragraph 34(4) of that Schedule (additional persons to whom court must give a copy of the order) to the local authority specified under paragraph 25(2) of that Schedule has effect as a reference to the Education and Library Board specified under that paragraph.	The references to a local authority in paragraph 25 of that Schedule (education requirement) (except in sub-paragraph (6) of that paragraph) have effect **as references to the Education Authority established under section 1 to the Education Act (Northern Ireland) 2014 (c. 12 (N.I.)).** … (6A) The reference in the second column of the Table in paragraph 34(4) of that Schedule (additional persons to whom court must give a copy of the order) to the local authority specified under paragraph 25(2) of that Schedule has effect as a reference **to the Education Authority established under section 1 to the Education Act (Northern Ireland) 2014 (c. 12 (N.I.)).**	Amendment to reflect abolition and replacement of Education and Library Boards by the Education Act (Northern Ireland) 2014.

Clause	Origin	Before	After	Reason
Para 10 of Sch 8	CJIA 2008 Sch 3 para 4(1)	Before making or amending a youth rehabilitation order in accordance with paragraph 1 or 2, the court must explain to the offender in ordinary language— (a) the requirements of the legislation in Northern Ireland relating to the order to be specified under paragraph 3(b), (b) the powers of the home court under that legislation, as modified by Part 2 of this Schedule, and (c) its own powers under Part 2 of this Schedule.	Before making or amending a youth rehabilitation order in accordance with paragraph 1 or 2, the court must explain to the offender in ordinary language— (za) the effect of paragraph 8, (a) the requirements of the legislation in Northern Ireland relating to the order to be specified under paragraph 3(b), (b) the powers of the home court under that legislation, as modified by Part 2 of this Schedule, and (c) its own powers under Part 2 of this Schedule.	This extends the duty to explain to the offender how the transferred order will operate.

Clause	Origin	Before	After	Reason
Para 12(4) of Sch 8	CJIA 2008 Sch 1 para 34(4)	Where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement.	Where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the **proper officer of the court** by which the order is made must also provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement.	Amendment requires the proper officer of the court to provide copies of the order, rather than the placing the duty on the court itself. This brings this provision into line with the duties imposed by paragraphs 27 of Schedule 8 and 22 of Schedule 12 to the Criminal Justice Act 2003 which are imposed on the proper officer of the court. It also omits forthwith.
Para 15 of Sch 8	CJIA 2008 Sch 3 para 11	Where the youth rehabilitation order was made or amended by the Crown Court, the Crown Court in Northern Ireland may direct that any proceedings in Northern Ireland in relation to the order be before the court of summary jurisdiction acting for the petty sessions district in which the offender resides or proposes to reside.	Where the youth rehabilitation order was made or amended by the Crown Court, the Crown Court in Northern Ireland may direct that any proceedings in Northern Ireland in relation to the order be before **a court of summary jurisdiction**.	Change made to reflect the abolition of petty sessions districts in Northern Ireland by the Justice Act (Northern Ireland) 2015.

Clause	Origin	Before	After	Reason
Para 17 of Sch 8	CJIA 2008 Sch 3 para 12(c)	in the case of a youth rehabilitation order imposing a curfew requirement, any power to vary the order by substituting for the period specified in it any longer period than the court which made the order could have specified.	in the case of a youth rehabilitation order imposing a curfew requirement, any power to vary the order by substituting for the period specified in it any longer period than **if the offender had just been convicted by or before it of the offence in respect of which the order was made, a court in England and Wales could now specify in a youth rehabilitation order the court could include in a youth rehabilitation order in respect of that offence (if the offender were the same age as when in fact convicted of the offence).**	The amendment ensures that the court cannot impose a curfew requirement greater than that which would currently be available to a court in England and Wales for that offence.
Para 18(2) of Sch 8	CJIA 2008 Sch 3 para 13(2)	This sub-paragraph applies where it appears to the home court upon a complaint being made to a lay magistrate acting for the petty sessions district for the time being specified in the order that the offender has failed to comply with one or more requirements of the order.	This sub-paragraph applies where it appears to the home court upon a complaint being made to a **lay magistrate in Northern Ireland** that the offender has failed to comply with one or more requirements of the order.	Change made to reflect the abolition of petty sessions districts in Northern Ireland by the Justice Act (Northern Ireland) 2015.

Clause	Origin	Before	After	Reason
Para 20(3) of Sch 8	CJIA 2008 Sch 3 para 16(1)	Paragraph 15(b) does not enable the relevant court in England or Wales to amend the youth rehabilitation order unless it appears to the court that the conditions in paragraph 2(2)(a) and (b) are satisfied in relation to any requirement to be imposed.	**Where the offender resides in Northern Ireland paragraph** 15(b) does not enable the relevant court in England or Wales to amend the youth rehabilitation order unless it appears to the court that the conditions in paragraph 2(2)(a) and (b) are satisfied in relation to any requirement to be imposed.	PCA so that the court is not required to ensure that suitable arrangements for the offender's supervision can be made by the Probation Board for Northern Ireland where the offender no longer lives there.
Para 3(3) of Sch 12	PCC(S)A 2000 s 104(3A)	The maximum period referred to in subsection (3)(a) and (aa) above is the shorter of— (a) three months, and (b) the period beginning with the date of the offender's failure and ending with the last day of the term of the detention and training order.	The maximum period referred to in subsection (3)(a) and (aa) above is the shorter of— (a) three months, and (b) the period **between** the date of the offender's failure and the last day of the term of the detention and training order.	Change made to conform this provision with section 105(2) of the Powers of Criminal Courts (Sentencing) Act 2000.
Para 3(4) of Sch 12	PCC(S)A 2000 s 104(3B)	For the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the first of those days.	For the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the **last** of those days.	Change made to conform this provision with section 105(4) of the Powers of Criminal Courts (Sentencing) Act 2000 and other similar provisions in the Sentencing Code.

Clause	Origin	Before	After	Reason
Para 3(6) of Sch 12	PCC(S)A 2000 s 104(3D)	A period of detention or supervision ordered under subsection (3) above— (a) begins on the date the order is made, and (b) may overlap to any extent with the period of supervision under the detention and training order.	A period of detention or supervision ordered under subsection (3) above— (a) begins **with the day on which** the order is made, and (b) may overlap to any extent with the period of supervision under the detention and training order.	Amendment to clarify that period begins at the beginning of the day, to conform the reference with other similar provisions in the Sentencing Code.

Appendix 2: The Sentencing Code

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.

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 385).

(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 335 (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.

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.

4 Availability of deferment order

(1) 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).

(2) But a deferment order is not available for a magistrates' court dealing with an offender in respect of an offence for which section 82(1)(a) (compulsory referral conditions) requires the court to make a referral order.

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.

(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.

(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.

(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.

(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.

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

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.

(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.

(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.

(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.

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

(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)).

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.

(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.

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

(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.

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

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.

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.

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.

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.

(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.

(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.

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.

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.

(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.

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).

(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.

(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.

(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.

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).

(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.

(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 in section 14 to commit the offender to the Crown Court for sentence.

(4) Where a magistrates' court deals with the offender by committing the offender to the Crown Court under section 14, 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.

12 Saving for power to bind over and other powers to defer sentence

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.

13 Deferment orders: interpretation

(1) 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).

(2) 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.

CHAPTER 2

COMMITTAL TO THE CROWN COURT FOR SENTENCE

Committal following summary trial: adults and corporations

14 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).

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

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.

(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).

(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.

15 Committal for sentence of dangerous adult offenders

(1) This section applies where—

(a) on the summary trial of a specified offence (see section 299) 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 259 or 272) would be available in relation to the offence.

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

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.

(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).

(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.

(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 14 or 18 if the provisions of that section are satisfied.

Committal following summary trial: persons under 18

16 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 13 (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 242.

(2) The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 22(2).

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.

17 Committal for sentence of dangerous young offenders

(1) This section applies where—

(a) on the summary trial of a specified offence (see section 299) 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 247 would be available in relation to the offence.

(2) The court must commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 22(2).

(3) For powers of the court, where it commits a person under subsection (2), also to commit in respect of other offences, see section 20.

(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 16 or 19 if the provisions of that section are satisfied.

Committal for sentence following indication of guilty plea

18 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 21(2).

(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).

(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.

(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 14(2) or is required under section 15(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.

(5) For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 20.

(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.

(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.

(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).

(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.

19 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 13 (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 22(2).

(2) Where a magistrates' court—

(a) convicts a young person of an offence mentioned in paragraph 1 or 2 of Schedule 13 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.

(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 16(2) or 17(2),

the court may make a statement of that opinion.

(4) For powers of the court, where it commits a person under subsection (1), also to commit in respect of other offences, see section 20.

(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.

(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.

Committal for sentence where offender committed in respect of another offence

20 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 14 to 19 (committal for sentence for offences triable either way),

(b) paragraph 5(4) of Schedule 2 (further offence committed by offender given conditional discharge order), or

(c) paragraph 11(2)(a) of Schedule 17 (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").

(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.

(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.

(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 17.

(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.

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

Power of Crown Court on committal for sentence

21 Power of Crown Court on committal for sentence of offender under section 14, 15 or 18

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

(a) section 14(2) (committal for sentence on summary trial of offence triable either way),

(b) section 15(2) (committal for sentence of dangerous adult offenders), or

(c) section 18(1) (committal for sentence on indication of guilty plea to offence triable either way).

(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 been convicted of the offence on indictment before the court.

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

(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).

(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(4) (statement of power to commit under section 14(2) or 15(2)).

(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)(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 have dealt with the offender for it.

(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 15(2) (dangerous adult offenders), or

(b) in respect of which—

(i) the offender is committed under section 18(1) (guilty plea to offence triable either way), and

(ii) the court makes a statement under section 18(4) that, in its opinion, it also has power to commit the offender under section 15(2).

22 Power of Crown Court on committal for sentence of person under 18 under section 16, 17 or 19

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

(a) section 16(2) (committal for sentence of young offenders on summary trial of certain serious offences),

(b) section 17(2) (committal for sentence of dangerous young offenders), or

(c) section 19(1) (committal for sentence on indication of guilty plea by child or young person with related offences).

(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 been convicted of the offence on indictment before the court.

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

(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).

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

(a) commits an offender under section 19(1) to be dealt with in respect of an offence ("the offence"), but

(b) does not make a statement under section 19(3) (statement of power to commit under section 16(2) or 17(2)).

(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 19(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 have dealt with the offender for it.

23 Power of Crown Court on committal for sentence under section 20

(1) Subsection (2) applies where under section 20(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.

(2) The Crown Court—

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

(b) may deal with the offender for the offence in any way in which the magistrates' court could have dealt with the offender (assuming it had convicted the offender of the offence).

(3) Subsection (4) applies where under section 20(4)(b) a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence.

(4) The powers under paragraphs 13 and 14 of Schedule 17 (power of court to deal with suspended sentence) are exercisable by the Crown Court.

(5) Subsection (6) applies where under section 20 a magistrates' court commits a person to be dealt with by the Crown Court.

(6) Without prejudice to subsections (1) to (4), 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).

Further powers to commit to Crown Court for sentence

24 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) paragraph 21(2) and (4) of Schedule 7 (offender subject to youth rehabilitation order made by Crown Court convicted of further offence by magistrates' court);

(b) 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);

(c) section 43(1) of the Mental Health Act 1983 (power of magistrates' courts to commit for restriction order);
(d) section 6(6) of the Bail Act 1976 (offence of absconding by person released on bail);
(e) section 9(3) of that Act (offence of agreeing to indemnify sureties in criminal proceedings);
(f) the Vagrancy Act 1824 (incorrigible rogues).

(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.

CHAPTER 3

REMISSION TO YOUTH COURT OR OTHER MAGISTRATES' COURT FOR SENTENCE

25 Power and duty to remit offenders aged under 18 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.

(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.

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

(4) If the convicting court is a magistrates' court other than a youth court, it must remit the offender to a youth court.
This is subject to subsection (5).

(5) But it need not do so where—
(a) it would be required by section 82(1)(a) to make a referral order if it did not remit the offender to a youth court, or
(b) it is of the opinion that the case is one which can properly be dealt with by means of—
(i) an order for absolute discharge or an order for conditional discharge, or
(ii) an order for the payment of a fine, or
(iii) an order (under section 351) 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.

(6) For the purposes of subsection (5)(b)(iii)—
(a) "care" and "control" are to be read in accordance with section 351(3) (binding over of parent or guardian), and
(b) section 377 (certain references to parent or guardian to be read as references to local authority) does not apply.

(7) 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.

(8) 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 deal with the offender if it had convicted the offender of the offence.

(9) 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 (8).

(10) 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.

26 Remission by Crown Court to youth court: custody or bail, and appeals

(1) This section applies where the Crown Court remits an offender to a youth court under section 25.

(2) The Crown Court 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 29.

(3) The offender—

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

(b) has the same right of appeal against an order of the youth court as if convicted by that court.

27 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.

(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").

(3) Where an offender is remitted under subsection (2), the adult court may deal with the offender in any way in which it could deal with the offender if it had convicted the offender of the offence.

(4) Where an offender is remitted under subsection (2), section 25(4) (duty of adult magistrates' court to remit young offenders to youth court for sentence) does not apply to the adult court.

(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.

28 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.

(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.

(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.

(4) Where the convicting court remits the offender to the other court under this section the other court may deal with the offender in any way in which it could deal with the offender if it had convicted the offender of the present offence.

This is subject to subsection (8).

(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.

(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.

(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.

(8) Nothing in this section precludes the convicting court from making a restitution order (see section 151) by virtue of the offender's conviction of the present offence.

(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.

29 Remission by magistrates' court: adjournment, remand and appeal

(1) This section applies where a magistrates' court ("the remitting court") remits an offender under section 25, 27 or 28 to another magistrates' court ("the other court") to be dealt with in respect of an offence.

(2) The remitting court must adjourn proceedings in relation to the offence.

(3) 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.

(4) 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.

(5) The offender has no right of appeal against the order of remission.

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

PART 3

PROCEDURE

CHAPTER 1

INFORMATION AND REPORTS

Pre-sentence reports

30 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.

(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.

(3) If the offender is aged 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.

(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.

31 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.

(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.

"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).

(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 222(2) (seriousness threshold for discretionary custodial sentence),

(ii) section 223(2) (determining term of custodial sentence), or

(iii) section 248(1)(c) (determining risk of harm to public for purpose of extended sentence).

32 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.

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.

(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.

For this purpose "harm" has the same meaning as in section 31 of the Children Act 1989.

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.

(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.

(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.

33 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.

(2) If the offender is aged 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.

(3) If the offender is aged 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.

Other reports of providers of probation services etc

34 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.

(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.

(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.

For this purpose, "harm" has the same meaning as in section 31 of the Children Act 1989.

Financial circumstances orders

35 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.

(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.

(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.

(4) Where—

(a) an individual aged under 18 has been convicted of an offence, and

(b) the court is considering whether to make an order under section 355 in respect of the individual's parent or guardian (power to order parent or guardian to pay fine, costs, compensation or surcharge),

the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.

36 Financial circumstances order: offences

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

(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.

(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.

(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.

(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).

Other powers to obtain reports etc

37 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 224 (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).

CHAPTER 2

DEROGATORY ASSERTION ORDERS

38 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.

(2) In this Chapter—
"derogatory assertion order" means an order made under subsection section (3) of 39 in relation to an assertion to which that section applies;
"interim derogatory assertion order" means an order made under subsection (4) of section 39 in relation to an assertion to which that section applies.

39 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.

(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.

(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.

(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.

(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.

(6) Section 38(1) has effect where a court makes a derogatory assertion order or an interim derogatory assertion order.

(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.

(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.

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

(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)).

40 Reporting of assertions: offences

(1) If an assertion is published or included in a relevant programme in contravention of section 38, 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.

(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.

(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.

(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.

(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.

41 Reporting of assertions: supplementary

(1) In sections 38 and 40—

"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.

(2) For the purposes of sections 38 and 40 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.

(3) Nothing in section 38 or 39 affects any prohibition or restriction imposed by virtue of any other enactment on a publication or on matter included in a programme.

CHAPTER 3

SURCHARGE

42 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) to (4).

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

(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).

(4) Where an offender aged under 18 is convicted of an offence and, but for this subsection, a court would order the offender to pay a surcharge—

(a) section 355 (orders for payment by parent or guardian) applies to the surcharge, and

(b) for the purposes of any order under that section in respect of the surcharge, subsection (3)(b) is to be read as if the reference to the offender's means were to the means of the offender's parent or guardian.

(5) 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.

(6) 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.

(7) 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.

43 Amount of surcharge

(1) The surcharge payable under section 42 is such amount as the Secretary of State may specify by regulations.

(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.

CHAPTER 4

CRIMINAL COURTS CHARGE

44 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 46).

45 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 10 (magistrates' court dealing with offender for breach of requirement of community order);

(e) paragraph 11(3) of that Schedule (Crown Court dealing with offender for breach of community order);

(f) paragraph 13(2) of Schedule 17 (magistrates' court or Crown Court dealing with offender for breach of community requirement of suspended sentence order).

(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 46 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."

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

"30B Criminal courts charge

The criminal courts charge duty (see section 46 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."

(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 46 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 46 of the Sentencing Code".

46 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.

(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.

(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).

(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.

47 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.

48 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 46.

49 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.

50 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.

CHAPTER 5

DUTIES TO EXPLAIN OR GIVE REASONS

51 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).

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

(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.

(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.

(5) Subsections (6) to (8) are particular duties of the court in complying with the duty in subsection (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 59 or 60 (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.

(7) Where as a result of taking into account any matter mentioned in section 70(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.

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

(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 195.

(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 222(2) (discretionary custodial sentence), the court must state why it is of that opinion.

52 Offender aged under 16: duty to give reasons where order not made in respect of parent or guardian

(1) Where an offender aged under 16 is convicted of an offence, for the duty of the court to make a statement in certain cases—

(a) if it does not make a parenting order under section 341 in respect of a parent or guardian of the offender, see subsection (3)(b) of that section;

(b) if it makes a criminal behaviour order in respect of the offender and does not make a parenting order under section 342 in respect of a parent or guardian of the offender, see subsection (3)(b) of that section;

(c) if it does not make an order under section 351 (binding over of parent or guardian), see subsection (4)(b) of that section.

(2) Section 377 (certain references to parent or guardian to be read as references to local authority) does not apply to this section.

53 Duty to give reasons where reparation order not made

(1) This section applies where—

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

(b) a reparation order is available.

(2) The court must give reasons if it does not make a reparation order.

54 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.

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

55 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).

56 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).

PART 4

EXERCISE OF COURT'S DISCRETION

CHAPTER 1

PURPOSES OF SENTENCING

57 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.

(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.

(3) Subsection (1) does not apply—

(a) to an offence in relation to which a mandatory sentence requirement applies (see section 372), 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.

58 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).

CHAPTER 2

SENTENCING GUIDELINES

59 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.

(2) The duty imposed by subsection (1) is subject to—

(a) section 122(1) (fine must reflect seriousness of offence);

(b) section 195(2) (restriction on community order);

(c) section 199(2) and (5) (restrictions on choice of requirements of community order);

(d) section 222 (threshold for imposing discretionary custodial sentence);

(e) section 223 (custodial sentence must be for shortest term commensurate with seriousness of offence);

(f) sections 266 and 276 (life sentence for second listed offence for certain dangerous offenders);

(g) section 312 and Schedule 21 (determination of minimum term in relation to mandatory life sentence);

(h) the provisions mentioned in section 372(1)(c) (mandatory minimum sentences).

(3) Nothing in this section or section 60 or 61 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.

60 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.

(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.

(3) Subsection (2) is subject to—

(a) section 70 (reduction in sentences for guilty pleas),

(b) sections 71 and 364 (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.

(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.

(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.

(6) Subsections (2) and (4) (except as applied by section 61) are subject to any power a court has to impose an extended sentence.

61 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.

(2) In determining the appropriate custodial term for the purposes of section 249(2), 261(2) or 274(2) (extended sentence for certain violent or sexual offences), section 60 applies to the court as it applies to a court in determining the sentence for an offence.

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 266 or 276 (life sentence for second listed offence) for an offence.

(4) In determining, for the purpose of deciding whether the sentence condition in section 266(3) or 276(3) is met, the sentence that it would have passed as mentioned in that condition, section 60 applies to the court as it applies to a court in determining the sentence for an offence.

Tariff for non-fixed life sentence

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

(6) Section 60 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 314 (minimum term order for non-fixed life sentence).

(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.

(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 242, or

(c) a sentence of custody for life under section 265.

62 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 59(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.

(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.

CHAPTER 3

SERIOUSNESS AND DETERMINING SENTENCE

Generally

63 Application of Chapter

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

64 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.

Aggravating factors

65 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.

66 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.

(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.

(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)).

(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.

(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.

(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.

67 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).

(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.

(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).

(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.

(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.

(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.

68 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).

(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.

(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).

69 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).

Mitigating factors

70 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.

(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.

(3) If—

(a) a mandatory sentence requirement applies in relation to the offence (see section 372) by virtue of a provision mentioned in subsection (4), and

(b) the offender was aged 18 or over when convicted,

the mandatory sentence requirement does not prevent the court, after taking into account any matter referred to in subsection (2), from imposing any sentence which is not less than 80 per cent of the sentence which would otherwise be required by that requirement.

(4) The provisions referred to in subsection (3)(a) are—

(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 304 (minimum of 7 years for third class A drug trafficking offence);

(d) section 305 (minimum of 3 years for third domestic burglary);

(e) section 306 (minimum sentence for repeat offence involving weapon).

(5) If—

(a) a mandatory sentence requirement applies in relation to the offence by virtue of—

(i) section 1A(5) of the Prevention of Crime Act 1953,

(ii) section 139AA(7) of the Criminal Justice Act 1988, or

(iii) section 306, and

(b) the offender was aged under 18 when convicted,

the mandatory sentence requirement does not prevent the court from imposing any sentence that it considers appropriate after taking into account any matter referred to in subsection (2).

71 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.

(2) The court may take into account the extent and nature of the assistance given or offered.

(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).

(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 51(2) and 313(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.

(5) Nothing in—

(a) any of the provisions listed in section 372(1)(b) or (c) (minimum sentences in certain circumstances), or
(b) section 312 (and Schedule 21) (determination of minimum term in relation to mandatory life sentence),

affects the Crown Court's power under subsection (2).

72 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).

(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.

(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

(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.

(5) The Attorney General may from time to time revise any guidance issued under subsection (4).

(6) In this section "the reduction in sentence provisions" means—
(a) section 71;
(b) this section;
(c) sections 363 to 367 (review of sentence in cases of assistance for prosecutor etc).

Effect of Code on other powers of court in assessing seriousness

73 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.

74 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.

(2) Section 222(2) (threshold for imposing discretionary custodial sentence) 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.

(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.

(4) Subsections (2) and (3) are without prejudice to the generality of subsection (1).

(5) In this section "basis of opinion provision" means any of the following—

(a) section 30 or 33 (pre-sentence reports and other requirements);

(b) section 121, 122 or 123 (fixing of fines);

(c) section 195 (imposing community sentences);

(d) section 222, 223 or 224 (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).

75 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.

(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 74.

THIRD GROUP OF PARTS

DISPOSALS

PART 5

ABSOLUTE AND CONDITIONAL DISCHARGE

76 Order for absolute discharge

(1) In this Code "order for absolute discharge" means an order discharging an offender absolutely for an offence.

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 372).

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.

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 130);

(ii) an order under section 142 (deprivation orders);

(iii) a restitution order (see section 151);

(iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,

(c) making an order under section 46 (criminal courts charge), or

(d) making an order for costs against the offender.

77 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").

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 372).

(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 330(3) (breach of criminal behaviour order).

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.

(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.

(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.

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 130),
(ii) an order under section 142 (deprivation orders), or
(iii) a restitution order (see section 151), or
(iv) an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013,
(c) making an order under section 46 (criminal courts charge), or
(d) making an order for costs against the offender.

78 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.

79 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.

(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).

(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.

(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.

(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.

(6) In subsection (4)—

"enactment" includes an enactment contained in a local Act;

"instrument" means an instrument having effect by virtue of an Act.

(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.

PART 6

ORDERS RELATING TO CONDUCT

CHAPTER 1

REFERRAL ORDERS FOR OFFENDERS AGED UNDER 18

Making referral orders

80 Referral orders

(1) In this Code "referral order" means an order—

(a) which requires an offender to attend each of the meetings of a youth offender panel established for the offender by a youth offending team, and

(b) by virtue of which the offender is required to comply, for a particular period, with a programme of behaviour to be agreed between the offender and the panel in accordance with this Part (which takes effect as a youth offender contract).

(2) For the court's power to order other persons to attend meetings of the panel, see section 87.

(3) For provision about—

(a) the youth offender panel, see section 88;

(b) the youth offender contract, see section 93.

(4) For the purposes of this Code, references to an offender being referred to a youth offender panel are to a referral order being made in respect of the offender.

81 Referral orders: availability

(1) A referral order is available for a court dealing with an offender for an offence where—

(a) the court is a youth court or other magistrates' court,

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

(c) neither the offence nor any connected offence is an offence the sentence for which is fixed by law,

(d) the court is not proposing to—

(i) impose a custodial sentence, or

(ii) make a hospital order (within the meaning of the Mental Health Act 1983),

in respect of the offence or any connected offence,

(e) the court is not proposing to make—

(i) an order for absolute discharge, or

(ii) an order for conditional discharge,

in respect of the offence, and

(f) the offender pleaded guilty to the offence or to any connected offence.

(2) But a referral order is not available unless the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside (and the notice has not been withdrawn).

82 Duty and power to make referral order

(1) Where a referral order is available—

(a) the court must make a referral order if the compulsory referral conditions are satisfied;

(b) otherwise, the court may make a referral order.

(2) The compulsory referral conditions are satisfied where—

(a) the offence is an imprisonable offence,

(b) the offender pleaded guilty to the offence and to any connected offence, and

(c) the offender has never been—

(i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or

(ii) convicted by or before a court in another member State of any offence.

(3) For the effect of making a referral order on the court's other sentencing powers, see section 86.

83 Making of referral orders: general

(1) A referral order must specify—

(a) the youth offending team which is to establish a youth offender panel for the offender, and

(b) the period for which the offender is to be required to comply with a youth offender contract which takes effect by virtue of the order.

(2) That period must be—

(a) not less than 3 months, and
(b) not more than 12 months.

(3) The youth offending team specified in the order must be the team which has the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.

(4) On making a referral order the court must explain to the offender in ordinary language—
(a) the effect of the order, and
(b) the consequences which may follow—
(i) if no youth offender contract takes effect between the offender and the panel, or
(ii) if the offender breaches a youth offender contract.

Nothing in this subsection affects the court's duty under section 51 (duty to give reasons for and explain effect of sentence).

84 Referral order consecutive to earlier referral order

(1) Where—
(a) a court makes a referral order ("the later order"), and
(b) the offender is subject to an earlier referral order,

the court may direct that any youth offender contract under the later order is not to take effect until the earlier order is revoked or discharged.

(2) For this purpose an earlier referral order includes one made under the Powers of Criminal Courts (Sentencing) Act 2000.

85 Making of referral orders: connected offences

(1) This section applies where a court makes referral orders in respect of two or more connected offences.

(2) The referral orders have the effect of referring the offender to a single youth offender panel.

(3) Accordingly, provision made by the orders under section 80(1)(a) and section 83(1)(a) (which relates to the youth offending team and a youth offender panel) must be the same for each referral order.

(4) The court may direct that the period specified under section 83(1)(b) in any of the referral orders is to run—
(a) concurrently with, or
(b) in addition to,

the period specified in another of the referral orders.

(5) But a direction under subsection (4) must not result in a total period of more than 12 months.

(6) For the purposes of this Chapter, each of the orders mentioned in subsection (1) is associated with each other of those orders.

86 Making of referral orders: effect on court's other sentencing powers

(1) This section applies where a court makes a referral order in respect of an offence.

(2) In dealing with the offender for any connected offence, the court must—
  (a) sentence the offender by making a referral order, or
  (b) make an order for absolute discharge.

(3) In dealing with the offender in respect of the offence or any connected offence, the court may not—
  (a) order the offender to pay a fine,
  (b) make any of the following orders—
    (i) a youth rehabilitation order;
    (ii) an order under section 1(2A) of the Street Offences Act 1959;
    (iii) a reparation order;
    (iv) an order for conditional discharge,
  (c) make an order binding the offender over to keep the peace or to be of good behaviour, or
  (d) make an order under section 351 (binding over of parent or guardian).

(4) Nothing in section 82 or subsection (2) affects any power or duty of a magistrates' court under—
  (a) section 25 (power and duty to remit young offenders to youth courts for sentence),
  (b) section 10(3) of the Magistrates' Courts Act 1980 (adjournment for inquiries), or
  (c) section 35, 38, 43 or 44 of the Mental Health Act 1983 (remand for reports, interim hospital orders and committal to Crown Court for restriction order).

(5) Nothing in this section affects any power of a court, where it revokes a referral order, to re-sentence an offender for the offence in respect of which the order was made.

87 Order requiring attendance of parents etc at meetings

(1) This section applies where a court makes a referral order.

(2) The court—
  (a) may make an order requiring—
    (i) the appropriate person, or
    (ii) if there are two or more appropriate persons, one or more of them,
  to attend the meetings of the youth offender panel, and
  (b) must do so if the offender is aged under 16 when the referral order is made.

(3) If the offender is—
  (a) a looked-after child, and
  (b) aged under 16 when the referral order is made,
the person or persons required under subsection (2) to attend those meetings must include at least one representative of the responsible authority.

(4) But an order under subsection (2) must not require a person to attend those meetings—

(a) if the court is satisfied that it would be unreasonable to do so, or

(b) to an extent which the court is satisfied would be unreasonable.

(5) For the purposes of this section, each of the following is an appropriate person in relation to an offender—

(a) if the offender is a looked-after child—

(i) a representative of the responsible authority, and

(ii) each person who is a parent or guardian of the offender with whom the offender is allowed to live;

(b) otherwise, each person who is a parent or guardian of the offender.

(6) In this section—

"looked-after child" means a child who is (within the meaning of the Children Act 1989 or the Social Services and Well-being (Wales) Act 2014 (anaw 4)) looked after by a local authority, and

"responsible authority", in relation to a looked-after child, means the authority by which the child is looked after.

(7) The court must forthwith send a copy of an order under subsection (2)—

(a) to each person required by the order to attend meetings of the panel, and

(b) to any responsible authority whose representative is required by the order to attend meetings of the panel,

unless the person was present, or the authority was represented, in court when the order was made.

Youth offender panels

88 Establishment of youth offender panels

(1) This section applies where a court has made a referral order (or two or more associated referral orders).

(2) The specified youth offending team must establish a youth offender panel for the offender.

(3) The youth offender panel must—

(a) be constituted,

(b) conduct its proceedings, and

(c) discharge its functions under this Chapter,

in accordance with guidance given from time to time by the Secretary of State.

(4) But at each of its meetings the panel must consist of at least—

(a) one member appointed by the specified youth offending team from among its members, and

(b) two members appointed by that team who are not members of the team.

(5) The Secretary of State may by regulations made by statutory instrument make provision requiring persons appointed as members of a youth offender panel to—

(a) have qualifications specified in the regulations;

(b) satisfy other criteria so specified.

89 Attendance at panel meetings: offender and parent or guardian

(1) This section applies to each meeting of the youth offender panel established for the offender.

(2) The specified youth offending team must notify—
(a) the offender, and
(b) any person to whom an order under section 87 (requirement to attend meetings of the panel) applies,
of the time and place at which the person is required to attend the meeting.

(3) If the offender fails to attend any part of the meeting the panel may—
(a) adjourn the meeting to such time and place as the panel may specify (in which case subsection (2) applies to the adjourned meeting), or
(b) end the meeting and refer the offender back to court.

90 Failure of parent or guardian to comply with order under section 87

(1) If—
(a) a parent or guardian of an offender fails to comply with an order under section 87, and
(b) the offender is aged under 18 at the time of the failure,
the youth offender panel may refer the parent or guardian to a youth court acting in the local justice area in which it appears to the panel that the offender resides or will reside.

(2) To make the referral, the panel must send a report to the youth court explaining why the parent or guardian is being referred to it.

(3) A youth court which receives a report under subsection (2) must cause the parent or guardian to appear before it.

(4) For that purpose, a justice acting in the local justice area in which the court acts may—
(a) issue a summons requiring the parent to appear before that youth court at the place and time specified in it, or
(b) if the report is substantiated on oath, issue a warrant for the parent's arrest which requires the parent to be brought before that court.

(5) For the youth court's power to make a parenting order where the panel refers the parent or guardian under this section, see section 343.

(6) Making a parenting order under that section does not affect the order under section 87.

(7) Accordingly, section 63(1) to (4) of the Magistrates' Court Act 1980 (power to deal with person for breach of order, etc) applies in relation to an order under section 87 (in addition to this section and section 343).

91 Attendance at panel meetings: other persons

(1) At a meeting of a youth offender panel, the offender may be accompanied by one person aged 18 or over chosen by the offender with the agreement of the panel.

(2) It need not be the same person who accompanies the offender to every meeting.

(3) The panel may allow any of the following to attend a meeting—

(a) a victim;

(b) any person who appears to the panel to be someone capable of having a good influence on the offender.

(4) If the panel allows a victim to attend a meeting of the panel, it may allow the victim to be accompanied to the meeting by one person chosen by the victim with the agreement of the panel.

(5) For the purposes of subsections (3) and (4) "victim" means any person who appears to the panel to be a victim of, or otherwise affected by, the offence or any of the offences in respect of which the offender was referred to the panel.

Youth offender contracts

92 Duty of youth offending team to arrange initial meetings of panel

(1) Where a court has made a referral order (or two or more associated referral orders), the specified youth offending team must arrange the first meeting of the youth offender panel established for the offender.

(2) The specified youth offending team must also arrange any further meeting of the panel that may be held under section 95(2)(b) (resuming consideration).

93 Agreement of youth offender contract with offender

(1) This section applies to—

(a) the first meeting of a youth offender panel established for an offender, and

(b) any further meeting of the panel held under section 95(2)(b) (resuming consideration).

(2) At the meeting the panel must seek to reach agreement with the offender on a programme of behaviour whose aim (or principal aim) is to prevent re-offending by the offender.

(3) Schedule 3 makes provision about the programme.

(4) Where a programme is agreed between the offender and the panel, the panel must produce a written record of the programme forthwith—

(a) in language capable of being readily understood by, or explained to, the offender,

(b) for signature by the offender, and

(c) for signature by a member of the panel on behalf of the panel.

(5) Once the record has been signed by the offender and on behalf of the panel—

(a) the terms of the programme, as set out in the record, take effect as the terms of a "youth offender contract" between the offender and the panel, and

(b) the panel must provide a copy of the record to the offender.

94 Duration of compliance period

(1) This section applies where a youth offender contract has taken effect between an offender and a youth offender panel.

(2) The compliance period begins with the day on which the youth offender contract takes effect.

(3) The length of the compliance period is—

(a) if the contract relates to a single referral order, the period specified in the order under section 83(1)(b);

(b) if the contract relates to two or more referral orders, the total period resulting from any direction of the court under section 85(4).

(4) Subsection (3) is subject to—

(a) any order under paragraph 7, 10 or 12 of Schedule 4 extending the length of the compliance period, and

(b) subsection (5).

(5) The compliance period expires on revocation of the referral order, or each of the referral orders, to which the youth offender contract relates.

95 Failure to agree youth offender contract

(1) This section applies to—

(a) the first meeting of a youth offender panel established for an offender, and

(b) any further meeting of the panel held under subsection (2)(b).

(2) The panel may—

(a) end the meeting without having reached agreement with the offender on a programme of behaviour of the kind mentioned in section 93(2), and

(b) resume consideration of the offender's case at a further meeting of the panel.

(3) But if, at the meeting, it appears to the panel that there is no prospect of reaching an agreement with the offender on a programme of behaviour within a reasonable period after the making of the referral order (or orders), the panel—

(a) may not consider the case at a further meeting under subsection (2)(b), and

(b) must instead refer the offender back to court.

(4) If, at the meeting, the panel and the offender reach agreement on a programme of behaviour, but—

(a) the offender does not sign the record produced under section 93(4)(b), and

(b) the offender's failure to do so appears to the panel to be unreasonable,

the panel must end the meeting and refer the offender back to court.

96 Arranging progress meetings

(1) This section applies where a youth offender contract has taken effect.

(2) The specified youth offending team must arrange a meeting of the youth offender panel at any time during the compliance period ("a progress meeting") if the panel requests it to do so under this section.

(3) The panel may request the specified youth offending team to arrange a progress meeting if it appears to the panel to be expedient to review—

(a) the offender's progress in implementing the programme of behaviour contained in the youth offender contract, or

(b) any other matter arising in connection with the contract.

(4) The panel must request the specified youth offending team to arrange a progress meeting if subsection (5) or (6) applies.

(5) This subsection applies where the offender has notified the panel that the offender wishes—

(a) the youth offender contract to be varied, or

(b) to be referred back to court with a view to the referral order (or orders) being revoked on account of a significant change in the offender's circumstances (such as being taken to live abroad) which makes compliance with the contract impractical.

(6) This subsection applies where it appears to the panel that the offender is in breach of the contract.

97 Progress meetings: conduct

(1) This section applies to any meeting of a youth offender panel arranged under section 96.

(2) At the meeting, the youth offender panel must do such of the following as it considers appropriate in the circumstances—

(a) review the offender's progress or any other matter referred to in section 96(3);

(b) discuss with the offender any breach of the youth offender contract which it appears to the panel that the offender has committed;

(c) consider any variation in the youth offender contract—

(i) sought by the offender, or

(ii) which appears to the panel expedient in the light of any such review or discussion;

(d) consider any request by the offender under section 96(5)(b) to be referred back to court.

(3) Where the youth offender panel has discussed with the offender any breach of the contract which it appears to the panel that the offender has committed, the panel may—

(a) agree with the offender that the offender is to continue to be required to comply with the contract (either in its original form or with any agreed variation of it) without being referred back to court, or

(b) end the meeting and refer the offender back to court.

(4) Where the panel and the offender agree a variation in the contract, the panel must produce a written record of the variation forthwith—

(a) in language capable of being readily understood by, or explained to, the offender,

(b) for signature by the offender, and

(c) for signature by a member of the panel on behalf of the panel.

(5) Once the record has been signed by the offender and on behalf of the panel—

(a) the variation in the contract takes effect, and

(b) the panel must provide a copy of the record to the offender.

(6) If at the meeting—

(a) the panel and the offender agree a variation in the contract,

(b) the offender does not sign the record produced under subsection (4), and

(c) the offender's failure to do so appears to the panel to be unreasonable,

the panel may end the meeting and refer the offender back to court.

(7) Paragraphs 2 to 6 of Schedule 3 (programme of behaviour) apply to what the contract, as varied under this section, may provide as they apply to a programme of behaviour agreed under section 93.

(8) Where the panel—

(a) has discussed with the offender a request to be referred back to court under section 96(5)(b), and

(b) is satisfied that there is (or is soon to be) a change in circumstances of the kind mentioned in that provision,

it may end the meeting and refer the offender back to court.

98 Final meeting

(1) This section applies where—

(a) a youth offender contract has taken effect between a youth offender panel and an offender, and

(b) the compliance period is due to expire.

(2) The specified youth offending team must arrange a meeting of the panel ("the final meeting") to be held before the end of the compliance period.

(3) At the final meeting the panel must—

(a) review the extent of the offender's compliance to date with the youth offender contract,

(b) decide whether or not the offender's compliance with the contract justifies the conclusion that the offender will have satisfactorily completed the contract by the end of the compliance period, and

(c) give the offender written confirmation of its decision.

(4) A decision that the conclusion mentioned in subsection (3)(b) is justified—

(a) has the effect of discharging the referral order (or orders) as from the end of the compliance period, and

(b) can be made in the offender's absence.

(5) If the panel decides that that conclusion is not justified, it must refer the offender back to court.

(6) Nothing in section 89(3) permits the final meeting to be adjourned (or re-adjourned) to a time after the end of the compliance period.

Other powers to refer offender back to court

99 Revocation of referral order where offender making good progress etc

(1) This section applies where—

(a) a youth offender contract has taken effect between a youth offender panel and an offender, and

(b) it appears to the panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.

(2) The panel may refer the offender back to court, requesting the appropriate court—

(a) to revoke the order (or each of the orders) under sub-paragraph (2) of paragraph 5 of Schedule 4, or

(b) to—

(i) revoke the order (or each of the orders) under that sub-paragraph, and

(ii) re-sentence the offender under sub-paragraph (4) of that paragraph for the offence in respect of which the revoked order was made.

(3) In deciding whether to refer the offender back to court under this section, the panel must have regard to circumstances which have arisen since the youth offender contract took effect, which may include the offender's making good progress under the contract.

(4) Where—

(a) the panel refers the offender back to court under this section, and

(b) the appropriate court decides not to revoke the order (or orders) under paragraph 5(2) of Schedule 4 in consequence of that referral,

the panel may not refer the offender back to court again under this section during the 3 month period beginning with the date of the court's decision, except with the consent of the appropriate court.

100 Extension of compliance period

(1) This section applies where—

(a) a youth offender contract has taken effect,

(b) the compliance period is less than 12 months,

(c) the compliance period has not ended, and

(d) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of the compliance period to be extended.

(2) The panel may refer the offender back to court requesting the appropriate court to extend the length of the compliance period.

(3) The requested period of extension must not be more than 3 months.

Further court proceedings

101 Offender or parent referred back to court: offender convicted while subject to referral order

In Schedule 4—

(a) Part 1 makes provision for what is to happen when a youth offender panel refers an offender back to court;

(b) Part 2 makes provision for what is to happen when an offender is convicted of further offences while subject to a referral order.

Supplementary

102 Youth offender panels: change of residence

(1) This section applies where the court which made a referral order is satisfied that—

(a) the offender has changed, or proposes to change, residence (to the "new residence"), and

(b) the youth offending team for the time being specified in the order ("the current team") does not have the function of implementing referral orders in the area of the offender's new residence ("the new area").

(2) The court may amend the order so that it specifies instead the youth offending team which has the function of implementing referral orders in the new area ("the new team").

(3) Where the court does so, this Chapter (and, in particular, section 88(2) (duty to establish youth offender panel) applies to the new team accordingly.

This is subject to subsection (4).

(4) If a youth offender contract has already taken effect under the referral order between the offender and the youth offender panel established by the current team—

(a) section 92 does not apply to the new team, and

(b) the contract has effect after the amendment as a youth offender contract between—

(i) the offender, and

(ii) the youth offender panel established by the new team.

103 Functions of the specified youth offending team

(1) This section applies where a referral order is made in respect of an offender.

(2) The specified youth offending team must arrange for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel.

(3) During the compliance period—

(a) the specified youth offending team must make arrangements for supervising the offender's compliance with the youth offender contract, and

(b) the person who is the member of the panel referred to in section 88(4)(a) must ensure that records are kept of the offender's compliance (or non-compliance) with that contract.

(4) In implementing a referral order, the specified youth offending team must have regard to any guidance given from time to time by the Secretary of State.

104 Rules of court

(1) Criminal Procedure Rules may make such provision as appears to the Criminal Procedure Rule Committee to be necessary or expedient for the purposes of this Chapter.

(2) Nothing in this section affects the generality of any other enactment conferring power to make Criminal Procedure Rules.

105 Referral orders: interpretation

(1) In this Chapter—

"the appropriate court", in relation to any referral of an offender back to court, means—

(a) if the offender is aged under 18 when first appearing before the court in pursuance of the referral back, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside;

(b) otherwise, a magistrates' court (other than a youth court) acting in that area;

"associated", in relation to referral orders, is to be read in accordance with section 85(6);

"compliance period" means the period for which a youth offender contract which takes effect between the offender and the youth offender panel is to have effect;

"meeting", in relation to a youth offender panel, means—

(a) the first meeting arranged under section 92(1),

(b) any further meeting held under section 95(2)(b),

(c) any progress meeting arranged under section 96, or

(d) the final meeting held under section 98;

"the specified youth offending team", in relation to an offender to whom a referral order applies (or two or more associated referral orders apply), means the youth offending team for the time being specified in the order (or orders);

"youth offender panel", in relation to an offender, means the panel established for the offender in accordance with section 88.

(2) For the purposes of this Chapter, an offence is connected with another offence if the offender is to be dealt with for both offences at the same time (whether or not convicted of them at the same time or by or before the same court).

(3) Any reference in this Chapter to a youth offender contract taking effect is to it taking effect between an offender and a youth offender panel under section 93.

(4) Section 377 (certain references to parent or guardian to be read as references to local authority) does not apply for the purposes of this Part (except that it does

apply for the purposes of section 361 as that section applies for the purposes of proceedings under Schedule 4).

CHAPTER 2

REPARATION ORDERS FOR OFFENDERS AGED UNDER 18

106 Reparation orders

(1) In this Code "reparation order" means an order made under this Chapter in respect of an offence which imposes requirements on the offender to make reparation for the offence to—

(a) a particular person or particular persons, or

(b) the community at large.

(2) In this Chapter, references to making reparation are to making reparation for the offence otherwise than by the payment of compensation.

107 Reparation orders: availability

(1) A reparation order is available for a court dealing with an offender for an offence where—

(a) the offender is aged under 18 at the time of conviction,

(b) the offence is not an offence the sentence for which is fixed by law, and

(c) the court is not proposing to—

(i) impose a custodial sentence,

(ii) make a youth rehabilitation order, or

(iii) make a referral order.

(2) But a reparation order is not available unless the court has been notified by the Secretary of State that arrangements for implementing reparation orders are available in the area in which it appears to the court that the offender resides or will reside (and the notice has not been withdrawn).

(3) A reparation order is not available if the offender is subject to a youth rehabilitation order, unless when it makes the reparation order the court revokes the youth rehabilitation order.

(4) For the power of the court to revoke the youth rehabilitation order, see Part 5 of Schedule 7 (powers of court in relation to youth rehabilitation order following subsequent conviction).

108 Requirement to consider report before making a reparation order

(1) This section applies where a court proposes to make a reparation order in respect of an offence.

(2) Before making the order, the court must obtain and consider a written report by—

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

(b) a social worker of a local authority, or

(c) a member of a youth offending team.

(3) The report must indicate—

(a) the type of work that is suitable for the offender, and
(b) the attitude of the victim or victims to requirements proposed to be included in the reparation order.

109 Requirements to make reparation to be specified in order

(1) This section applies where a court makes a reparation order in respect of an offence.

(2) The reparation order must—
(a) specify the requirements with which the offender must comply, and
(b) if those requirements require reparation to be made to a particular person or particular persons, specify that person or those persons.

(3) The requirements must be such as in the opinion of the court are commensurate with the seriousness of—
(a) the offence, or
(b) the combination of the offence and one or more associated offences.
This is subject to subsections (5) and (6).

(4) Any person specified under subsection (2)(b) must be a person identified by the court as—
(a) a victim of the offence, or
(b) a person otherwise affected by it.

(5) The reparation order may not impose a requirement to make reparation to a particular person without the consent of that person.

(6) The requirements must be requirements to make reparation which—
(a) may require the offender to perform work, but
(b) if they do, must not require the offender to work for more than 24 hours in aggregate.

(7) The requirements 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 offender's religious beliefs;
(c) any conflict with the requirements of any other court order to which the offender may be subject.

110 Other provision to be specified in a reparation order

(1) This section applies where a court makes a reparation order.

(2) The reparation order must specify the local justice area in which it appears to the court making the order that the offender resides or will reside.

(3) The reparation order must specify the responsible officer.

(4) The person specified as the responsible officer must be—
(a) an officer of a provider of probation services acting in the offender's home local justice area,
(b) a social worker of the local authority in whose area it appears to the court that the offender resides or will reside, or
(c) a member of a youth offending team established by that local authority.

111 Making reparation

(1) The offender must perform the requirements of the reparation order under the supervision of the responsible officer.

(2) Any requirements to make reparation imposed by a reparation order must be completed within the period of 3 months beginning with the day on which the order is made.

112 Breach, revocation or amendment of reparation order

Schedule 5 makes provision about breach, revocation and amendment of reparation orders.

113 Reparation orders: interpretation

In this Chapter—

(a) references to making reparation are to be read in accordance with section 106(2);

(b) "offender's home local justice area" means the local justice area for the time being specified in the reparation order under section 110 or by virtue of an order under paragraph 5(4)(b)(ii) of Schedule 5;

(c) the "responsible officer" means the responsible officer for the time being specified in the reparation order under that section or by virtue of an order under that paragraph;

(d) references to breach of a requirement of a reparation order include references to a failure to comply with the requirement.

CHAPTER 3

OTHER ORDERS

114 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.

PART 7

FINANCIAL ORDERS AND ORDERS RELATING TO PROPERTY

CHAPTER 1

FINES

Availability

115 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.

(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).

(3) This is subject to—

(a) section 118 (availability: fines not to be combined with certain other orders);

(b) section 120 (limit on fines imposed by magistrates' courts in respect of young offenders).

(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 116 (power of magistrates' court to fine where only imprisonment etc specified);

(v) section 119 (standard scale of fines).

116 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.

(2) The magistrates' court may impose a fine instead of sentencing the offender to imprisonment or other detention.

(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).

(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.

(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.

117 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.

(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.

(3) Those provisions are—

(a) section 304(2) or 305(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 372(1)(b) (required life sentences).

(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.

118 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 86 (making of referral orders: effect on court's other sentencing powers).

Magistrates' court

119 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

(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.

(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).

(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.

120 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.

Exercise of powers

121 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.

(2) For the power to make a financial circumstances order, see section 35.

(3) For modifications of this section where the court also makes an order under section 355 (power to order parent or guardian to pay fine, costs, compensation or surcharge), see section 125.

122 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.

(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.

(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.

(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 42, except to the extent that the offender has insufficient means to pay both.

(5) For modifications of this section where the court also makes an order under section 355 (power to order parent or guardian to pay fine, costs, compensation or surcharge), see section 125.

123 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 35(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.

(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 122, it may make such determination as it considers appropriate.

124 Remission of fines following determination under section 123

(1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 123 (offender absent or failing to provide information).

(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.

(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 127, 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.

(4) In calculating any reduction required by subsection (3), any fraction of a day is to be ignored.

(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 42 to pay a surcharge, and

(c) the amount of the surcharge was set by reference to the amount of the fine.

(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.

Fines: payment

125 Fine imposed on offender aged under 18: payment by parent or guardian

(1) This section applies where a court—

(a) is dealing with an offender for an offence,

(b) the offender was aged under 18 at the time of conviction, and

(c) but for this subsection, the court would impose a fine on the offender in respect of the offence.

(2) Section 355 (order for payment by parent or guardian) applies to the fine.

(3) Subsections (4) to (6) apply for the purposes of any order made under section 355 against the offender's parent or guardian.

(4) The following provisions are to be read as if any reference to the financial circumstances of the offender were a reference to the financial circumstances of the offender's parent or guardian—

(a) section 121 (duty of court to inquire into individual offender's financial circumstances);

(b) subsections (2) and (3) of section 122 (fixing of fine: exercise of court's powers).

This is subject to subsection (7).

(5) Section 123 (power to determine financial circumstances where offender is absent or fails to provide information) does not apply (but see section 357).

(6) The reference to the offender's means in section 122(4) (insufficient means to pay fine and surcharge) is to be read as a reference to the means of the offender's parent or guardian.

(7) For the purposes of any order under section 355 made against a local authority, section 121 does not apply.

126 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.

127 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.

(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.

(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.

(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
£250,000	£1,000,000	5 years
£1,000,000		10 years

(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).

(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.

(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).

(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.

(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.

(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.

128 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).

(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.

(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 127(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).

(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.

(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.

(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.

129 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.

CHAPTER 2

COMPENSATION ORDERS

Compensation orders

130 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.

Making a compensation order

131 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 133 (road accidents).

(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.

132 Making a compensation order

(1) The amount to be paid under a compensation order must be specified in the order.

(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 133 to 136.

(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.

(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).

(5) For modifications of this section where the court also makes an order under section 355 (power to order parent or guardian to pay fine, costs, compensation or surcharge), see section 137.

Particular cases

133 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.

(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 134 as resulting from an offence under the Theft Act 1968 or Fraud Act 2006, or
(c) uninsured harm.

(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.

(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.

(5) In this Chapter, "road accident" means an accident arising out of the presence of a motor vehicle on a road.

134 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.

(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 130 as having resulted from the offence.

This applies regardless of how the damage was caused and who caused it.

(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.

(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 130.

135 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.

(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.

(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.

Compensation orders made in respect of young offenders

136 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").

(2) The compensation in respect of a main offence must not exceed £5,000.

(3) The total compensation in respect of main offences and TIC offences must not exceed £5,000 multiplied by the number of main offences.

(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.

(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).

137 Compensation order: order for payment by parent or guardian

(1) This section applies where—

(a) a court makes or is proposing to make a compensation order in respect of an offence, and

(b) the offender was aged under 18 at the time of conviction.

(2) Section 355 (order for payment by parent or guardian) applies to the amount to be paid under any such compensation order.

(3) Subsection (4) applies for the purposes of any order made under section 355 against the offender's parent or guardian.

(4) The references in subsections (3) and (4) of section 132 (taking account of offender's means in determining amount of compensation) to the offender's means are to be read as references to the means of the offender's parent or guardian.

This is subject to subsection (5).

(5) For the purposes of any order made under section 355 against a local authority, section 132(3) does not apply.

Supplementary

138 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).

(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).

(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.

(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 42 (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.

(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.

Reviews and appeals

139 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.

(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).

(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.

(4) Subsections (5) to (7) apply for the purposes of subsection (3)(c).

(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.

(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.

(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.

140 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.

(2) The damages in the civil proceedings must be assessed without regard to the order.

(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").

(4) The plaintiff may not enforce the judgment, so far as it relates to unrecovered compensation, without the leave of the court.

Interpretation

141 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 130;

"court" does not include the Court Martial;

"road accident" has the meaning given by section 133.

(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.

CHAPTER 3

FORFEITURE, DEPRIVATION OF PROPERTY ETC

142 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.

143 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.

(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.

(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.

(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.

(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.

(6) Subsection (1) is subject to any restriction on forfeiture in any enactment contained in an Act passed on or after 29 July 1988.

144 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).

(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).

(3) The vehicle is to be regarded for the purposes of section 143 (and section 147(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).

145 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).

(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.

146 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.

(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.

(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.

(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).

147 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 146(4).

(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).

(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 143(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 143(3).

(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.

148 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 146(4) and in respect of which—

(a) no application under section 147 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.

(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.

(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 149 (court order as to application of property subject to deprivation order).

149 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.

(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.

(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).

(4) An order under this section has no effect—

(a) before the end of the 6 month period mentioned in section 147(3)(a), or

(b) if a successful application under—

(i) section 147, or

(ii) section 1(1) of the Police (Property) Act 1897,

has been made.

150 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)

Power to make order	*Description of order*
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
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.

CHAPTER 4

RESTITUTION ORDERS

151 Restitution orders

[To be added]

CHAPTER 5

CONFISCATION

152 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.

PART 8

DISQUALIFICATION

CHAPTER 1

DRIVING DISQUALIFICATION

153 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.

154 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).

(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.

155 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 14 (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.

(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.

(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.

156 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 158 and 159.

157 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).

158 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.

(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 312(2)(b).

(3) The disqualification period must be—

(a) the discretionary disqualification period, and

(b) the appropriate extension period.

(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.

(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 226 (offenders under 18: detention and training orders)	half the term of the detention and training order
2	an extended sentence of detention under section 247 (persons under 18)	two-thirds of the term imposed pursuant to section 247(a) (the appropriate custodial term)
3	a sentence under section 258 (special custodial sentence for certain offenders of particular concern: adults aged 18 to 20)	half the term imposed pursuant to section 258(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 259(a) (the appropriate custodial term)
5	a sentence under section 271 (special custodial sentence for certain offenders of particular concern: adults aged 21 and over)	half the term imposed pursuant to section 271(2)(a) (the appropriate custodial term)
6	an extended sentence of imprisonment	two-thirds of the term imposed pursuant to section 272(a) (the appropriate custodial term)
7	a life sentence in relation to which a minimum term order is made under section 312(2)(a)	the term specified in the minimum term order
8	any other case	half the custodial sentence imposed.

(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.

159 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.

(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.

160 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.

161 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).

CHAPTER 2

DISQUALIFICATION ETC UNDER OTHER ACTS

162 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.

163 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.

PART 9

COMMUNITY SENTENCES

CHAPTER 1

YOUTH REHABILITATION ORDERS

What a youth rehabilitation order is

164 Youth rehabilitation order

(1) In this Code, "youth rehabilitation order" means an order imposing one or more youth rehabilitation requirements.

(2) The youth rehabilitation requirements are listed in column 1 of the youth rehabilitation requirements table (see section 165).

(3) Provision about each requirement is made by the Part of Schedule 6 mentioned in the corresponding entry in column 2 of that table.

165 Youth rehabilitation requirements table

The youth rehabilitation requirements table referred to in sections 164 and 174 is—

Requirement	*Part of Schedule 6 relating to requirement*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
activity requirement	Part 1		paragraph 8 of Schedule 6, paragraph 6 of Schedule 8
extended activity requirement	Part 1	section 175(1)	paragraph 8 of Schedule 6, paragraph 6 of Schedule 8
supervision requirement	Part 2		
unpaid work requirement	Part 3		paragraph 11 of Schedule 6, paragraph 6 of Schedule 8
programme requirement	Part 4		paragraph 13 of Schedule 6, paragraph 6 of Schedule 8
attendance centre requirement	Part 5		paragraph 15 of Schedule 6, paragraph 6 of Schedule 8
prohibited activity requirement	Part 6		paragraph 17 of Schedule 6
curfew requirement	Part 7		paragraph 19 of Schedule 6
exclusion requirement	Part 8		paragraph 21 of Schedule 6
residence requirement	Part 9		paragraph 23 of Schedule 6

Requirement	*Part of Schedule 6 relating to requirement*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
local authority residence requirement	Part 10	paragraph 5 of Schedule 8	paragraph 25 of Schedule 6
fostering requirement	Part 11	section 166(2)(b), section 175(2), paragraph 5 of Schedule 8	paragraph 27 of Schedule 6
mental health treatment requirement	Part 12		paragraph 29 of Schedule 6, paragraph 6 of Schedule 8
drug treatment requirement	Part 13		paragraph 32 of Schedule 6, paragraph 6 of Schedule 8
drug testing requirement	Part 14		paragraph 34 of Schedule 6, paragraph 6 of Schedule 8
intoxicating substance treatment requirement	Part 15		paragraph 36 of Schedule 6
education requirement	Part 16		paragraph 39 of Schedule 6, paragraph 6 of Schedule 8
electronic monitoring requirement	Part 17	section 175(3)	paragraph 42 of Schedule 6, paragraph 6 of Schedule 8.

166 Youth rehabilitation order with intensive supervision and surveillance

(1) In this Code "youth rehabilitation order with intensive supervision and surveillance" means a youth rehabilitation order which imposes—

(a) an extended activity requirement (see paragraph 2 of Schedule 6),

(b) a supervision requirement, and

(c) a curfew requirement (and, accordingly, if so required by paragraph 19(3) of Schedule 6, an electronic monitoring requirement).

(2) A youth rehabilitation order with intensive supervision and surveillance—

(a) may impose other youth rehabilitation requirements, but

(b) may not impose a fostering requirement.

167 Youth rehabilitation order with fostering

(1) In this Code "youth rehabilitation order with fostering" means a youth rehabilitation order which imposes—

(a) a fostering requirement (see Part 11 of Schedule 6), and

(b) a supervision requirement.

(2) A youth rehabilitation order with fostering may also impose other requirements.

But this is subject to section 166(2) (fostering requirement not available with intensive supervision and surveillance).

Availability

168 Youth rehabilitation orders: availability

(1) A youth rehabilitation order is available for a court by or before which an offender is convicted of an offence if the offender is aged under 18 at the time of the conviction.

(2) Subsection (1) is subject to—

(a) subsection (3), and

(b) section 37(8) of the Mental Health Act 1983 (youth rehabilitation order not to be made in combination with hospital order or guardianship order in respect of same offence).

(3) A youth rehabilitation order is not available if a mandatory sentence requirement applies in relation to the offence (see section 372)—

(a) because the sentence is fixed by law, or

(b) by virtue of—

(i) section 251 (required sentence of detention for life),

(ii) section 51A(2) of the Firearms Act 1968, or

(iii) section 29(6) of the Violent Crime Reduction Act 2006.

169 Youth rehabilitation orders with intensive supervision and surveillance or fostering: availability

(1) A youth rehabilitation order which is—

(a) a youth rehabilitation order with intensive supervision and surveillance, or

(b) a youth rehabilitation order with fostering,

is available only in respect of an imprisonable offence.

(2) This is subject to paragraph 11(2) of Schedule 7 (powers of court in case of wilful and persistent failure to comply with youth rehabilitation order).

Exercise of power to make youth rehabilitation order

170 Exercise of power to make youth rehabilitation order: general considerations

(1) This section applies where a court is dealing with an offender for an offence and a youth rehabilitation order is available.

(2) The court must not make a youth rehabilitation order 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.

(3) In forming its opinion for the purposes of 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 any associated offence or offences, including any aggravating or mitigating factors.

(4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

(5) If the court is of the opinion mentioned in subsection (2), that does not require it to make a youth rehabilitation order in relation to the offence.

(6) Before making a youth rehabilitation order, the court must obtain and consider information about—

(a) the offender's family circumstances, and

(b) the likely effect of a youth rehabilitation order on those circumstances.

171 Making youth rehabilitation order with intensive supervision and surveillance or fostering

(1) This section applies where either of the following orders is available for a court dealing with an offender for an offence—

(a) a youth rehabilitation order with intensive supervision and surveillance;

(b) a youth rehabilitation order with fostering.

(2) The court must not make an order of either of those kinds unless it is of the opinion—

(a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that, if such an order were not available—

(i) a custodial sentence would be appropriate, or

(ii) if the offender was aged under 12 at the time of conviction, a custodial sentence would have been appropriate if the offender had been 12, and

(b) if the offender was aged under 15 at the time of conviction, that the offender is a persistent offender.

(3) In forming its opinion for the purposes of 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.

(4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

172 Making youth rehabilitation order where offender subject to other order

Offender subject to detention and training order

(1) Where a court makes a youth rehabilitation order in respect of an offender who is subject to a detention and training order, the court may order that the youth rehabilitation order is to take effect—

(a) when the period of supervision in respect of the detention and training order begins in accordance with section 235 (the period of supervision), or

(b) on the expiry of the detention and training order.

(2) In subsection (1)—

(a) the references to a detention and training order include an order made under section 211 of the Armed Forces Act 2006 (detention and training orders made by service courts), and

(b) the reference to section 235 includes that provision as applied by section 213 of that Act.

Offender subject to youth rehabilitation order or reparation order

(3) A court must not make a youth rehabilitation order in respect of an offender when—

(a) another youth rehabilitation order, or

(b) a reparation order,

is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

(4) Where the earlier order is revoked under subsection (3), paragraph 23 of Schedule 7 applies to the revocation as it applies to the revocation of a youth rehabilitation order.

173 Concurrent and consecutive orders

(1) This section applies where a court is dealing with an offender for two or more offences.

(2) If the court makes an order of any of the following kinds in respect of one of the offences—

(a) a youth rehabilitation order with intensive supervision and surveillance,

(b) a youth rehabilitation order with fostering, or

(c) any other youth rehabilitation order,

it may not make a youth rehabilitation order of another of those kinds in respect of the other offence, or any of the other offences.

(3) If the court makes—

(a) two or more youth rehabilitation orders with intensive supervision and surveillance, or

(b) two or more youth rehabilitation orders with fostering,

those orders must take effect at the same time (in accordance with section 189).

(4) Subsections (5) to (7) apply where the court includes requirements of the same kind in two or more youth rehabilitation orders.

(5) The court must direct, for each kind of requirement—

(a) whether the requirements are to be concurrent or consecutive, or

(b) if more than two requirements of that kind are imposed, which are to be concurrent and which consecutive.

(6) But the court may not direct that two or more fostering requirements are to be consecutive.

(7) Where the court directs that two or more requirements of the same kind are to be consecutive, the numbers of hours, days or months specified in relation to each of them—

(a) are to be aggregated, but

(b) in aggregate, must not exceed the maximum number which may be specified in relation to any one of them.

(8) For the purposes of subsections (4) to (7), requirements are of the same kind if they fall within the same Part of Schedule 6.

Available requirements

174 Youth rehabilitation orders: available requirements

(1) Any youth rehabilitation requirement imposed by a youth rehabilitation order must be an available requirement for the court which makes the order.

(2) A youth rehabilitation requirement is available unless a provision mentioned in column 3 of the entry for that requirement in the youth rehabilitation requirements table (see section 165) provides otherwise.

175 Youth rehabilitation order: availability of particular requirements

Extended activity requirement

(1) An extended activity requirement is not available for a youth rehabilitation order other than a youth rehabilitation order with intensive supervision and surveillance.

Fostering requirement

(2) A fostering requirement is not available for a youth rehabilitation order other than a youth rehabilitation order with fostering.

Electronic monitoring requirement

(3) An electronic monitoring requirement is not available for a youth rehabilitation order unless the order imposes at least one other youth rehabilitation requirement.

Exercise of power to impose particular requirements

176 Youth rehabilitation order: exercise of power to impose particular requirements

(1) This section applies where a court makes a youth rehabilitation order in respect of an offence.

Suitability

(2) The particular youth rehabilitation requirement or combination of youth rehabilitation requirements imposed by the order must, in the opinion of the court, be the most suitable for the offender.

In the case of a youth rehabilitation order with intensive supervision and surveillance, this is subject to section 166 (by virtue of which the order must impose certain requirements).

(3) The pre-sentence report requirements (see section 30) apply to the court in relation to forming any opinion on whether a particular youth rehabilitation requirement or combination of youth rehabilitation requirements is suitable for the offender.

(4) In forming its opinion for the purposes of subsection (2) on which requirement or combination of requirements is the most suitable for the offender, the court may take into account any information about the offender which is before it.

Restrictions on liberty to be commensurate with seriousness

(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.

In the case of a youth rehabilitation order with intensive supervision and surveillance, this is subject to section 166 (by virtue of which the order must impose certain requirements).

(6) In forming its opinion for the purposes of subsection (5), 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.

(7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

(8) The fact that, by virtue of subsection (5), particular restrictions on liberty may be imposed by a youth rehabilitation order does not require the court to impose those restrictions.

Compatibility with other requirements and other matters

(9) If the order imposes two or more requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.

This is subject to sections 166 and 167 and paragraphs 19(3) and 21 of Schedule 6 (certain types of youth rehabilitation order to contain certain requirements).

(10) The court must ensure, as far as practicable, that any requirement imposed by the order is such as to avoid—

(a) any conflict with the offender's religious beliefs,

(b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and

(c) any conflict with the requirements of any other court order to which the offender may be subject.

177 Youth rehabilitation order: effect of remand in custody

(1) In determining the restrictions on liberty to be imposed by a youth rehabilitation 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.

(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 under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail), or

(c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

Making a youth rehabilitation order: contents

178 Youth rehabilitation order to specify end date

(1) A youth rehabilitation order must specify a date (the "end date") by which all the requirements in it must have been complied with.

(2) The end date must be—

(a) not more than 3 years, and

(b) in the case of a youth rehabilitation order with intensive supervision and surveillance, not less than 6 months,

after the date on which the order takes effect.

(3) If a youth rehabilitation order imposes two or more different youth rehabilitation requirements—

(a) the order may also specify, for each of the requirements, a date by which the requirement must have been complied with;

(b) if it does so, the last of those dates must be the same as the end date.

179 Youth rehabilitation order to specify offender's home local justice area

(1) A youth rehabilitation order must specify which local justice area is the offender's home local justice area.

(2) The area specified must be the local justice area in which the offender resides or will reside.

180 Power for Crown Court to direct magistrates' court supervision

(1) This section applies where the Crown Court makes a youth rehabilitation order.

(2) The Crown Court may include a direction that any proceedings relating to the order under Part 2, 3 or 4 of Schedule 7 (breach, revocation or amendment) are to be in a youth court or other magistrates' court.

This is subject to paragraph 6(3) of Schedule 7 (power of magistrates' court to refer to Crown Court).

181 Provision of copies of youth rehabilitation order and related documents

(1) This section applies when a court makes a youth rehabilitation order.

(2) The proper officer of the court must provide copies of the order—

(a) to the offender,

(b) if the offender is aged under 14, to the offender's parent or guardian,

(c) to a member of a youth offending team assigned to the court or to an officer who is acting at the court and is an officer of a provider of probation services, and

(d) if the court does not act in the offender's home local justice area, to a provider of probation services operating in that area.

(3) Sub-paragraph (4) applies if the order—

(a) is made by the Crown Court, or

(b) is made by a magistrates' court which does not act in the offender's home local justice area.

(4) The proper officer of the court must provide to the magistrates' court acting in the offender's home local justice 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.

(5) 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.

Requirement	*Person to whom copy of requirement is to be given*
An activity requirement which comprises or includes a specified place obligation	The person in charge of each place specified under paragraph 3(1)(b) of Schedule 6
An activity requirement which comprises or includes a specified activities obligation	The person in charge of each activity specified under paragraph 4(1)(b) of Schedule 6

Requirement	*Person to whom copy of requirement is to be given*
An activity requirement which comprises or includes a specified residential exercise obligation	The person in charge of each place or activity specified under paragraph 5(1)(b) of Schedule 6
An attendance centre requirement	The officer in charge of the attendance centre specified under paragraph 14(2) of Schedule 6
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 requiring residence with an individual	The individual specified under paragraph 22(2)(b) of Schedule 6
A place of residence requirement (within the meaning of paragraph 22 of Schedule 6) relating to residence in an institution	The person in charge of the institution
A local authority residence requirement	The local authority specified under paragraph 24(3)(b) of Schedule 6
A mental health treatment requirement	The person in charge of the institution or place specified under sub-paragraph (4)(b)(i) or (ii) of paragraph 28 of Schedule 6, or the person specified under sub-paragraph (4)(b)(iii) of that paragraph
A drug treatment requirement	The treatment director specified under paragraph 31(3)(b)(i) of Schedule 6
A drug testing requirement	The treatment director specified under paragraph 31(3)(b)(i) of Schedule 6
An intoxicating substance treatment requirement	The treatment director specified under paragraph 35(3)(b)(i) of Schedule 6
An education requirement	The relevant authority specified under paragraph 38(2)(a) of Schedule 6

Requirement	*Person to whom copy of requirement is to be given*
An electronic monitoring requirement	Any person who by virtue of paragraph 41(1) of Schedule 6 will be responsible for the electronic monitoring Any person without whose consent the requirement could not have been included in the order.

(6) 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.

Obligations of responsible officer and offender

182 Meaning of "the responsible officer"

(1) For the purposes of this Chapter, "the responsible officer", in relation to an offender to whom a youth rehabilitation order relates, means the person identified in subsection (2), (3) or (4).

(2) If the order imposes the following requirements, and no other youth rehabilitation requirements—

(a) an electronic monitoring requirement, and

(b) a curfew requirement or an exclusion requirement (or both),

the responsible officer is the person who under paragraph 41(1) of Schedule 6 is responsible for the electronic monitoring required by the order.

(3) If the only youth rehabilitation requirement imposed by the order is an attendance centre requirement, the responsible officer is the officer in charge of the attendance centre in question.

(4) In any other case the responsible officer is the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Chapter on the responsible officer.

(5) In subsection (4) "qualifying officer", means—

(a) a member of a youth offending team established by a local authority specified in the order for the purposes of this section, or

(b) an officer of a provider of probation services acting in the offender's home local justice area.

183 Obligations of responsible officer

(1) This section applies where a youth rehabilitation order is in force.

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,
(b) promote the offender's compliance with those requirements, and
(c) where appropriate, take steps to enforce those requirements.

(3) But subsection (2) does not apply to a person who is a responsible officer by virtue of section 182(2) (person responsible for electronic monitoring).

Exercise of functions by responsible officer

(4) In giving instructions to the offender in pursuance of the order, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid—
(a) any conflict with the offender's religious beliefs,
(b) any interference with the times, if any, at which the offender normally works, or attends school or any other educational establishment, and
(c) any conflict with the requirements of any other court order to which the offender may be subject.

184 Duty of offender to keep in touch with responsible officer etc

(1) This section applies where a youth rehabilitation order is in force.

(2) The offender—
(a) must keep in touch with the responsible officer in accordance with any instructions the responsible officer may give the offender from time to time, and
(b) must notify the responsible officer of any change of address.

(3) This obligation is enforceable as if it were a youth rehabilitation requirement of the youth rehabilitation order.

Review

185 Power to provide for court review of youth rehabilitation orders

(1) The Secretary of State may by regulations—
(a) enable or require a court making a youth rehabilitation order to provide for the order to be reviewed periodically by that or another court,
(b) enable a court to amend a 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.

(2) Regulations under this section may, in particular, make provision in relation to youth rehabilitation orders corresponding to any provision made by sections 286 and 287 in relation to suspended sentence orders.

(3) Regulations under this section may repeal or amend any provision of—
(a) this Chapter, or
(b) any other provision of this Code derived from Chapter 1 of Part 12 of the Criminal Justice Act 2003.

Breach, revocation or amendment of order

186 Breach, revocation or amendment of youth rehabilitation orders

Schedule 7 makes provision about—

(a) failures to comply with the requirements of youth rehabilitation orders, and

(b) revocation and amendment of youth rehabilitation orders.

Transferring order to Northern Ireland

187 Transfer of youth rehabilitation orders to Northern Ireland

Schedule 8 makes provision about the transfer of youth rehabilitation orders to Northern Ireland.

Youth rehabilitation orders: supplementary

188 Youth rehabilitation orders: interpretation

(1) In this Chapter, except where the contrary intention appears—

"end date", in relation to a youth rehabilitation order, means the date for the time being specified in the order under—

(a) section 178 (youth rehabilitation order to specify end date),

(b) paragraph 10(4) of Schedule 7 (power to substitute later end date on breach), or

(c) paragraph 17(1) of that Schedule (extension of order);

"home local justice area", in relation to a youth rehabilitation order, means the local justice area for the time being specified in the order under—

(a) section 179, or

(b) paragraph 14(2) of Schedule 7;

"local authority foster parent" has the same meaning as in the Children Act 1989 (see section 105(1) of that Act);

"the responsible officer", in relation to an offender to whom a youth rehabilitation order relates, has the meaning given by section 182;

"youth rehabilitation order" has the meaning given by section 164;

"youth rehabilitation order with fostering" has the meaning given by section 167;

"youth rehabilitation order with intensive supervision and surveillance" has the meaning given by section 166;

"youth rehabilitation requirement" has the meaning given by section 164.

(2) In this Code, each of the expressions listed in column 1 of the table in section 165 has, in relation to a youth rehabilitation order, the meaning given for it by the Part of Schedule 6 mentioned in the entry for it in column 2 of that table.

189 When a youth rehabilitation order is in force

(1) A youth rehabilitation order takes effect on the day on which it is made.

(2) But a court making a youth rehabilitation order may order that it is to take effect instead on a later date (and see, in particular, section 172(1)).

(3) A youth rehabilitation order is in force for the period—
  (a) beginning when it takes effect, and
  (b) ending—
    (i) with the end date, or
    (ii) if later, when the offender has completed any unpaid work requirement imposed by the order.

(4) But a youth rehabilitation order ceases to be in force when it is revoked.

(5) An unpaid work requirement is completed when the offender has worked under it for the number of hours specified in the order.

190 Youth rehabilitation orders: Isles of Scilly

This Chapter has effect in relation to the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may by regulations specify.

CHAPTER 2

COMMUNITY ORDERS

What a community order is

191 Community order

(1) In this Code "community order" means an order imposing one or more community order requirements.

(2) The community order requirements are listed in column 1 of the community order requirements table (see section 192).

(3) Provision about each requirement is made by the provisions of Schedule 9 mentioned in the corresponding entry in column 2 of that table.

192 Community order requirements table

The community order requirements table referred to in sections 191 and 197 is—

Requirement	*Further provision in Schedule 9*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
unpaid work requirement	Part 1		paragraph 3 of Schedule 9, paragraph 7(1) of Schedule 11

Requirement	*Further provision in Schedule 9*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
rehabilitation activity requirement	Part 2		paragraph 7(1) of Schedule 11
programme requirement	Part 3		paragraph 7(1) of Schedule 11
prohibited activity requirement	Part 4		paragraph 8 of Schedule 9
curfew requirement	Part 5		paragraph 10 of Schedule 9
exclusion requirement	Part 6		paragraph 12 of Schedule 9
residence requirement	Part 7		paragraph 14 of Schedule 9
foreign travel prohibition requirement	Part 8		
mental health treatment requirement	Part 9		paragraph 17 of Schedule 9, paragraph 7(1) of Schedule 11
drug rehabilitation requirement	Part 10		paragraph 20 of Schedule 9, paragraph 7(1) of Schedule 11
alcohol treatment requirement	Part 11		paragraph 24 of Schedule 9, paragraph 7(1) of Schedule 11
alcohol abstinence and monitoring requirement	Part 12	section 198(1), (2) or (3), paragraph 6(a) of Schedule 11	paragraph 26 of Schedule 9
attendance centre requirement	Part 13	section 198(4), paragraph 6(b) of Schedule 11	paragraph 28 of Schedule 9

Requirement	*Further provision in Schedule 9*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
electronic compliance monitoring requirement	Part 14	section 198(5)	paragraphs 34 and 33 of Schedule 9, paragraph 7(1) of Schedule 11
electronic whereabouts monitoring requirement	Part 14	section 198(6)	paragraphs 35 and 33 of Schedule 9

Availability

193 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 by that court.

(2) Subsection (1) is subject to—

(a) subsection (3),

(b) section 194 (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).

(3) A community order is not available in respect of an offence in relation to which a mandatory sentence requirement applies (see section 372).

194 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.

Exercise of power to make community order

195 Exercise of power to impose community order: general considerations

(1) This section applies where a community order is available.

(2) The court must not make a community order 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.

(3) In forming its opinion for the purposes of 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.

(4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

(5) The fact that, by virtue of subsection (2), the court may make a community order does not require it to do so.

196 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.

(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.

(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.

Available requirements

197 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.

(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 192) provides otherwise.

198 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 23 [to be added]).

(2) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 9 (prescribed arrangements for monitoring).

(3) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 9 (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).

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.

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.

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 11 (transfer to Scotland or Northern Ireland).

Exercise of power to impose requirements

199 Community order: exercise of power to impose particular requirements

(1) This section applies where a court makes a community order in respect of an offence.

Suitability of requirements

(2) The particular requirement or requirements imposed by the order must, in the opinion of the court, be the most suitable for the offender.
This is subject to subsection (9).

(3) The pre-sentence report requirements (see section 30) apply to the court in relation to forming any opinion on whether a particular requirement or combination of requirements is suitable for the offender.

(4) In forming the opinion under subsection (2) on which requirement or combination of requirements is most suitable for the offender, the court may take into account any information about the offender which is before it.

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.
This is subject to subsection (9).

(6) In forming its opinion for the purposes of subsection (5), 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.

(7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

(8) The fact that, by virtue of subsection (5), particular restrictions on liberty may be imposed by a community order does not require the court to impose those restrictions.

(9) The order must include at least one requirement imposed for the purpose of punishment.

(10) Subsection (9) 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.

Compatibility with other matters

(11) 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.

(12) The court must ensure, so far as practicable, that any community order requirement imposed by the order is such as to avoid—
(a) any conflict with the offender's religious beliefs;

(b) any conflict with the requirements of any other court order to which the offender may be subject, and

(c) any interference with the times, if any, at which the offender normally—

(i) works, or

(ii) attends any educational establishment.

200 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.

(2) This is subject to—

(a) paragraph 33 of Schedule 9 (consent of person whose co-operation is required), and

(b) paragraph 34(1) of that Schedule (availability of arrangements in local area).

Making a community order

201 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.

(2) The end date must not be more than 3 years after the date of the order.

(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;

(b) if it does so, the last of those dates must be the same as the end date.

(4) Section 212 sets out the effect of the end date.

202 Community order to specify offender's home local justice area

(1) A community order must specify which local justice area is the offender's home local justice area.

(2) The area specified must be the local justice area in which the offender resides or will reside.

203 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 further proceedings relating to the order are to be in a magistrates' court.

This is subject to paragraph 10(3) of Schedule 10 (power of magistrates' court to refer to Crown Court).

(2) In subsection (1), "further proceedings" means—

(a) proceedings for any failure to comply with a requirement of the order, or

(b) proceedings on any application for the order to be amended or revoked under Part 3 or 4 of Schedule 10.

204 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.

(2) Regulations under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 286 and 287 in relation to suspended sentence orders.

(3) Regulations under this section may repeal or amend any provision of this Code derived from Part 12 of the Criminal Justice Act 2003.

205 Provision of copies of community order and related documents

(1) This section applies when a court makes a community order.

(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.

(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 9 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 9
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 9 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 31(1) of Schedule 9 will be responsible for the electronic monitoring Any person by virtue of whose consent the requirement is included in the order.

(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.

(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.

(6) In subsection (2) "public sector provider" means—
  (a) a probation trust or other public body, or

(b) the Secretary of State.

Obligations of responsible officer and offender

206 The responsible officer

(1) For the purposes of this Chapter, "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.

207 Obligations of responsible officer

(1) This section applies where a community order is in force.

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.

(3) This is subject to paragraph 16(7) of Schedule 9 (in-patient treatment under mental health treatment requirement).

Exercise of functions by responsible officer

(4) The responsible officer must ensure, as far as practicable, that any instruction given by the responsible officer is such as to avoid—
(a) any conflict with the offender's religious beliefs,
(b) any conflict with the requirements of any other court order to which the offender may be subject, and
(c) any interference with the times, if any, at which the offender normally—
(i) works, or
(ii) attends any educational establishment.

208 Duty of offender to keep in touch with responsible officer

(1) This section applies where a community order is in force.

(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.

(3) This obligation is enforceable as if it were a community order requirement of the community order.

209 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 9.

(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.

(3) This obligation has effect as a community order requirement of the community order.

(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 10 (see paragraph 1 of that Schedule).

(5) A court may also give permission in any proceedings before it under Schedule 10 (breach or amendment of orders etc).

(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.

(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.

(8) For cases in which a community order has to be amended because of permission given under this section, see paragraph 16 of Schedule 10 (amendment to reflect change in local justice area).

Breach, amendment etc of community order

210 Breach, revocation or amendment of community order

Schedule 10 makes provision about—
  (a) failures to comply with the requirements of community orders;
  (b) revocation of community orders;
  (c) amendment of community orders.

Transferring order to Scotland or Northern Ireland

211 Transfer of community orders to Scotland or Northern Ireland

Schedule 11 makes provision about transfers of community orders to Scotland or Northern Ireland.

Community orders: supplementary

212 When a community order ceases to be in force

(1) A community order ceases to be in force—
  (a) on the end date (see section 201), or
  (b) 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.

PART 10

CUSTODIAL SENTENCES

CHAPTER 1

CUSTODY: GENERAL PROVISIONS

Introductory

213 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 214 defines "custodial sentence";
  (b) sections 215 to 220 make provision about when a custodial sentence is not available or subject to restrictions;
  (c) section 221 permits a magistrates' court to impose imprisonment for less than the term specified;
  (d) sections 222 to 224 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 226);
  (b) extended sentences of detention (sections 247 to 250);
  (c) other sentences of detention under section 242, including life sentences (sections 242 to 251);
  (d) detention at Her Majesty's pleasure for murder etc where the offender is under 18 at the time of the offence (section 252).

(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 255 to 264);

(b) sentences of custody for life (sections 265 to 269);

(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.

214 Meaning of "custodial sentence"

(1) In this Code "custodial sentence" means—

(a) a detention and training order (under section 226);

(b) a sentence of detention under section 247 (extended term: offenders aged under 18);

(c) a sentence of detention under section 242 or 252;

(d) a sentence of detention in a young offender institution (under section 255 or otherwise);

(e) a sentence of custody for life under section 265 or 268;

(f) a sentence of imprisonment.

(2) In subsection (1) "sentence of imprisonment" does not include a committal for contempt of court or any kindred offence.

Availability of custodial sentence

215 Availability of custodial sentence

For restrictions on when certain custodial sentences are available see—

(a) sections 216 to 220;

(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).

General limits on powers to impose imprisonment

216 Two 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.

217 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.

(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.

(3) Nothing in subsection (1) affects section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment).

(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.

(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).

(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 371(4)), or
    (iii) failure to do or abstain from doing anything required to be done or left undone.

(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.

218 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).

(2) In this section "relevant custodial term" means—

(a) a sentence of detention under—

(i) section 247 (extended sentence), or

(ii) section 242 (sentence of detention),

(b) a sentence of detention in a young offender institution, or

(c) a sentence of imprisonment.

(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.

219 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.

Offenders aged under 21

(2) The court may not—

(a) make a detention and training order,

(b) pass a sentence of detention under section 247, 242 or 252 (offenders under 18),

(c) pass a sentence of detention in a young offender institution,

(d) pass a sentence of custody for life (under section 265 (discretionary life sentence: offender aged at least 18 but under 21), or

(e) pass a sentence of custody for life under section 268 (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)).

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.

(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 17,

(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.

(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).

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.

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.

(8) For those purposes an offender has failed, or is ineligible on financial grounds, to benefit from relevant representation if—

(a) the offender has refused or failed to 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.

220 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 aged under 21 when convicted of the offence.

Committal to prison

(2) No court may commit a person who is aged under 21 to prison for any reason, except as provided by subsection (3).

(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.

Power for magistrates' court to imprison for less than specified term

221 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.

(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.

Exercise of powers to impose discretionary custodial sentences

222 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).

(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.

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 372), except as provided in sections 266(3) and 276(3) (pre-condition for life sentence for second listed offence).

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.

(5) Subsection (2) is also subject to—

(a) paragraph 11(3) of Schedule 7 (power to impose custodial sentence in case involving wilful and persistent breach of youth rehabilitation order with intensive supervision and surveillance);

(b) paragraph 22(6)(b) of Schedule 9 (power to deal with offender who does not express willingness to comply with amended drug rehabilitation requirement);

(c) paragraph 10(9) of Schedule 10 (power of magistrates' court to impose custodial sentence following wilful and persistent breach of community order);

(d) paragraph 11(6) of that Schedule (corresponding power of Crown Court);

(e) paragraph 18(9)(b) of that Schedule (power to deal with offender who does not express willingness to comply with amended treatment requirement).

Procedure for forming opinion

(6) In forming its opinion for the purposes of 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.

(7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.

(8) See also—

(a) section 74(2) (effect of mitigation);

(b) section 224 (additional requirements for offender suffering from mental disorder).

223 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).

(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.

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 266(3) and 276(3) (pre-condition for life sentence for second listed offence).

(4) Subsection (2) is subject to the provisions listed in section 372(1)(c) (minimum sentences).

(5) Subsection (2) does not apply where the custodial sentence is an extended sentence, except as provided in sections 249(2), 261(2) and 274(2) (determination of appropriate custodial term).

Procedure for forming opinion

(6) In forming its opinion for the purposes of 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.

(7) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion, except where the sentence is an extended sentence.

(8) See section 224 for additional requirements in the case of an offender suffering from a mental disorder.

224 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").

(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.

(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.

(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.

(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.

(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.

(7) Nothing in this section is to be taken to limit the generality of—

(a) the pre-sentence report requirements (see section 30), 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.

Deportation

225 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.

CHAPTER 2

OFFENDERS AGED UNDER 18

Detention and training orders

226 Detention and training order

A detention and training order in respect of an offender is an order that the offender is subject, for the term specified in the order, to a period of detention and training followed by a period of supervision.

227 Detention and training orders: availability

(1) A detention and training order is available where a court is dealing with an offender in respect of an offence if—

(a) the offender was aged under 18, but at least 12, at the time of conviction,

(b) the offence is an imprisonable offence, and

(c) the court is not required to pass—

(i) a sentence of detention under section 242 (see section 243(2)), or

(ii) a sentence of detention at Her Majesty's pleasure under section 252.

(2) For circumstances in which the court is required to impose a detention and training order, see—

(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), and

(c) section 306(2) (minimum sentences for certain repeated offences involving weapons or sharp or bladed articles).

228 Exercise of power to make a detention and training order

(1) This section applies where a detention and training order is available.

(2) The court may not make a detention and training order if it imposes—

(a) a sentence of detention under section 242, or

(b) an extended sentence of detention under section 247,

in respect of the offence.

(3) If the offender is aged under 15 at the time of conviction the court may not make a detention and training order unless it is of the opinion that the offender is a persistent offender.

(4) The court's power to make a detention and training order is subject to (in particular) section 222 (threshold for imposing discretionary custodial sentence).

229 Term of detention and training order

(1) The term of a detention and training order made in respect of an offence (whether by a magistrates' court or otherwise) must be 4, 6, 8, 10, 12, 18 or 24 months.

This is subject to subsection (2).

(2) The term of a detention and training order in respect of an offence may not exceed—

(a) in the case of a summary offence, the maximum sentence of imprisonment that could be imposed (in the case of an offender aged 21 or over) for the offence;

(b) in the case of any other offence, the maximum term of imprisonment that the Crown Court could impose (in the case of an offender aged 21 or over) for the offence.

(3) Section 223 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a detention and training order.

(4) A detention and training order takes effect at the beginning of the day on which it is made, unless the court orders otherwise under section 230.

230 Making of order where offender subject to other order or sentence of detention

(1) This section applies where a court makes a detention and training order.

(2) The court may order that the term of the detention and training order is to take effect on the expiry of any other detention and training order which it imposes on the same occasion.

This is subject to section 231(1).

(3) If the offender—

(a) is subject to another detention and training order ("the existing order"), and

(b) has not at any time been released for supervision under the existing order,

the court may order that the detention and training order is to take effect on the expiry of the existing order.

This is subject to section 231(1).

(4) If the offender—

(a) is subject to a sentence of detention, and

(b) has not at any time been released under Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence of fixed-term prisoners),

the court may order that the detention and training order is to take effect at the time when the offender would otherwise be released under that Chapter.

(5) Section 246 of that Act (power of Secretary of State to release prisoners on licence earlier than required to do so) is to be disregarded in determining for this purpose when an offender would otherwise be released under that Chapter.

(6) If the offender is subject to a further period of detention imposed under paragraph 3(2)(a) of Schedule 12 (breach of supervision requirement of existing detention and training order), the court may order that the detention and training order is to take effect at the end of the further period of detention.

(7) In subsection (3)—

(a) the reference in paragraph (a) to another detention and training order includes a reference to an order made under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, and

(b) in relation to such an order, the reference to being released for supervision is a reference to being released by virtue of section 102(2), (3), (4) or (5) of that Act.

(8) In subsection (4) "sentence of detention" means—

(a) a sentence of detention under section 242,

(b) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (offenders under 18 convicted of certain serious offences: power to detain for specified period),

(c) a sentence of detention under section 209 of the Armed Forces Act 2006 (whether passed before or after this Code comes into force),

(d) an extended sentence of detention under section 247 (including one passed as a result of section 221A of the Armed Forces Act 2006), or

(e) a sentence under section 226B or 228 of the Criminal Justice Act 2003 (extended sentence of detention: offenders aged under 18), including one passed as a result of section 221A or 222 of the Armed Forces Act 2006.

(9) In subsection (6), the reference to a further period of detention includes a reference to an order made under section 104(3)(a) of the Powers of Criminal Courts (Sentencing) Act 2000.

231 Offender subject to more than one order: maximum overall term

(1) A court may not make a detention and training order as a result of which the offender would be subject to detention and training orders for a term exceeding 24 months.

(2) Where the term of the detention and training orders to which an offender would otherwise be subject exceeds 24 months, the excess is to be treated as remitted.

(3) Any detention and training order under which the offender has been released for supervision is to be disregarded for the purposes of subsections (1) and (2).

(4) Subsection (5) applies where an offender is subject to two or more detention and training orders.

(5) The terms of those orders are to be treated for the purposes of sections 234 to 236 and Schedule 12 as a single term if—

(a) the orders were made on the same occasion, or

(b) the offender has not been released for supervision at any time during the period beginning when the first of those orders was made and ending when the last of them was made.

(6) Where an offender is subject to—

(a) one or more detention and training orders, and

(b) one or more orders made under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention and training orders under that Act),

references in this section to detention and training orders are to be read as including references to orders under that section.

In relation to an order under that section, references to being released for supervision are to being released by virtue of subsection (2), (3), (4) or (5) of section 102 of that Act.

232 Period on remand etc: effect on term of detention and training order

(1) Subsection (2) applies where—

(a) a court proposes to make a detention and training order in respect of an offence, and

(b) the offender has been remanded—

(i) in custody, or

(ii) on bail subject to a qualifying curfew condition and an electronic monitoring condition,

in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

(2) In determining the term of the detention and training order, the court must take account of the period for which the offender was so remanded.

(3) If the court proposes to make two or more detention and training orders in respect of two or more offences—

(a) subsection (2) does not apply, but

(b) in determining the total term of those detention and training orders, the court must take account of the total period for which the offender has been remanded as mentioned in subsection (1)(b)(i) and (ii) in connection with—

(i) any of those offences, or

(ii) any other offence the charge for which was founded on the same facts or evidence.

(4) A period of remand may be taken account of under this section only once.

(5) For the purposes of this section an offender is remanded in custody when—

(a) in police detention for the purposes of the Police and Criminal Evidence Act 1984,

(b) detained under section 41 of the Terrorism Act 2000 (arrest without warrant),

(c) remanded in or committed to custody by an order of a court,

(d) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or

(e) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

(6) For the purposes of this section, "qualifying curfew condition" and "electronic monitoring condition" have the same meanings as in section 316 (direction for time on bail under certain conditions to count as time served: see section 317(4)).

233 Period of custody awaiting extradition: effect on term of detention and training order

(1) This section applies where—

(a) a court proposes to make a detention and training order in respect of an offence,

(b) the offender was tried for the offence, or is to be sentenced—

(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

(c) the offender was kept in custody for any period while awaiting extradition to the United Kingdom.

(2) The court must—

(a) specify in open court the number of days for which the offender was kept in custody while awaiting extradition, and

(b) take account of those days in determining the term of the detention and training order.

234 The period of detention and training

(1) An offender must serve the period of detention and training under a detention and training order in such youth detention accommodation as may be determined by the Secretary of State.

Release at half-way point

(2) Subject to subsections (3) to (5), the period of detention and training under a detention and training order is half of the term of the order.

Early release on compassionate grounds

(3) The Secretary of State may release the offender at any time if satisfied that exceptional circumstances exist which justify the offender's release on compassionate grounds.

Release before half-way point

(4) The Secretary of State may release the offender—

(a) in the case of an order for a term of—
(i) 8 months or more, but
(ii) less than 18 months,
at any time during the period of 1 month ending with the half-way point of the term of the order, and
(b) in the case of an order for a term of 18 months or more, at any time during the period of 2 months ending with that point.

Release after half-way point

(5) If a youth court so orders on an application made by the Secretary of State for the purpose, the Secretary of State must release the offender—
(a) in the case of an order for a term of—
(i) 8 months or more, but
(ii) less than 18 months,
1 month after the half-way point of the term of the order, and
(b) in the case of an order for a term of 18 months or more, 1 month or 2 months after that point.

(6) Where—
(a) the court makes an order under subsection (5), and
(b) the offender is also subject to a sentence of any of the following kinds that is to take effect, by virtue of an order to which subsection (7) applies, when the offender would otherwise be released for supervision—
(i) a sentence of detention under section 242,
(ii) a sentence of detention under section 209 of the Armed Forces Act 2006, or
(iii) an extended sentence of detention under section 247 (including one passed as a result of section 221A of the Armed Forces Act 2006),
the order under subsection (5) must be expressed as an order that the period of detention and training attributable to the detention and training order is to end at the time determined under that subsection.

(7) This subsection applies to orders under the following provisions (which provide for sentences of detention to take effect when an offender would otherwise be released for supervision under a detention and training order)—
(a) section 246(2) (offender under 18: sentence of detention to take effect on release for supervision under detention and training order),
(b) section 250(2) (offender under 18: extended sentence of detention), or
(c) any corresponding provision relating to an order under section 209 or made as a result of 221A of the Armed Forces Act 2006.

Detention to be legal custody

(8) An offender detained under a detention and training order is in legal custody.

235 The period of supervision

(1) The period of supervision of an offender who is subject to a detention and training order—
(a) begins when the offender is released for supervision (whether at the half-way point of the term of the order or otherwise), and

(b) ends when the term of the order ends.

(2) During the period of supervision, the offender—
(a) is to be under the supervision of—
(i) an officer of a provider of probation services, or
(ii) a member of a youth offending team, and
(b) may be required to comply with particular requirements.

(3) Any such requirements, and the category of person to supervise the offender, are to be determined from time to time by the Secretary of State.

(4) The offender must be notified by the Secretary of State of—
(a) the category of person responsible for the offender's supervision, and
(b) any requirements with which the offender must comply.

(5) A notice under subsection (4) must be given to the offender—
(a) before the period of supervision begins, and
(b) before any change in the matters mentioned in that subsection.

(6) Where the supervision is to be provided by an officer of a provider of probation services, that officer must be an officer acting in the local justice area within which the offender resides for the time being.

(7) Where the supervision is to be provided by a member of a youth offending team, the member must be a member of a youth offending team established by the local authority in whose area the offender resides for the time being.

236 Breach of supervision requirement and further offences during order

Schedule 12 makes provision about—
(a) breach of supervision requirements imposed under a detention and training order etc, and
(b) offences committed during the term of a detention and training order.

237 Offender subject concurrently to detention and training order and sentence of detention in a young offender institution

(1) This section applies where an offender is subject concurrently—
(a) to a detention and training order, and
(b) to a sentence of detention in a young offender institution.

(2) The offender is to be treated for the purposes of the following provisions as if subject only to the sentence of detention in a young offender institution—
(a) sections 234 to 236 and Schedule 12 (periods of detention and training and supervision, breach of supervision requirements and further offences);
(b) section 264 (detention in a young offender institution: place of detention);
(c) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall).

This is subject to subsection (3).

(3) Nothing in subsection (2) requires the offender to be released in respect of either the order or the sentence unless and until the offender is required to be released in respect of each of them.

(4) Where an offender is subject to a detention and training order, or a sentence of detention in a young offender institution, imposed under this Code, subsections (1) to (3) apply as follows—

(a) references to a detention and training order include references to an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) references to a sentence of detention in a young offender institution include references to a sentence under section 96 of that Act;

(c) in relation to an order or sentence under that Act subsection (2) has effect as if the provisions referred to in paragraphs (a) to (c) were the provisions referred to in section 106(4) of that Act;

(d) in relation to an order under section 100 of that Act the reference in subsection (3) to being released is a reference to being released by virtue of subsection (2), (3), (4) or (5) of section 102 of that Act.

238 Offender subject concurrently to detention and training order and other sentence of detention

(1) This section applies where an offender is subject concurrently—

(a) to a detention and training order, and

(b) to a sentence of detention.

(2) The offender is to be treated as if subject only to the sentence of detention for the purposes of the following provisions—

(a) sections 234 to 236 and Schedule 12 (periods of detention and training and supervision, breach of supervision requirements and further offences);

(b) section 253 and section 254 (place of detention);

(c) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release and supervision following release);

(d) section 210 of the Armed Forces Act 2006 (place of detention etc);

(e) section 214 of the Armed Forces Act 2006 (offences committed during a detention and training order under that Act).

This is subject to subsection (3).

(3) Nothing in subsection (1) requires the offender to be released in respect of either the order or the sentence unless and until the offender is required to be released in respect of each of them.

(4) In this section "sentence of detention" has the same meaning as in section 230.

(5) Where an offender is subject to a detention and training order, or a sentence of detention, imposed under this Code, subsections (1) to (4) apply as follows—

(a) references to a detention and training order include an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) in relation to—

(i) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000,

(ii) an extended sentence under section 226B or 228 of the Criminal Justice Act 2003 (including one imposed as a result of section 221A or 222 of the Armed Forces Act 2006), or

(iii) an order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000,

subsection (2) has effect as if the provisions referred to in paragraphs (a) to (e) were the provisions referred to in section 106A(8) of the Powers of Criminal Courts (Sentencing) Act 2000;

(c) in relation to an order under section 100 of that Act the reference in subsection (3) to being released is a reference to being released by virtue of subsection (2), (3), (4) or (5) of section 102 of that Act.

239 Effect of detention and training order made where offender has reached 18

(1) This section applies where—

(a) a court has power, by virtue of any enactment, to deal with a person in respect of an offence in any way in which—

(i) a court could have dealt with the person on a previous occasion, or

(ii) a court could deal with the person if the person were the same age as when convicted,

(b) in exercise of the power, the court makes a detention and training order for any term, and

(c) the person has reached the age of 18.

(2) The person is to be treated as if sentenced to detention in a young offender institution for the same term.

240 Further supervision after end of term of detention and training order

(1) This section applies where a detention and training order is made in respect of an offender if—

(a) the offender is aged 18 or over at the half-way point of the term of the order,

(b) the term of the order is less than 24 months, and

(c) the order was imposed in respect of an offence committed on or after 1 February 2015.

(2) The following provisions of the Criminal Justice Act 2003 (which relate to supervision after end of sentence) apply as they apply in cases described in section 256AA(1) of that Act—

(a) sections 256AA(2) to (11), 256AB and 256AC,

(b) sections 256D and 256E, and

(c) Schedule 19A,

but with the following modifications.

(3) "The supervision period", in relation to the offender, is the period which—

(a) begins on the expiry of the term of the detention and training order, and

(b) ends on the expiry of the period of 12 months beginning immediately after the half-way point of the term of the order.

(4) "The supervisor", in relation to the offender, must be—

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

(b) a member of a youth offending team established by the local authority in whose area the offender resides for the time being.

(5) The power in section 256AB(4) includes power—

(a) to make provision about the supervision requirements that may be imposed under section 256AA as applied by this section, and

(b) to amend any provision of the Powers of Criminal Courts (Sentencing) Act 2000 or any provision of this Code derived from that Act.

(6) Subsection (7) applies where the term of the detention and training order is determined by section 231(5) (offender subject to two or more detention and training orders).

(7) The offender is subject to supervision under section 256AA (as applied by this section) if that section (as applied) so requires in respect of one or more of the consecutive or concurrent orders.

(8) For the purposes of subsection (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 taken to have been committed on the last of those days.

241 Detention and training orders: interpretation

(1) In section 234 and Schedule 12 "youth detention accommodation" means—

(a) a secure training centre,

(b) a secure college,

(c) a young offender institution,

(d) accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons,

(e) accommodation provided for that purpose under section 82(5) of the Children Act 1989 (financial support by the Secretary of State), or

(f) such other accommodation or descriptions of accommodation as the Secretary of State may specify by regulations.

(2) In sections 234, 235 and 240 and in Schedule 12, references to the term of a detention and training order are to be read in accordance with section 231(5).

(3) For the purposes of this Code, an offender who is subject to a detention and training order is released for supervision when released by virtue of section 234(2), (3), (4) or (5).

Detention for specified period

242 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.

243 Sentence of detention under section 242: availability

(1) A sentence of detention under section 242 is available where a person aged under 18 is convicted on indictment of an offence within Schedule 13.

(2) For circumstances in which a court is required to impose a sentence of detention under section 242, see—

(a) section 51A(2) of the Firearms Act 1968;

(b) section 29(6) of the Violent Crime Reduction Act 2006;
(c) section 251.

244 Power to detain for specified period: offender convicted of certain serious offences

(1) Subsection (2) applies where a sentence of detention under section 242 is available by virtue of section 243(1).

(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.

(3) This is subject to (in particular) section 222 (threshold for imposing discretionary custodial sentence).

245 Maximum sentence

(1) This section applies where the court imposes a sentence of detention under section 242 by virtue of—
(a) section 244,
(b) section 51A(2) of the Firearms Act 1968, or
(c) section 29(6) of the Violent Crime Reduction Act 2006.

(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.

(3) This is subject to (in particular) section 223 (length of discretionary custodial sentences: general provision).

246 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 242 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 for supervision 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 for supervision 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) In this section—
(a) references to a detention and training order include references to an order passed under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, and
(b) in relation to such an order, references to being released for supervision are references to being released by virtue of subsection (2), (3), (4) or (5) of section 102 of that Act.

Extended sentences

247 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 249), and

(b) a further period (the "extension period") for which the offender is to be subject to a licence.

248 Extended sentence of detention: availability

(1) An extended sentence of detention under section 247 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 299(1)) and falls within Schedule 13,

(b) the offender is aged 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 301),

(d) the court is not required by section 251(2) to impose a sentence of detention for life under section 242, 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.

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion referred to in subsection (1)(c).

249 Term of extended sentence of detention under section 247

(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 247 to be imposed on an offender in respect of an offence.

(2) The appropriate custodial term is the term of detention that would be imposed in respect of the offence in compliance with section 223(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.

(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).

(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.

(5) The term of the extended sentence of detention under section 247 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.

250 Extended sentence under section 247 where offender subject to detention and training order

(1) This section applies where the court imposes an extended sentence of detention under section 247 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 for supervision 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 for supervision 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) In this section—

(a) references to a detention and training order include references to an order passed under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, and

(b) in relation to an order under that section, references to being released for supervision are references to being released by virtue of subsection (2), (3), (4) or (5) of section 102 of that Act.

Detention for life etc

251 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 20 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 299(1) and 301).

(2) The court must impose a sentence of detention for life under section 242.

(3) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

(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.

252 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.

(2) The court must sentence the offender to be detained during Her Majesty's pleasure.

(3) Subsection (2) applies notwithstanding anything in this or any other Act.

Detention under this Chapter

253 Detention under section 242 or 252

(1) Detention under section 242 or 252 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 242 imposed by virtue of section 251 (required sentence of detention for life).

(2) A person detained pursuant to directions or arrangements made by the Secretary of State under this section is in legal custody.

254 Detention in pursuance of extended sentence or required life sentence

(1) This section applies to detention—

(a) under section 247 (extended sentence of detention), or
(b) in pursuance of a sentence of detention under section 242 imposed by virtue of section 251 (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.

CHAPTER 3

ADULTS AGED UNDER 21

Detention in a young offender institution

255 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 for a court dealing with an offender for an offence where—

(a) the offender was aged at least 18 but under 21 at the time of conviction,
(b) the offence is punishable by that court 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 252, or
(ii) custody for life under section 265 or 268,

(2) Where—

(a) a sentence of detention in a young offender institution is available, and

(b) the court is not required to impose such a sentence,

the power of the court to impose such a sentence is subject (in particular) to section 222 (threshold for imposing discretionary custodial sentence).

(3) 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 372(1)(c) (mandatory minimum sentences).

256 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.

(2) The minimum term of a sentence of detention in a young offender institution is 21 days.

(3) Section 223 (length of discretionary custodial sentences: general provision), in particular, applies in determining the term of a sentence of detention in a young offender institution.

(4) For further provision about the term of a sentence of detention in a young offender institution, see—

(a) section 258 (special sentence for certain offenders of particular concern);

(b) section 261 (extended sentence).

Suspended sentence of detention in a young offender institution

257 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.

(2) A suspended sentence order (see section 278) 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.

(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.

(4) For provision about suspended sentences see Chapter 5.

Special custodial sentence for certain offenders of particular concern

258 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 14,

(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 259, or
  (ii) a sentence of custody for life under section 265.

(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.

(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.

Extended sentence of detention in a young offender institution

259 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 261), and
(b) a further period (the "extension period") for which the offender is to be subject to a licence.

260 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 299(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 301),
(d) the court is not required by section 266 or 267 to impose a sentence of custody for life, and
(e) the earlier offence condition or the 4 year term condition is met.

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

(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 15.

(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.

261 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 259.

(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 223(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence.

(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).

(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.

(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.

Detention in a young offender institution: consecutive sentences etc

262 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.

(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 218 (restriction on consecutive sentences for released prisoners).

263 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 for supervision 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) In this section—

(a) references to a detention and training order include references to an order made under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, and

(b) in relation to an order under that section, references to being released for supervision are references to being released by virtue of subsection (2), (3), (4) or (5) of section 102 of that Act.

Detention in a young offender institution: further provision

264 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).

(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.

Custody for life

265 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 222 (threshold for imposing discretionary custodial sentence) and 223 (length of discretionary custodial sentences: general provision), in particular, apply for this purpose.

266 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 16,

(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.

(2) The court must impose a sentence of custody for life under section 265 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.

(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 259.

Sections 222(2) and 223(2) apply for this purpose.

(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 16, 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.

(5) An offence listed in Part 1 of Schedule 16 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.

(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.

(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.

(8) Any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

(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.

(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.

(11) For the purposes of subsections (4) to (10)—

"extended sentence" means—

(a) a sentence imposed under—

(i) section 247 or 259, 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 242 or 252 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 265 or 268 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).

(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.

(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.

267 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 20 offence (see section 300),

(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 299(1) and 301).

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(d).

(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 265.

(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.

268 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 252 (detention at Her Majesty's pleasure for offender under 18).

269 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.

CHAPTER 4

ADULTS AGED 21 AND OVER

Suspended sentences of imprisonment

270 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.

(2) A suspended sentence order (see section 278) 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.

(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.

(4) For provision about suspended sentences see Chapter 5.

Special custodial sentence for certain offenders of particular concern

271 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 14,

(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 272, or

(ii) a sentence of imprisonment for life.

(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.

(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.

Extended sentences

272 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 274), and

(b) a further period (the "extension period") for which the offender is to be subject to a licence.

273 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 299(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 301),

(d) the court is not required by section 276 or 277 to impose a sentence of imprisonment for life, and

(e) the earlier offence condition or the 4 year term condition is met.

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(c).

(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 15.

(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 274) would be at least 4 years.

274 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 272.

(2) The appropriate custodial term is the term of imprisonment that would be imposed in respect of the index offence in compliance with section 223(2) (length of discretionary custodial sentences: general provision) if the court did not impose an extended sentence of imprisonment.

(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).

(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.

(5) The term of the extended sentence of imprisonment must not exceed the maximum term permitted for the index offence.

275 Extended sentences for offences committed before 4 April 2005

In section 273(1)(a) and section 274(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.

Life sentences

276 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 16,
(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.

(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.

(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 272.
Sections 222(2) and 223(2) apply for this purpose.

(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 16, 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.

(5) An offence listed in Part 1 of Schedule 16 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.

(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.

(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.

(8) Any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

(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.

(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.

(11) For the purposes of subsections (4) to (10)—

"extended sentence" means—

(a) a sentence imposed under—

(i) section 247, 259 or 272,

(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 242 or 252 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 265 or 268 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).

(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.

(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.

277 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 20 offence (see section 300),

(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 299(1) and 301).

(2) The pre-sentence report requirements (see section 30) apply to the court in relation to forming the opinion mentioned in subsection (1)(d).

(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.

(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.

CHAPTER 5

SUSPENDED SENTENCES

What a suspended sentence order is

278 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 17 that the sentence is to take effect.

(2) A suspended sentence order may also specify one or more available community requirements with which the offender must comply during the supervision period.

(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.

(4) The community requirements are listed in column 1 of the community requirements table (see section 279).

(5) Provision about each requirement is made by the provisions of Schedule 9 mentioned in the corresponding entry in column 2 of that table.

(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.

(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 280).

279 Suspended sentence order: community requirements table

The community requirements table referred to in sections 278 and 282 is—

Requirement	*Further provision in Schedule 9*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
unpaid work requirement	Part 1		paragraph 3 of Schedule 9
rehabilitation activity requirement	Part 2		
programme requirement	Part 3		
prohibited activity requirement	Part 4		paragraph 8 of Schedule 9
curfew requirement	Part 5		paragraph 10 of Schedule 9
exclusion requirement	Part 6		paragraph 12 of Schedule 9
residence requirement	Part 7		paragraph 14 of Schedule 9
foreign travel prohibition requirement	Part 8		
mental health treatment requirement	Part 9		paragraph 17 of Schedule 9,
drug rehabilitation requirement	Part 10		paragraph 20 of Schedule 9
alcohol treatment requirement	Part 11		paragraph 24 of Schedule 9
alcohol abstinence and monitoring requirement	Part 12	section 283(1), (2) or (3); paragraph 11(b) or 12 of Schedule 18 (transfer to Scotland or Northern Ireland)	paragraph 26 of Schedule 9
attendance centre requirement	Part 13	section 283(4), paragraph 11(a) of Schedule 18 (transfer to Scotland)	paragraph 28 of Schedule 9

Requirement	*Further provision in Schedule 9*	*Restrictions on availability*	*Restrictions or obligations in relation to imposing requirement*
electronic compliance monitoring requirement	Part 14	section 283(5)	paragraph 33 of Schedule 9
electronic whereabouts monitoring requirement	Part 14	section 283(6)	paragraphs 35 and 33 of Schedule 9

280 Operational period and supervision period

(1) A suspended sentence order must specify the operational period (see section 278(3)(a)).

(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.

(3) If a suspended sentence order imposes any community requirement or requirements, the order must specify the supervision period (see section 278(2)).

(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.

281 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 17 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.

(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.

Available community requirements

282 Suspended sentence order: available community requirements

(1) A suspended sentence order may not impose a community requirement that is not an available requirement.

(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 279 provides otherwise.

283 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 23).

(2) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 9 (prescribed arrangements for monitoring).

(3) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 9 (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).

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.

Electronic compliance monitoring requirement

(5) An electronic compliance monitoring requirement is not an available requirement in relation to a suspended sentence order unless the suspended sentence order imposes at least one other available requirement, other than—

(a) an alcohol abstinence and monitoring requirement;

(b) an electronic whereabouts monitoring requirement.

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 18 (transfer to Scotland or Northern Ireland).

Exercise of power to impose community requirements

284 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.

(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.

(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.

(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 any other court 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.

285 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.

(2) This is subject to—

(a) paragraph 34(1) of Schedule 9 (availability of arrangements in local area);

(b) paragraph 33 of that Schedule (consent of person whose co-operation is required).

Provision for review of suspended sentence order with community requirements

286 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).

(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 288, 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.

(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 9 for separate provision about review of such a requirement).

(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.

(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.

(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.

287 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 286.

(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.

(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 280(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.

(4) For the purposes of subsection (3)(a)—

(a) a community requirement of a kind within any entry in the table in section 279 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.

(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 17 (powers of court to deal with offender on breach of requirement or subsequent conviction).

(6) In this section—

"review hearing" has the meaning given by section 286(2)(b);

"progress report" in relation to a review has the meaning given by section 286(2).

288 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.

(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.

(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.

(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.

(5) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 286(2)(a).

(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.

(7) In this section—

"review hearing" has the meaning given by section 286(2)(b);

"progress report" has the meaning given by section 286(2).

Making a suspended sentence order with community requirements

289 Order 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.

290 Power to direct magistrates' court supervision of order

(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.

(2) For the purposes of this section, breach of a requirement means any failure to comply with the requirement.

291 Provision of copies of order 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.

(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.

(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 9 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 9.
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 9 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 31(1) of Schedule 9 will be responsible for the electronic monitoring. Any person by virtue of whose consent the requirement is included in the order.

(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.

(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.

(6) In subsection (1) "public sector provider" means—

(a) a probation trust or other public body, or

(b) the Secretary of State.

Suspended sentence order with community requirement: obligations of responsible officer and offender

292 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.

293 Obligations of responsible officer

(1) This section applies during while a suspended sentence order which imposes any community requirement is in force.

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.

(3) This is subject to paragraph 16(7) of Schedule 9 (in-patient treatment under mental health treatment requirement).

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.

(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 any other court 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.

294 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.

(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.

(3) That obligation is enforceable as if it were a community requirement imposed by the suspended sentence order.

295 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 9).

(2) The offender must not change residence without permission given in accordance with this section by—
(a) the responsible officer, or
(b) a court.

(3) The obligation imposed by subsection (2) has effect as a community requirement imposed by the suspended sentence order.

(4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.

(5) A court may also give permission in any proceedings before it under Schedule 17 (breach or amendment of orders etc).

(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.

(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.

(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 17 (amendment to reflect change in local justice area).

(9) In this section "the appropriate court" has the same meaning as in Schedule 17.

Activation of sentence, amendment and revocation of order etc

296 Breach, revocation or amendment of suspended sentence order, and effect of further conviction

Schedule 17 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.

Transferring order with community requirements to Scotland or Northern Ireland

297 Transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements

Schedule 18 makes provision about the transfer to Scotland or Northern Ireland of suspended sentence orders which impose community requirements.

Interpretation

298 Suspended sentences: interpretation

(1) In this Chapter—
"the operational period", in relation to a suspended sentence, means the period specified under—
(a) section 280(1), or
(b) paragraph 13(1)(d)(iii) of Schedule 17 (extension of operational period on breach of order);
"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—
(a) section 280(3),
(b) section 287 (review of order), or
(c) paragraph 13(1)(d)(ii) of Schedule 17 (extension of supervision period on breach of order).

(2) For the purposes of this Chapter, a suspended sentence order is "in force" during the operational period.

CHAPTER 6

DANGEROUS OFFENDERS

Interpretation

299 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.

(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 19;

"specified sexual offence" means an offence specified in Part 2 of that Schedule.

300 Life sentences: meaning of "Schedule 20 offence"

(1) In this Part "Schedule 20 offence" means an offence listed in Schedule 20 (certain specified offences carrying maximum sentence on indictment of imprisonment for life).

(2) For the purposes of Schedule 20, 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.

The assessment of dangerousness

301 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 248, 260 or 273, (extended sentence for certain violent or sexual offences);

(b) section 251, 267 or 277 (required life sentence for Schedule 20 offence).

(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.

(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).

(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.

Supplementary

302 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 266 or 276 (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 266(4) or 276(4) would not have been met.

(2) Subsection (3) also applies where—

(a) a sentence has been imposed on a person under section 259 or 272 (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 260 or 273 (as the case may be).

(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.

(4) Subsection (5) applies where—

(a) a sentence has been imposed on a person under section 266 or 276,

(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 266(4) or 276(4) would not have been met.

(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.

303 Certificates of conviction

Where—

(a) a person is convicted in England and Wales of an offence listed in Schedule 15 or 16,

(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 260, 266, 273 or 276 (extended sentences for adults and life sentences for second listed offence), that the person was convicted of such an offence on that day.

CHAPTER 7

MINIMUM SENTENCES FOR PARTICULAR OFFENCES

304 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.

(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.

(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.

(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.

(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.

(6) In this section "an appropriate custodial sentence" means—

(a) in relation to an offender who is aged 21 or over when convicted of the index offence, a sentence of imprisonment;

(b) in relation to an offender who is aged under 21 when convicted of the index offence, a sentence of detention in a young offender institution under section 255 (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 265).

305 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.

(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.

(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.

(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.

(5) In this section "domestic burglary" means a burglary committed in respect of a building or part of a building which is a dwelling.

(6) In this section "an appropriate custodial sentence" means—

(a) in relation to a person who is aged 21 or over when convicted of the index offence, a sentence of imprisonment;

(b) in relation to a person who is aged under 21 when convicted of the index offence, a sentence of detention in a young offender institution under section 255.

306 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.

(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.

(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).

(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.

(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.

(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).

307 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 304,

(ii) section 305, or

(iii) section 306, and

(b) any of the offender's previous convictions without which that section would not have applied has been subsequently set aside on appeal.

(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).

308 Certificates of conviction for purposes of sections 304 and 305

(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.

(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 304 or 305 of the facts so certified.

(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.

(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 304 and 305 respectively;

"corresponding drug trafficking offence" means an offence within section 304(3)(b);

"corresponding domestic burglary offence" means an offence within section 305(3)(b).

309 Offences under service law

(1) In sections 304 to 306 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.

(2) For the purposes of section 304(3)(c) and (d), section 305(3)(c) and (d) and section 306(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.

310 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 304, 305 and 306 to have been committed on the last of those days.

311 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).

CHAPTER 8

EFFECT OF LIFE SENTENCES

312 Life sentence: minimum term order or whole life order

(1) This section applies where a court passes a life sentence.

(2) The court must make—

(a) a minimum term order, or

(b) a whole life order.

(3) A minimum term order is an order that the early release provisions (see section 315) 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 313 or 314 ("the minimum term").

(4) A whole life order is an order that the early release provisions are not to apply to the offender.

(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.

313 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.

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 316 or 318 (crediting periods of remand on certain types of bail or in custody pending extradition).

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 312(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 21, and
(b) any guidelines relating to offences in general which are relevant to the case and are not incompatible with the provisions of Schedule 21.

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 51(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 21 it has chosen and its reasons for doing so, and
(b) state its reasons for any departure from that starting point.

314 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.

(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 316 or 318 (crediting periods of remand on bail subject to certain types of condition or in custody pending extradition).

315 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 242 or 252, or

(c) a sentence of custody for life under section 265 or 268;

"minimum term order" and "minimum term" have the meanings given by section 312(3);

"whole life order" has the meaning given by section 312(4).

CHAPTER 9

SENTENCE ADMINISTRATION

Declaration about time to count as served

316 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").

(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.

(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.

(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.

(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 247 or 242 (offenders aged under 18).

(6) Section 240ZA of the Criminal Justice Act 2003 makes provision about time remanded in custody which is to count as time served.

317 Section 316: interpretation

(1) For the purposes of section 316, "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 371 for those purposes.

(2) For the purposes of section 316, 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 17, and

(b) is to be treated as being imposed by the order under which it is activated.

(3) For the purposes of the reference in section 316(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.

(4) In section 316—

"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.

318 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).

(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 247 or 242.

(3) The court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.

Recommendations

319 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.

(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.

(3) A recommendation under subsection (2) is not to be treated for any purpose as part of the sentence passed on the offender.

Conversion of sentence of detention or custody to sentence of imprisonment

320 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.

(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.

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.

(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.

(5) If the relevant custodial sentence is—

(a) an extended sentence of detention under section 247, or

(b) an extended sentence of detention in a young offender institution (see section 259),

the offender is to be treated as if sentenced to an extended sentence of imprisonment under section 272.

(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.

"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.

FOURTH GROUP OF PARTS

FURTHER POWERS RELATING TO SENTENCING

PART 11

BEHAVIOUR ORDERS

CHAPTER 1

CRIMINAL BEHAVIOUR ORDERS

321 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.

322 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.

(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.

(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 76 in respect of the offence.

(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 to which the offender may be subject.

(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.

(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.

323 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.

(2) It does not matter whether the evidence would have been admissible in the proceedings in which the offender was convicted.

(3) The court may adjourn any proceedings on an application for a criminal behaviour order even after sentencing the offender.

(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.

(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.

(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.

(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.

(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.

324 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.

(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.

(3) Before including two or more requirements, the court must consider their compatibility with each other.

(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.

(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.

(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.

325 Duration of order etc

(1) A criminal behaviour order takes effect on the day it is made, subject to subsection (2).

(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.

(3) A criminal behaviour order must specify the period ("the order period") for which it has effect.

(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.

(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).

(6) A criminal behaviour order may specify periods for which particular prohibitions or requirements have effect.

326 Interim orders

(1) This section applies where a court adjourns the hearing of an application for a criminal behaviour order.

(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.

(3) Section 322(1)(b), (3) and (5) and section 325(3) to (5) do not apply in relation to the making of an interim order.

(4) Subject to that, the court has the same powers whether or not the criminal behaviour order is an interim order.

327 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.

(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.

(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.

(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.

(5) Section 324 applies to additional requirements included under subsection (4) as it applies to requirements included in a new order.

(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.

328 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.

(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 327, 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 327, the day on which it is varied (or most recently varied, if the order is varied more than once).

(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.

(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 332 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.

329 Carrying out and participating in reviews

(1) A review under section 328 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.

(2) The chief officer, in carrying out a review under section 328, 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.

(3) The chief officer may invite the participation in the review of any other person or body.

(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.

330 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.

(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.

(3) If a person is convicted of an offence under this section, an order for conditional discharge under section 77 is not available for the court by or before which the person is convicted.

(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.

(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.

(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.

331 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.

(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.

(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.

(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.

(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.

332 Guidance

(1) The Secretary of State may issue guidance to—

(a) chief officers of police, and

(b) the councils mentioned in section 329(2),

about the exercise of their functions under this Chapter.

(2) The Secretary of State may revise any guidance issued under this section.

(3) The Secretary of State must arrange for any guidance issued or revised under this section to be published.

CHAPTER 2

PROTECTION FROM HARASSMENT

333 Restraining order

(1) In this Code "restraining order" means an order made under section 334 or 335 against a person which prohibits the person from doing anything described in the order.

(2) A restraining order may have effect—
  (a) for a period specified in the order, or
  (b) until further order.

334 Restraining order: availability on conviction

(1) This section applies where a court is dealing with an offender for an offence.

(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.

(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.

335 Restraining order on acquittal

(1) This section applies where a person ("the defendant") is acquitted of an offence by or before a court.

(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.

(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.

(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.

(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 334.

336 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.

(2) Any person mentioned in the order is entitled to be heard on the hearing of an application under subsection (1).

337 Evidence in proceedings relating to restraining orders

(1) This section applies to proceedings—
(a) under section 334 or 335 for the making of a restraining order, or
(b) under section 336 or 338(6) for the variation or discharge of a restraining order.

(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).

338 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.

(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.

(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 on behalf of the Crown.

(4) A certificate under subsection (3) is conclusive evidence that subsection (1) does not apply to conduct of that person on that occasion.

(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.

(6) A court dealing with a person for an offence under this section may vary or discharge the restraining order by a further order.

339 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.

CHAPTER 3

PARENTING ORDERS

What a parenting order is

340 Parenting order

(1) A parenting order under this Chapter is an order which requires the person in respect of whom it is made ("the parent")—

(a) to comply, for a period not exceeding 12 months, with requirements specified in the order, and

(b) to attend, for a concurrent period not exceeding 3 months, such counselling or guidance programme as may be specified in directions given by the responsible officer (see section 347).

(2) But a parenting order need not include a requirement under subsection (1)(b) if a parenting order (whether under this Chapter or any other enactment) has been made in respect of the parent on any previous occasion.

Parenting order for parent or guardian of offender aged under 18

341 Parenting order where offender is under 18

(1) A parenting order under this section is available for a court by or before which an offender is convicted of an offence if the offender is aged under 18 at the time of conviction.

This is subject to section 346.

(2) Subsections (3) and (4) apply where a parenting order under this section is available.

(3) If the offender was aged under 16 when convicted of the offence, the court must—

(a) make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender, or

(b) state in open court that it is not so satisfied, and why not.

But this does not apply if the court makes a referral order in respect of the offender.

(4) If the offender was aged 16 or 17 when convicted of the offence, the court may make a parenting order under this section in respect of a parent or guardian of

the offender if it is satisfied that the order would be desirable in the interests of preventing the commission of any further offence by the offender.

(5) The requirements that the court may specify under section 340(1)(a) are requirements that it considers desirable in the interests of preventing the commission of any further offence by the offender.

(6) A counselling or guidance programme which the parent or guardian is required to attend by virtue of section 340(1)(b) may be or include a residential course, but only if the court is satisfied that—

(a) the attendance of that person at a residential course is likely to be more effective than that person's attendance at a non-residential course in preventing the commission of any further offence by the offender, and

(b) any interference with family life which is likely to result from the parent's or guardian's attendance at a residential course is proportionate in all the circumstances.

(7) Before making a parenting order under this section where the offender was aged under 16 when convicted of the offence, the court must obtain and consider information about the offender's family circumstances and the likely effect of the order on those circumstances.

(8) Subsections (9) and (10) apply if the court proposes to make both—

(a) a referral order in respect of the offender, and

(b) a parenting order under this section in respect of a parent or guardian of the offender.

(9) Before making the parenting order the court must obtain and consider a report by an appropriate officer—

(a) indicating the requirements which that officer proposes should be included in the parenting order;

(b) indicating the reasons why the officer considers that those requirements would be desirable in the interests of preventing the commission of any further offence by the offender;

(c) if the offender is aged under 16, containing the information required by subsection (7).

(10) In subsection (9) "an appropriate officer" means—

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

(b) a social worker of a local authority, or

(c) a member of a youth offending team.

(11) Where a parenting order is made under this section, the person in respect of whom it is made has the same right of appeal against the making of the order as if—

(a) that person had committed the offence mentioned in subsection (1), and

(b) the order were a sentence passed on that person for the offence.

342 Parenting order where criminal behaviour order made: offender under 18

(1) A parenting order under this section is available for a court where—

(a) an offender is convicted of an offence,

(b) the court makes a criminal behaviour order in respect of the offender, and

(c) the offender is aged under 18.

This is subject to section 346.

(2) Subsections (3) and (4) apply where a parenting order is available.

(3) If the offender is aged under 16 when the criminal behaviour order is made, the court must—

(a) make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing any repetition of behaviour of the kind which led to the criminal behaviour order being made, or

(b) state in open court that it is not so satisfied, and why not.

(4) If the offender is aged 16 or 17 when the criminal behaviour order is made, the court may make a parenting order under this section in respect of a parent or guardian of the offender if it is satisfied that the order would be desirable in the interests of preventing any repetition of behaviour of the kind which led to the criminal behaviour order being made.

(5) The requirements that the court may specify under section 340(1)(a) are requirements that the court considers desirable in the interests of preventing any repetition of behaviour of the kind which led to the criminal behaviour order being made.

(6) A counselling or guidance programme which the parent or guardian is required to attend by virtue of section 340(1)(b) may be or include a residential course, but only if the court is satisfied that—

(a) the attendance of that person at a residential course is likely to be more effective than that person's attendance at a non-residential course in preventing any repetition of behaviour of the kind which led to the criminal behaviour order being made, and

(b) any interference with family life which is likely to result from the parent's or guardian's attendance at a residential course is proportionate in all the circumstances.

(7) Before making a parenting order under this section where the offender is aged under 16 when the criminal behaviour order is made, the court must obtain and consider information about the offender's family circumstances and the likely effect of the order on those circumstances.

(8) Where a parenting order is made under this section, the person in respect of whom it is made has the same right of appeal against the making of the order as if—

(a) that person had committed the offence mentioned in subsection (1), and

(b) the order were a sentence passed on that person for the offence.

343 Parenting order where parent or guardian of offender fails to attend meetings of youth offender panel

(1) A parenting order under this section is available to a youth court where—

(a) an offender has been referred to a youth offender panel (see section 80), and

(b) a parent or guardian of the offender is referred by the panel to the youth court under section 90 in respect of a failure to comply with an order under section 87 (order requiring attendance at meetings of panel).

This is subject to section 346.

(2) Where a parenting order under this section is available, the youth court may make such an order if it is satisfied that—

(a) the parent has failed without reasonable excuse to comply with the order under section 87, and

(b) the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender.

(3) The requirements that may be specified under section 340(1)(a) are those that the court considers desirable in the interests of preventing the commission of any further offence by the offender.

(4) A counselling or guidance programme which the parent or guardian is required to attend by virtue of section 340(1)(b) may be or include a residential course, but only if the court is satisfied that—

(a) the attendance of that person at a residential course is likely to be more effective than that person's attendance at a non-residential course in preventing the commission of any further offence by the offender, and

(b) any interference with family life which is likely to result from the parent's or guardian's attendance at a residential course is proportionate in all the circumstances.

(5) Before making a parenting order under this section where the offender is aged under 16, the court must obtain and consider information about the offender's family circumstances and the likely effect of the order on those circumstances.

(6) Where a parenting order is made under this section, the person in respect of whom it is made may appeal against it to the Crown Court.

(7) On an appeal under subsection (6) the Crown Court—

(a) may make such orders as may be necessary to give effect to its determination of the appeal, and

(b) may also make such incidental or consequential orders as appear to it to be just.

(8) An order of the Crown Court made on an appeal under subsection (6) is to be treated for the purposes of section 349 as having been made by the youth court.

344 Parenting order for parent or guardian of offender under 18: further provision

(1) Where a court exercises two or more of the following powers in respect of the same parent or guardian of an offender, it may do so by way of a single parenting order—

(a) the power in section 341 to make a parenting order in respect of a parent or guardian of an offender in respect of an offence;

(b) the power in 342 to make a parenting order in respect of a parent or guardian of an offender by virtue of a criminal behaviour order made in respect of the offender;

(c) the power in section 8(1)(b) of the Crime and Disorder Act 1998 to make a parenting order in respect of a parent or guardian of an offender by virtue of a sexual harm prevention order made in respect of the offender.

(2) Section 377 (certain references to parent or guardian to be read as references to local authority) does not apply to this Chapter.

Parenting order in case of certain offences related to school attendance

345 Parenting order in respect of certain offences under Education Act 1996

(1) A parenting order under this section is available to the court by or before which an offender is convicted of an offence under—

(a) section 443 of the Education Act 1996 (failure to comply with school attendance order), or

(b) section 444 of that Act (failure to secure regular attendance at school of registered pupil).

This is subject to section 346.

(2) Where a parenting order under this section is available, the court may make such an order in respect of the offender if satisfied that the order would be desirable in the interests of preventing the commission of any further offence under section 443 or 444 of the Education Act 1996.

(3) The requirements that the court may specify under section 340(1)(a) are requirements that the court considers desirable in the interests of preventing the commission of any further offence under section 443 or 444 of the Education Act 1996.

(4) A counselling or guidance programme which the offender is required to attend by virtue of section 340(1)(b) may be or include a residential course, but only if the court is satisfied that—

(a) the attendance of that offender at a residential course is likely to be more effective than the offender's attendance at a non-residential course in preventing the commission of any further offence under section 443 or 444 of the Education Act 1996, and

(b) any interference with family life which is likely to result from that person's attendance at a residential course is proportionate in all the circumstances.

(5) Before making a parenting order under this section in a case where the offence related to a person aged under 16, the court must obtain and consider information about that person's family circumstances and the likely effect of the order on those circumstances.

Provisions applying generally to parenting orders under Code

346 Parenting order: availability

A court may not make a parenting order under this Chapter in respect of a person unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the person resides or will reside (and the notice has not been withdrawn).

347 Making a parenting order

(1) This section applies where a court makes a parenting order under this Chapter in respect of a person ("the parent").

(2) Requirements specified in a parenting order under this Chapter must, as far as practicable, be such as to avoid—

(a) any conflict with the parent's religious beliefs, and
(b) any interference with the times, if any, at which the parent normally works or attends an educational establishment.

(3) Before making a parenting order, a court must explain to the parent in ordinary language—
(a) the effect of the order and of the requirements proposed to be included in it;
(b) the consequences which may follow (under section 350) if the parent fails to comply with those requirements, and
(c) that the court has power (under section 349) to review the order on the application either of the parent or of the responsible officer.

(4) The parenting order must specify the responsible officer.

(5) The responsible officer must be—
(a) an officer of a provider of probation services acting in the local justice area in which it appears to the court that the parent resides or will reside,
(b) a social worker of the local authority in whose area it appears to the court that the parent resides or will reside,
(c) a person nominated by—
(i) a person appointed as director of children's services under section 18 of the Children Act 2004, or
(ii) a person appointed as chief education officer under section 532 of the Education Act 1996, or
(d) a member of a youth offending team established by the local authority in whose area it appears to the court that the parent resides or will reside.

(6) For the purposes of this Chapter the Inner Temple and the Middle Temple form part of the City of London.

348 The responsible officer

Directions given by a responsible officer under a parenting order under this Code must, as far as practicable, be such as to avoid—
(a) any conflict with the parent's religious beliefs, and
(b) any interference with the times, if any, at which the parent normally works or attends an educational establishment.

For this purpose "parent" means the person in respect of whom the parenting order is made.

349 Discharge and variation of parenting order

(1) This section applies where—
(a) a parenting order made under this Code is in force, and
(b) an application is made under this section by—
(i) the responsible officer, or
(ii) the person in respect of whom it is made
to the court which made the order.

(2) The court may make an order—

(a) discharging the parenting order, or
(b) varying the parenting order—
(i) by cancelling any provision included in it, or
(ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that it could include, if it were now making the order.

(3) Where an application under this section for the discharge of a parenting order is dismissed, no-one may make a further application under this section for its discharge except with the consent of the court which made the order.

350 Offence of failure to comply with a requirement of a parenting order

(1) It is an offence for a person in respect of whom a parenting order made under this Chapter is in force to fail to comply with any requirement—
(a) included in the order, or
(b) specified in directions given by the responsible officer.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

CHAPTER 4

BINDING OVER

351 Binding over of parent or guardian

(1) This section applies where—
(a) a person aged under 18 is convicted of an offence, and
(b) a court is sentencing the offender for the offence.

(2) The court has the following powers—
(a) the court may, with the consent of the offender's parent or guardian, order the parent or guardian to enter into a recognizance to take proper care of the offender and exercise proper control over the offender, and
(b) if—
(i) the parent or guardian refuses consent, and
(ii) the court considers the refusal unreasonable,
the court may order the parent or guardian to pay a fine not exceeding £1,000.

(3) For the purposes of this section—
(a) taking "care" of a person includes giving the person protection and guidance, and
(b) "control" includes discipline.

(4) If the offender is aged under 16 when sentenced, the court must—
(a) exercise its powers under subsection (2), if satisfied, having regard to the circumstances of the case, that doing so would be desirable in the interests of preventing the offender from committing further offences, or
(b) state in open court that it is not so satisfied, and why not.

(5) Subsections (2) and (4) are subject to—

(a) section 86(3)(c) and (3)(d), and
(b) paragraph 13(2) of Schedule 4,

(restrictions on the powers of a court making or extending a referral order).

(6) If the court makes a youth rehabilitation order, a recognizance under this section may include a provision that the offender's parent or guardian ensure that the offender complies with the requirements of that order.

(7) The period of a recognizance under this section—
(a) may not be more 3 years, and
(b) must end before the offender reaches the age of 18.

(8) A recognizance under this section may not be for an amount of more than £1,000.

(9) In fixing the amount of a recognizance under this section, the court must take into account among other things the means of the parent or guardian so far as they appear or are known to the court (whether doing so has the effect of increasing or reducing the amount).

(10) Section 120 of the Magistrates' Courts Act 1980 (forfeiture of recognizances) applies in relation to a recognizance under this section as it applies in relation to a recognizance to keep the peace.

(11) A fine imposed under subsection (2)(b) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(12) Section 377 (certain references to parent or guardian to be read as references to local authority) does not apply to this section.

352 Binding over of parent or guardian: appeals, variations and revocations

(1) A parent or guardian may appeal to the Crown Court against an order under section 351 made by a magistrates' court.

(2) A parent or guardian may appeal to the Court of Appeal against an order under section 351 made by the Crown Court as if—
(a) the parent or guardian had been convicted on indictment, and
(b) the order were a sentence passed on the conviction of the parent or guardian.

(3) A court may vary or revoke an order made by it under section 351 if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

353 Other powers of the court to bind over to keep the peace

(1) For powers to bind over to keep the peace exercisable on conviction or acquittal or where section 5 of the Criminal Procedure (Insanity) Act 1964 applies (special verdict or findings of disability and of act or omission) see, in particular—
(a) section 1 of the Justices of the Peace Act 1361;
(b) section 1(7) of the Justices of the Peace Act 1968.

(2) This section does not affect the exercise of those powers in other circumstances, or of other powers to bind over.

CHAPTER 5

OTHER ORDERS

354 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
section 14A of the Football Spectators Act 1989	football banning order in case of certain offences relating to football matches
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).

FIFTH GROUP OF PARTS

GENERAL PROVISIONS

PART 12

MISCELLANEOUS PROVISION AND GENERAL PROVISION ABOUT SENTENCING

CHAPTER 1

COSTS, FINES AND OTHER FINANCIAL ORDERS WHERE OFFENDER AGED UNDER 18

355 Order for parent or guardian to pay fine, costs, compensation or surcharge

(1) Where any enactment provides that this section applies to an amount which, but for that enactment, the court would order the offender to pay, the court—

(a) must, or

(b) if the offender is aged 16 or over, may,

order that the amount is to be paid by the parent or guardian instead of by the offender himself or herself.

(2) Subsection (1) does not apply if the court is satisfied that—

(a) the parent or guardian cannot be found, or

(b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

(3) No order may be made under subsection (1) without giving the parent or guardian an opportunity of being heard.

(4) But an order under subsection (1) may be made against a parent or guardian who, having been required to attend, has failed to do so.

(5) A parent or guardian may appeal to the Crown Court against an order under subsection (1) made by a magistrates' court.

(6) A parent or guardian may appeal to the Court of Appeal against an order under subsection (1) made by the Crown Court, as if the parent or guardian had been convicted on indictment and the order were a sentence passed on the parent's or guardian's conviction.

356 Costs awarded against offender under 18: payment by parent or guardian

Where—

(a) but for this section, a court would impose costs in respect of an offence on an offender, and

(b) the offender was aged under 18 at the time of conviction,

section 355 applies to the amount of the costs awarded.

357 Power to determine financial circumstances of offender's parent or guardian

(1) For the purposes of any order under section 355, where—

(a) the parent or guardian of an offender aged under 18—

(i) has failed to comply with a financial circumstances order imposed by virtue of section 35(4), or

(ii) has otherwise failed to co-operate with the court in its inquiring into the parent's or guardian's financial circumstances, and

(b) the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances,

the court may make such determination as it thinks fit.

(2) Subsections (3) to (5) apply where a court has—

(a) made an order under section 355 in respect of a parent or guardian of an offender to pay the amount of a fine, and

(b) in fixing the amount of the fine, determined the financial circumstances of the parent or guardian under subsection (1).

(3) If on subsequently inquiring into the financial circumstances of the parent or guardian 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.

(4) Where under subsection (3) the court remits the whole or part of the fine after a term of—

(a) imprisonment, or

(b) detention under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000,

has been fixed under section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default) in respect of the amount ordered to be paid under section 355, the court must reduce the term by the corresponding proportion.

(5) In calculating any reduction required by subsection (4), any fraction of a day is to be ignored.

CHAPTER 2

COMMENCEMENT AND AMENDMENT OF CROWN COURT SENTENCE

358 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.

(2) The power to give a direction under subsection (1) is subject to—

(a) section 218 (restriction on consecutive sentences for released prisoners), and

(b) sections 230, 246, 250 and 263 (interaction of detention and training order with other sentences).

(3) In this section—

"sentence" (see section 374)—

(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.

359 Alteration of Crown Court sentence

(1) Subsection (2) applies where the Crown Court has imposed a sentence when dealing with an offender.

(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).

(3) Subsection (2) does not apply where an appeal, or an application for leave to appeal, against that sentence has been determined.

(4) The power in 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.

(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).

(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.

(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.

(8) In this section—
"sentence" (see section 374)—
(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);
"imposed" includes made.

CHAPTER 3

FURTHER PROCEEDINGS RELATING TO ORDERS UNDER THIS CODE: WARRANTS, REMANDS AND ADJOURNMENT

360 Arrest of person aged under 18 under warrant

(1) This section applies where a person is arrested under a warrant issued by virtue of—

(a) Part 1 of Schedule 4 (referral orders: further court proceedings),

(b) Schedule 5 (breach, revocation and amendment of reparation orders),

(c) Schedule 7 (breach, revocation or amendment of youth rehabilitation orders, and effect of further conviction), or

cannot be brought immediately before the court before which the warrant directs the offender to be brought ("the relevant court").

(2) The person in whose custody the offender is—

(a) may, if the offender is aged under 18, arrange for the offender to be detained in a place of safety for a period of not more than 72 hours from the time of the arrest, and

(b) must, within that period, bring the offender before a youth court (or, if the offender is 18 or over, a magistrates' court other than a youth court).

(3) In the case of a warrant issued by the Crown Court, section 81(5) of the Senior Courts Act 1981 (duty to bring person before magistrates' court) does not apply.

(4) A person detained in accordance with subsection (2) is in legal custody.

(5) In subsection (2)(a) "place of safety" has the same meaning as in the Children and Young Persons Act 1933 (see section 107(1) of that Act).

(6) Subsections (7) and (8) apply where the court before which the offender is brought under subsection (2)(b) ("the alternative court") is not the relevant court.

(7) If the relevant court is a magistrates' court—

(a) the alternative court may—

(i) direct that the offender be released forthwith, or

(ii) remand the offender, and

(b) section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) applies as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the relevant court.

(8) If the relevant court is the Crown Court, section 43A of that Act (functions of magistrates' court where a person in custody is brought before it with a view to appearance before the Crown Court) applies as if, in subsection (1)—

(a) the words "issued by the Crown Court" were omitted, and

(b) the reference to section 81(5) of the Senior Courts Act 1981 were a reference to subsection (2)(b).

361 Power to adjourn hearings

(1) This section applies to any hearing relating to an offender held by a youth court or other magistrates' court in any proceedings under—

(a) Part 1 of Schedule 4 (referral orders: further court proceedings),
(b) Schedule 5 (breach, revocation and amendment of reparation orders),
(c) Schedule 7 (breach, revocation or amendment of youth rehabilitation orders, and effect of further conviction), or
(d) Schedule 10 (breach, revocation or amendment of community order, and effect of further conviction).

(2) The court may adjourn the hearing.

(3) Where the court adjourns the hearing under subsection (2), it may—
(a) direct that the offender be released forthwith, or
(b) remand the offender.

(4) Where the court remands the offender under subsection (3)—
(a) it must fix the time and place at which the hearing is to be resumed, and
(b) the remand must require the offender to be brought before the court at that time and place.

(5) Where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—
(a) it may fix the time and place at which the hearing is to be resumed, but
(b) if it does not do so, must not resume the hearing unless it is satisfied that the following persons have had adequate notice of the time and place of the resumed hearing—
(i) the offender,
(ii) if the offender is aged under 14, a parent or guardian of the offender, and
(iii) the relevant officer.

(6) In subsection (5)(b) "the relevant officer" means—
(a) in relation to proceedings under Schedule 4 relating to a referral order, a member of the youth offending team for the time being specified in the order;
(b) in relation to proceedings under Schedule 5 or 7, means the responsible officer within the meaning of that Schedule;
(c) in relation to proceedings under Schedule 10, means any officer of a provider of probation services who the court thinks has an interest in the proceedings.

(7) The powers of a magistrates' court under this section may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

(8) This section—
(a) applies to any hearing in any proceedings to which this section applies 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.

362 Remand of person aged under 18

In section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act

2012 (remands of children otherwise than on bail), after subsection (1) insert—

"(1A) This section also applies where a court remands a child in any proceedings under any of the following provisions of the Sentencing Code—

(a) section 360 (child arrested under warrant and remanded by one court to be dealt with by another court);

(b) Part 1 of Schedule 4 (referral orders: further court proceedings),

(c) Schedule 5 (breach, revocation and amendment of reparation orders);

(d) Schedule 7 (breach, revocation or amendment of youth rehabilitation orders, and effect of further conviction)."

CHAPTER 4

ASSISTANCE FOR PROSECUTION ETC: REVIEW OF SENTENCE

Reference back to court for review of sentence

363 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.

(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.

(3) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.

(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").

(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).

(6) Section 51(2) or, as the case may be, 313(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.

(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 51(2) or, as the case may be, 313(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.

(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.

(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).

364 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).

(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.

(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.

(4) A case so referred must, if possible, be heard by the judge who passed the sentence to which the referral relates.

(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.

(6) Nothing in—

(a) any of the provisions listed in section 372(1)(b) or (c) (minimum sentences in certain circumstances), or

(b) section 312 (and Schedule 21) (determination of minimum term in relation to mandatory life sentence),

affects the Crown Court's power under subsection (5).

(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).

(8) Section 51(2) or, as the case may be, 313(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).

(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 51(2) or, as the case may be, 313(4) does not apply to the extent that the explanation would disclose that the substitute sentence is a discounted sentence.

(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.

References under this Chapter: further provision

365 References under sections 363 and 364: appeals

(1) Where a reference is made under section 363 or 364—

(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.

(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.

(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).

366 Proceedings under section 363 or 364: exclusion of public

(1) This section applies to—
  (a) any proceedings relating to a reference made under section 363 or 364, and
  (b) any other proceedings arising in consequence of such proceedings.

(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).

(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.

(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.

(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.

367 Proceedings under section 363 or 364: 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 363 or 364 as it applies to sentencing hearings.

368 Interpretation of Chapter

(1) This section applies for the purposes of this Chapter.

(2) A discounted sentence is a sentence passed in pursuance of—
  (a) section 71, or
  (b) section 364,

(and includes a sentence imposed under section 363(4) which is less than the original maximum (within the meaning of that section)).

(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 72.

CHAPTER 5

RECOGNIZANCES

369 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.

(2) The magistrates' court which convicted the offender may dispense with or modify the requirement.

(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.

CHAPTER 6

ORDERS IMPOSING COMMUNITY REQUIREMENTS

370 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 206 or 292 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.

(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.

PART 13

INTERPRETATION

Interpretation

371 Interpretation: general

(1) In this Code, except where the contrary intention appears—

"accommodation provided by or on behalf of a local authority" has the same meaning as in the Children Act 1989 (see section 105 of that Act);

"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 373;

"attendance centre" has the meaning given by section 221 of the Criminal Justice Act 2003;

"community order" means an order under section 191;

"community order requirement" is to be read in accordance with section 191(2);

"community requirement", in relation to a suspended sentence order, has the meaning given by section 278(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 130;

"court" does not include the Court Martial;

"criminal courts charge order" has the meaning given by section 44;

"custodial sentence" has the meaning given by section 214;

"detention and training order" has the meaning given by section 226;

"electronic monitoring requirement", in relation to a community order or suspended sentence order, means—

(a) an electronic compliance monitoring requirement, or
(b) an electronic whereabouts monitoring requirement;

"extended sentence" means a sentence under—

(a) section 247 (extended custodial sentence for persons aged under 18),
(b) section 259 (extended sentence of detention in a young offender institution for adults aged under 21), or
(c) section 272 (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 201 (community order to specify end date), or

(b) paragraph 13(1)(b) of Schedule 10 (power to substitute later end date on breach), or

(c) paragraph 20(1) of that Schedule (power to amend order to substitute later end date);

"guardian" has the same meaning as in the Children and Young Persons Act 1933 (see section 107(1) of that Act);

"home local justice area" means—

(a) in relation to a community order, the local justice area specified in the order under section 202 or paragraph 16 or 17 of Schedule 10;

(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 289 paragraph 23 or 24 of Schedule 17;

"imprisonable offence" means an offence that is punishable with imprisonment in a court (even if the offence in question so punishable by the court dealing with the offender for it);

"pre-sentence report" has the meaning given by section 31;

"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 206;

(b) in relation to a suspended sentence order which imposes one or more community requirements, has the meaning given by section 292;

"restraining order" has the meaning given by section 333;

"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 299;

"suspended sentence" and "suspended sentence order" have the meanings given by section 278(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).

(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.

(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.

(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).

(5) A reference in this Code to an offender who is subject to a detention and training order being released for supervision is to be read in accordance with section 241(3).

372 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 251, 267 or 277 (life sentence for certain dangerous offenders);

(ii) section 266 or 276 (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 304(2) or 305(2) (minimum sentences for certain repeated drug trafficking and burglary offences);

(v) section 306(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).

(2) In this Code, "required life sentence" means a sentence of—

(a) detention for life under section 242,

(b) custody for life under section 265, or

(c) imprisonment for life,

required under a provision mentioned in subsection (1)(b).

373 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.

374 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.

375 Powers to re-sentence

(1) Where under this Code a court has power to re-sentence an offender for an offence, the court may deal with the offender in any way in which it could deal with the offender—

(a) if the offender had just been convicted by or before it of the offence, but

(b) in a case where the offender was aged under 18 when in fact convicted of the offence, as if the offender were the same age as when in fact convicted.

(2) But where under this Code the Crown Court has power to re-sentence an offender for an offence and subsection (3) applies, the power of the Crown Court is power to deal with the offender in any way in which a magistrates' court could deal with the offender for the offence if—

(a) the offender had just been convicted by the magistrates' court of the offence, and

(b) in a case where the offender was aged under 18 when in fact convicted of the offence, the offender were the same age as when in fact convicted.

(3) This subsection applies where—

(a) under this Code the Crown Court has power to re-sentence an offender for an offence on revoking another order previously made in respect of the offence, and

(b) that previous order was made by the Crown Court in circumstances 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.

376 References to "local authority"

(1) In this Code, any reference to a local authority in relation to—

(a) accommodation provided by or on behalf of a local authority (including any reference to a local authority which is to receive a person aged under 18),
(b) placing a person aged under 18 with a local authority foster parent, or
(c) an order made under section 355 (power to order parent or guardian to pay fine, costs, compensation or surcharge) against a local authority,

has the same meaning as in the Children Act 1989 (see section 105 of that Act).

(2) In this Code, in relation to a youth offending team—
(a) any reference to a local authority has the same meaning as in Part 3 of the Crime and Disorder Act 1998 (see section 42 of that Act), and
(b) any reference to the area of that local authority is to be read in accordance with section 42(2) of that Act.

377 References to parent or guardian of offender where local authority has parental responsibility

(1) This section applies where an offender for whom a local authority has parental responsibility is—
(a) in the care of the local authority, or
(b) provided with accommodation by the local authority in the exercise of any social services functions of the authority.

(2) Any reference in this Code to the offender's parent or guardian is to be read as a reference to that authority.

(3) This does not apply in paragraphs 27 and 38 of Schedule 6 (fostering and education requirements of youth rehabilitation orders) and is subject to express provision to the contrary.

(4) In this section—
"local authority" has the same meaning as it has in the Children Act 1989;
"parental responsibility" has the same meaning as it has in that Act (see section 3 of that Act);
"social services functions"—
(a) in relation to a local authority in England, has the same meaning as in the Local Authority Social Services Act 1970 (see section 1A of that Act);
(b) in relation to a local authority in Wales, has the same meaning as in the Social Services and Well-being (Wales) Act 2014 (anaw 4) (see section 143 of that Act).

378 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.

PART 14

SUPPLEMENTARY PROVISION

379 Regulations and rules

[To be added]

380 Amendments of the Sentencing Code

Schedule 22 contains amendments of the Sentencing Code.

381 Powers to amend the Sentencing Code

Schedule 23 contains powers to amend the Sentencing Code.

382 Transitional provisions and savings

Schedule 24 contains transitional provisions and savings.

383 Consequential amendments and repeals etc

(1) Schedule 25 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 25 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.

384 Extent

[To be added]

385 Commencement

This Act comes into force on [date].

386 Short Title

This Act may be cited as the Sentencing Act [2018].

SCHEDULES

SCHEDULE 1

Section 68

OFFENCES WHERE TERRORIST CONNECTION TO BE CONSIDERED

PART 1

OFFENCES

Common law offences

1 Murder.

2 Manslaughter.

3 Kidnapping.

Statutory offences

4 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).

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),

(d) section 5 (punishment of accessories).

6 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).

7 An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

8 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).

9 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.

10 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.

11 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).

12 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).

13 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

14 Any ancillary offence in relation to an offence specified in this Part of this Schedule.

PART 2

INTERPRETATION

15 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.

SCHEDULE 2

Section 78

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").

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.

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.

(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.

(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.

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.

(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.

(3) A summons or warrant issued under this paragraph must direct the offender to appear or to be brought before the Crown Court.

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.

(2) If the order for conditional discharge was made by the convicting court, that court may re-sentence the offender for the original offence.

(3) 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, re-sentence the offender for the original offence.

(4) 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.

(5) For powers of the convicting court, where it commits a person under sub-paragraph (4), to commit a person to the Crown Court in respect of other offences, see section 20.

Conviction of further offence by another court: 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 another court in Great Britain of an offence committed during the period of conditional discharge.

(2) The original court may re-sentence the offender for the original offence.

Powers of Crown Court with respect to original offence following subsequent conviction

7 (1) Sub-paragraph (2) applies where—

(a) the offender is convicted before the Crown Court of an offence committed during the period of conditional discharge, 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.

(2) The Crown Court may re-sentence the offender for the original offence.

(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.

(4) Where the offender is committed to the Crown Court under sub-paragraph (4) 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).

SCHEDULE 3

Section 93

YOUTH OFFENDER CONTRACT: PROGRAMME OF BEHAVIOUR

1 This Schedule applies to a programme of behaviour agreed between an offender and a youth offender panel under section 93.

2 The programme may, in particular, include requiring the offender to—

(a) make financial or other reparation to any victim;

(b) attend mediation sessions with any victim;

(c) carry out unpaid work or service in or for the community;

(d) be at home at times specified in or determined under the programme;

(e) attend a school or other educational establishment or a place of work;

(f) participate in activities specified in the programme;

(g) meet persons specified in the programme at times and places specified in or determined under the programme;

(h) stay away from places specified in the programme;

(i) stay away from persons specified in the programme.

This is subject to paragraphs 5 and 6.

3 The programme may include provision for the offender's compliance with the programme to be supervised and recorded.

4 Activities that may be specified by virtue of paragraph 2(f) include, in particular, activities—

(a) designed to address the offending behaviour,

(b) offering education or training, or

(c) assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs.

5 The programme may not provide for—

(a) electronic monitoring of the offender's whereabouts, or

(b) any physical restriction to be imposed on the offender's movements.

6 No term which provides for anything to be done to or with any victim may be included in the programme without the victim's consent.

7 In this Schedule "victim" means any person who appears to the panel to be a victim of, or otherwise affected by, the offence or any of the offences for which the offender was referred to the panel.

SCHEDULE 4

Section 101

REFERRAL ORDERS: FURTHER COURT PROCEEDINGS

PART 1

REFERRAL BACK TO COURT FOR FURTHER PROCEEDINGS

Introductory

1 This Part of this Schedule applies where a youth offender panel refers an offender back to court under Chapter 1 of Part 6 (referral orders).

Mode of referral back to court

2 To make the referral, the panel must send a report to the appropriate court explaining why the offender is being referred back to court.

Bringing the offender before the court

3 (1) Where the appropriate court receives a report under paragraph 2, the court must cause the offender to appear before it.

(2) For that purpose, a justice acting in the same local justice area as the appropriate court may—

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

(b) if the report is substantiated on oath, issue a warrant for the offender's arrest which requires the offender to be brought before the court.

Powers of court on referral back

4 Paragraphs 5 to 8 apply where the offender was referred back to court under—

(a) section 89(3) (offender's failure to attend panel meeting);

(b) section 95(3) (no prospect of agreement on youth offender contract);

(c) section 95(4) (unreasonable failure to sign record of agreement);

(d) section 97(3) (breach of contract);

(e) section 97(6) (unreasonable failure to sign record of variation);
(f) section 97(8) (change of circumstances);
(g) section 98(5) (final meeting: order not discharged);
(h) section 99(2) (panel requesting revocation of order).

Power of court where it upholds panel's decision

5 (1) Sub-paragraph (2) applies where the appropriate court is satisfied, for each decision of the youth offender panel which resulted in the referral back to court, that—
(a) so far as the decision relied on any finding of fact by the youth offender panel, the panel was entitled to make that finding in the circumstances, and
(b) so far as the decision involved any exercise of discretion by the youth offender panel, the panel reasonably exercised that discretion in the circumstances.

(2) The court may revoke the referral order (or each of the referral orders).

(3) Revocation of an order under sub-paragraph (2) has the effect of revoking any related order under paragraph 7, 10 or 12 (extension of compliance period).

(4) Where an order is revoked under sub-paragraph (2) or by virtue of sub-paragraph (3), the appropriate court may re-sentence the offender for the offence in respect of which the revoked order was made (but assuming that a referral order is not available).

(5) In re-sentencing the offender under sub-paragraph (4), the appropriate court must have regard to—
(a) the circumstances of the offender's referral back to the court, and
(b) where a youth offender contract has taken effect between the offender and the panel, the extent of the offender's compliance with the contract.

(6) A power under sub-paragraph (2) or (4)—
(a) may not be exercised unless the offender is present before the appropriate court, and
(b) is not affected by the expiry of the compliance period (whether before or after the offender was referred back to court), in a case where a youth offender contract has taken effect.

Appeal

6 An offender re-sentenced under paragraph 5(4) for an offence may appeal to the Crown Court against the sentence.

Power of court to impose fine or extend period for which contract has effect

7 (1) This paragraph applies where—
(a) the reference back to court was made under—
(i) section 89(3) (offender's failure to attend panel meeting),
(ii) section 97(3) (breach of contract), or
(iii) section 98(5) (final meeting: order not discharged),

(b) the offender is before the appropriate court,

(c) the appropriate court is satisfied that the offender has failed without reasonable excuse to comply with a youth offender contract which has taken effect between the offender and a youth offender panel, and

(d) the appropriate court does not revoke the order under paragraph 5.

(2) The appropriate court may make an order extending the length of the compliance period, but—

(a) not to more than 12 months, and

(b) not if the compliance period has already expired.

(3) The court may order the offender to pay a fine of an amount not exceeding £2,500.

(4) Expiry of the compliance period (whether before or after the offender was referred back to court) does not affect the power to impose a fine under sub-paragraph (3).

(5) A fine imposed under sub-paragraph (3) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

Consequences of court not revoking referral order or orders

8 (1) This paragraph applies where, having considered the matters in sub-paragraph (1) of paragraph 5, the appropriate court does not revoke the referral order (or orders) to which the offender is subject.

(2) The offender remains subject to the referral order (or orders) in all respects as if the referral back to court had not occurred (subject to any order under paragraph 7(2) (extension of compliance period)).

(3) But if—

(a) a youth offender contract has taken effect in pursuance of the referral order (or orders),

(b) the compliance period has expired, and

(c) the referral order (or each of the referral orders) has not been revoked,

the court must make an order declaring that the referral order (or each of the referral orders) is discharged.

(4) An order under sub-paragraph (3) has the effect of discharging any related order under paragraph 7, 10 or 12 (extension of compliance period).

Exception where court satisfied as to completion of contract

9 (1) This paragraph applies where—

(a) the reference back to court was made under section 98(5) (final meeting: order not discharged), and

(b) the court decides (contrary to the decision of the panel) that the offender's compliance with the youth offender contract has, or will by the end of the compliance period have, been such as to justify the conclusion that the offender has, or will have, satisfactorily completed the youth offender contract.

(2) The court must make an order declaring that the referral order (or each of the referral orders) is discharged.

(3) An order under sub-paragraph (2) has the effect of discharging any related order under paragraph 7, 10 or 12 (extension of compliance period).

Referral back for extension of compliance period

10 (1) This paragraph applies where—

(a) the reference back to court was made under section 100(2) (request for extension of compliance period),

(b) the youth offender contract has taken effect and the compliance period has not expired, and

(c) the offender is present before the appropriate court.

(2) If it appears to the appropriate court that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the contract took effect, it may make an order extending the length of the compliance period but—

(a) not by more than 3 months, and

(b) not to more than 12 months.

(3) When deciding whether to make an order under sub-paragraph (2), the court must have regard to the extent of the offender's compliance with the contract.

PART 2

FURTHER CONVICTIONS DURING REFERRAL

Introductory

11 This Part of this Schedule applies where—

(a) a referral order has been made in respect of an offender and has not been discharged or revoked,

(b) the offender is aged under 18, and

(c) a court is dealing with the offender for an offence ("the new offence").

Power of magistrates' court to deal with further offence by extending compliance period

12 (1) This paragraph applies if the court dealing with the offender for the new offence is a youth court or other magistrates' court.

(2) An order under this paragraph is available in respect of the new offence if neither the new offence nor any offence connected with it is one the sentence for which is fixed by law.

(3) The court may sentence the offender for the new offence by making an order extending the length of the compliance period, but not to more than 12 months.

Supplementary

13 (1) This paragraph applies where a court makes an order under paragraph 12 in respect of the new offence.

(2) The court must not deal with the offender for the new offence, or any offence connected with it, by making an order of the kind mentioned in section 86(3) (orders not available where court makes referral order).

(3) In respect of any offence connected with the new offence, the court must make—

(a) an order under paragraph 12, or

(b) an order for absolute discharge.

Further convictions: power of any court to revoke referral orders

14 (1) This paragraph applies where, in dealing with the offender for the new offence, the court makes an order other than—

(a) an order under paragraph 12, or

(b) an order for absolute discharge or an order for conditional discharge.

(2) If it appears to the court to be in the interests of justice to do so, the court—

(a) may revoke the referral order (or any one or more of the referral orders), and

(b) if it revokes a referral order, may re-sentence the offender for the offence in respect of which the revoked order was made (but assuming that a referral order is not available).

(3) Revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph 7, 10 or 12 (extension of compliance period).

(4) When re-sentencing the offender under sub-paragraph (2)(b), if a youth offender contract has taken effect between the offender and the panel, the court must have regard to the extent of the offender's compliance with the contract.

(5) For the purposes of this paragraph it does not matter whether the new offence was committed before or after the offender was referred to the panel.

SCHEDULE 5

Section 112

BREACH, REVOCATION AND AMENDMENT OF REPARATION ORDERS

PART 1

BREACH OF REPARATION ORDER

Application to court

1 (1) This Part of this Schedule applies where—

(a) a reparation order is in force in respect of an offender, and

(b) the responsible officer makes an application to the appropriate court under this paragraph for it to exercise its powers under paragraph 2.

(2) In this paragraph "appropriate court" means—
  (a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and
  (b) if the offender is aged 18 or over, a magistrates' court (other than a youth court) acting in that local justice area.

(3) In sub-paragraph (2) "relevant local justice area" means—
  (a) the local justice area in which the offender resides, or
  (b) if it is not known where the offender resides, the offender's home local justice area.

(4) Where the responsible officer makes an application to the appropriate court under this paragraph, the officer may bring the offender before the court.

Powers of appropriate court

2 (1) This paragraph applies if it is proved to the satisfaction of the appropriate court that the offender has breached any requirement of the reparation order.

(2) The appropriate court—
  (a) may order the offender to pay a fine of an amount not exceeding £1,000;
  (b) if the reparation order was made by a magistrates' court, may revoke the order and re-sentence the offender for the offence in respect of which the order was made, or
  (c) if the reparation order was made by the Crown Court, may—
    (i) commit the offender in custody, or
    (ii) release the offender on bail,
  until the offender can be brought or appear before the Crown Court.

(3) Where the appropriate court deals with the offender's case under sub-paragraph (2)(c) it must send to the Crown Court a certificate signed by a justice of the peace giving—
  (a) particulars of the offender's failure to comply with the requirement in question, 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.

(4) The appropriate court may not make an order under this paragraph unless the offender is present before the court.

(5) For powers to issue a summons or warrant to secure the offender's attendance see paragraph 6.

(6) In dealing with the offender under this paragraph the appropriate court must take into account the extent to which the offender has complied with the requirements of the reparation order.

(7) A fine imposed under this paragraph is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

(8) Where—
  (a) the offender is aged under 18, and

(b) but for this sub-paragraph, the court would impose a fine on the offender under sub-paragraph (2)(a),

section 355 (order for payment by parent or guardian) applies to the fine.

Powers of Crown Court

3 (1) This paragraph applies where—

(a) by virtue of paragraph 2(2)(c) the offender is brought or appears before the Crown Court, and

(b) it is proved to the satisfaction of that court that the offender has breached the requirement in question.

(2) The Crown Court may re-sentence the offender for the offence in respect of which the reparation order was made.

(3) Where the Crown Court deals with the offender under sub-paragraph (2), it must revoke the reparation order if it is still in force.

(4) In dealing with an offender under this paragraph the court must take into account the extent to which the offender has complied with the requirements of the reparation order.

(5) The appropriate court may not make an order under this paragraph unless the offender is present before the court.

(6) For powers to issue a summons or warrant to secure the offender's attendance, see paragraph 6.

Orders made on appeal

4 A reparation order made on appeal is to be treated, for the purposes of this Part of this Schedule—

(a) if it was made on appeal brought from a magistrates' court, to have been made by that magistrates' court;

(b) if it was made on an appeal brought—

(i) from the Crown Court, or

(ii) from the criminal division of the Court of Appeal,

to have been made by the Crown Court.

PART 2

REVOCATION AND AMENDMENT OF REPARATION ORDER

5 (1) This paragraph applies where—

(a) a reparation order is in force in respect of an offender, and

(b) the offender or the responsible officer makes an application to the relevant court under this paragraph.

(2) In this paragraph "the relevant court" means—

(a) a youth court acting in the offender's home local justice area, or

(b) in the case of an application made both under this paragraph and under paragraph 1, the appropriate court (as defined in that paragraph).

(3) Where the responsible officer makes an application to a court under this paragraph, the responsible officer may bring the offender before the court.

(4) If it appears to the relevant court that it is appropriate to make an order under this sub-paragraph, the court may—

(a) make an order revoking the reparation order, or

(b) make an order amending it—

(i) by cancelling any provision included in it, or

(ii) by inserting in it (either in addition or in substitution for any of its provisions) any provision which it could include in a reparation order if, applying the relevant assumptions, it were now making such an order in respect of the relevant offence.

(5) In sub-paragraph (4) the "relevant assumptions" are that—

(a) the offender has just been convicted by the relevant court of the relevant offence, and

(b) the offender is the same age as when in fact convicted of that offence.

(6) Unless the offender is present before it, the relevant court may not amend the reparation order under this paragraph, except to—

(a) cancel a requirement included in the order,

(b) substitute a new local justice area for the offender's home local justice area specified in the order, or

(c) change the responsible officer.

(7) Where an application under this paragraph for the revocation of a reparation order is dismissed, no-one may make a further application for its revocation under this paragraph except with the consent of the relevant court.

PART 3

SUPPLEMENTARY

Issue of summons or warrant

6 (1) This paragraph applies where an application is made under paragraph 1 or 5.

(2) For the purpose of securing the attendance of the offender before it, the court to which the application is made may issue a summons.

(3) If—

(a) the offender fails to appear in court in answer to the summons, and

(b) it is proved to the satisfaction of the court, on oath or in such manner as may be prescribed by rules of court, that the summons—

(i) could not be served, or

(ii) was served on the offender within what appears to the court to be a reasonable time before the hearing,

the court may issue a warrant.

(4) This paragraph is without prejudice to any other power to issue a summons or warrant.

Appeals

7 The offender may appeal to the Crown Court against—

(a) any order made under paragraph 2(1) (order made by appropriate court on breach of reparation order),

(b) any order made under paragraph 5(4)(b) (amendment of order), other than an order which only does one or more of the following—

(i) cancels a requirement included in the order,

(ii) substitutes a new local justice area for the offender's home local justice area specified in the order, or

(iii) changes the responsible officer, or

(c) the dismissal of an application under paragraph 5 to revoke a reparation order.

SCHEDULE 6

Section 164

YOUTH REHABILITATION ORDERS: REQUIREMENTS

PART 1

ACTIVITY REQUIREMENT

Activity requirement: types of requirement

1 (1) In this Code "activity requirement", in relation to a youth rehabilitation order, is a requirement consisting of one or more of the following—

(a) a specified place obligation (see paragraph 3),

(b) a specified activities obligation (see paragraph 4),

(c) a specified residential exercise obligation (see paragraph 5),

(d) an obligation under paragraph 6 to engage in activities as instructed by the responsible officer.

(2) A youth rehabilitation order that imposes an activity requirement may specify—

(a) obligations of more than one of those kinds, or

(b) more than one obligation of any of those kinds.

(3) The aggregate number of days specified in a youth rehabilitation order under paragraphs 3, 4, 5 and 6 must not exceed 90 unless the activity requirement is an extended activity requirement (see paragraph 2).

Extended activity requirement

2 (1) An extended activity requirement is an activity requirement for which the number of days specified in the youth rehabilitation order under paragraphs 3, 4, 5 and 6 is greater than 90.

(2) Where a youth rehabilitation order imposes an extended activity requirement, the number of days specified in the order under those paragraphs must not exceed 180.

(3) For restrictions on making a youth rehabilitation order with intensive supervision and surveillance (and, accordingly, on imposing an extended activity requirement), see section 171 (as well as sections 166 and 169 (requirements and availability relating to youth rehabilitation orders with intensive supervision and surveillance)).

Activity requirement: specified place obligation

3 (1) For each specified place obligation that it imposes, a youth rehabilitation order must specify—

(a) a number of days,

(b) a place or places, and

(c) for each place specified, the description of person to whom the offender is required to present himself or herself.

(2) The obligation requires the offender, in accordance with instructions of the responsible officer, on the specified number of days—

(a) to present himself or herself at a specified place to a person of the specified description, and

(b) while there, to participate in activities and comply with instructions given by, or under the authority of, the person in charge of the place.

Activity requirement: specified activities obligation

4 (1) For each specified activities obligation that it imposes, a youth rehabilitation order must specify—

(a) a number of days, and

(b) an activity or activities.

(2) The obligation requires the offender, in accordance with instructions of the responsible officer, on the specified number of days—

(a) to participate in a specified activity, and

(b) to comply with instructions given by, or under the authority of, the person in charge of the activity.

(3) An activity specified under this paragraph may be one whose purpose is reparation, such as an activity involving contact between an offender and persons affected by the offending concerned.

Activity requirement: specified residential exercise obligation

5 (1) For each specified residential exercise obligation that it imposes, a youth rehabilitation order must specify—

(a) a number of days, and

(b) a place or activity.

(2) The obligation requires the offender, in accordance with the instructions of the responsible officer—

(a) if a place is specified under sub-paragraph (1)(b)—

(i) to present himself or herself at that place to a person of a description specified in the instructions, and

(ii) to reside there for a period consisting of the specified number of days, and

(iii) during that period, to comply with instructions given by, or under the authority of, the person in charge of that place;

(b) if an activity is specified under sub-paragraph (1)(b)—

(i) to participate in that activity for a period consisting of the specified number of days, and

(ii) during that period, to comply with instructions given by or under the authority of, the person in charge of the activity.

Activity requirement: obligation to engage in activities as instructed by responsible officer

6 (1) A youth rehabilitation order that imposes an obligation under this paragraph—

(a) must specify a number of days, and

(b) may permit the responsible officer to give instructions in accordance with this paragraph requiring the offender to participate in a residential exercise.

(2) The obligation requires the offender to engage in activities in accordance with instructions of the responsible officer on that number of days.

(3) For each of those days, instructions of the responsible officer must require the offender to—

(a) present himself or herself to a person or persons of a description specified in the instructions at a place so specified, or

(b) participate in an activity specified in the instructions, which may be one whose purpose is reparation.

(4) On each of those days, or while participating in any such activity, the offender is required to comply with instructions given by, or under the authority of, the person in charge of the place or the activity.

(5) An example of an activity whose purpose is reparation is one involving contact between an offender and persons affected by the offending concerned.

(6) Sub-paragraphs (7) to (9) apply where under sub-paragraph (1)(b) the youth rehabilitation order permits the responsible officer to give instructions requiring the offender to participate in a residential exercise.

(7) Instructions given by the responsible officer may require the offender to participate in a residential exercise for the period specified in the instructions and, for that purpose—

(a) to present himself or herself to a person of a description specified in the instructions at a place so specified at the beginning of that period and to reside there for that period, or

(b) to participate for that period in an activity specified in the instructions.

(8) But instructions requiring the offender to participate in a residential exercise—

(a) may not require the offender to participate in such an exercise for a period of more than 7 days;

(b) may not be given except with the consent of a parent or guardian of the offender.

(9) Where the responsible officer gives instructions requiring the offender to participate in a residential exercise, the offender is required to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified in the responsible officer's instructions.

Activity requirement: general provisions

7 Instructions given by, or under the authority of, a person in charge of any place under any of the following provisions—

(a) paragraph 3(2)(b) (specified place obligation),

(b) paragraph 5(2)(a)(iii) (residential exercise obligation),

(c) paragraph 6(4) (obligation at place specified by responsible officer), or

(d) paragraph 6(9) (residential exercise at place specified by responsible officer),

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

Restrictions on imposing an activity requirement

8 (1) A court may not include an activity requirement in a youth rehabilitation order unless—

(a) it has consulted—

(i) a member of a youth offending team, or

(ii) an officer of a provider of probation services, and

(b) it is satisfied that it is feasible to secure compliance with the requirement.

(2) A court may not include an activity requirement in a youth rehabilitation order unless it is satisfied that provision can be made for the offender to participate in the activities that it proposes to specify in the order under the arrangements for persons to participate in such activities which exist in the local justice area in which the offender resides or is to reside.

(3) A court may not include an activity requirement in a youth rehabilitation order if compliance with the requirement would require the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion.

PART 2

SUPERVISION REQUIREMENT

Supervision requirement

9 In this Code "supervision requirement", in relation to a youth rehabilitation order, means a requirement that, while the order is in force, the offender must attend appointments with—

(a) the responsible officer, or

(b) another person determined by the responsible officer,

at times and places determined by the responsible officer.

PART 3

UNPAID WORK REQUIREMENT

Requirement

10 (1) In this Code "unpaid work requirement", in relation to a youth rehabilitation 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.

(2) Sub-paragraph (1)(b) is subject to paragraph 18 of Schedule 7.

(3) The order must specify the number of hours which the offender may be required to work under the requirement.

(4) That number must be, in aggregate—

(a) not less than 40, and

(b) not more than 240.

This is subject to paragraph 10(7) of Schedule 7.

Restriction on imposing an unpaid work requirement

11 (1) A court may not impose an unpaid work requirement in respect of an offender unless it is satisfied—

(a) that the offender is a suitable person to perform work under an unpaid work 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 local justice area in which the offender resides or is to reside.

(2) In making a decision under sub-paragraph (1)(a) the court must (if it considers it necessary) hear—

(a) a member of a youth offending team, or

(b) an officer of a provider of probation services.

PART 4

PROGRAMME REQUIREMENT

Programme requirement

12 (1) In this Code "programme requirement", in relation to a youth rehabilitation order, means a requirement for the offender to participate in a particular systematic set of activities (a "programme"), which may have a residential component.

(2) A youth rehabilitation order which imposes a programme requirement must specify—

(a) the programme,

(b) the place or places at which the offender is required to participate in it,

(c) the number of days on which the offender is required to participate in it, and

(d) if the programme has a residential component—

(i) the place where the offender is required to reside for the purposes of the residential component, and

(ii) the period for which the offender is required to reside there.

(3) For the purposes of this paragraph, a programme has "a residential component" if it is necessary to reside at a particular place for a particular period in order to participate in the programme.

(4) A programme requirement operates to require the offender, as instructed by the responsible officer—

(a) to participate in the programme on the number of days specified in the order at a place specified in the order, and

(b) while there, to comply with instructions given by, or under the authority of, the person in charge of the programme.

Restrictions on imposing a programme requirement

13 (1) A court may not include a programme requirement in a youth rehabilitation order unless—

(a) the programme which the court proposes to specify has been recommended to the court by—

(i) a member of a youth offending team, or

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

as being suitable for the offender, and

(b) the court is satisfied that the programme is available at the place or places it proposes to specify.

For this purpose "programme" has the same meaning as in paragraph 12.

(2) A court may not include a programme requirement in a youth rehabilitation order if compliance with the requirement would require the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.

PART 5

ATTENDANCE CENTRE REQUIREMENT

Attendance centre requirement

14 (1) In this Code "attendance centre requirement", in relation to a youth rehabilitation order, means a requirement that the offender must attend at a particular attendance centre for a particular number of hours.

(2) A youth rehabilitation order which imposes an attendance centre requirement must specify—

(a) the attendance centre, and

(b) the aggregate number of hours for which the offender may be required to attend at the attendance centre.

(3) That number of hours must be—

(a) if the offender was aged 16 or over at the time of conviction—

(i) not less than 12, and
(ii) not more than 36;

(b) if the offender was aged 14 or over but under 16 at the time of conviction—
(i) not less than 12, and
(ii) not more than 24;

(c) if the offender was aged under 14 at the time of conviction, not more than 12.

(4) The first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.

(5) The subsequent hours are to be fixed by the officer in charge of the centre—
(a) in accordance with arrangements made by the responsible officer, and
(b) having regard to the offender's circumstances.

(6) An offender may not be required under this paragraph to attend at an attendance centre—
(a) more than once on any day, or
(b) for more than 3 hours at a time.

(7) A requirement under this paragraph to attend at an attendance centre for any period on any occasion operates as a requirement, during that period, to engage in occupation, or receive instruction, 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.

Restriction on imposing attendance centre requirement

15 A court may not include an attendance centre requirement in a youth rehabilitation order unless it—
(a) has been notified by the Secretary of State that an attendance centre is available for persons of the offender's description and that provision can be made for the offender there, and
(b) is satisfied that the attendance centre which it proposes to specify in the order is reasonably accessible to the offender, having regard to the means of access available to the offender and any other circumstances.

PART 6

PROHIBITED ACTIVITY REQUIREMENT

Requirement

16 (1) In this Code "prohibited activity requirement", in relation to a youth rehabilitation order, means a requirement that the offender must refrain from particular activities—
(a) on one or more particular days, or
(b) for a particular period.

(2) Where the court makes a youth rehabilitation order imposing a prohibited activity requirement, the order must specify—

(a) the activities from which the offender must refrain;

(b) the day or days on which, or the period for which, the offender must refrain from those activities.

(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.

Restriction on imposing prohibited activity requirement

17 A court may not include a prohibited activity requirement in a youth rehabilitation order unless it has consulted—

(a) a member of a youth offending team, or

(c) an officer of a provider of probation services.

PART 7

CURFEW REQUIREMENT

Curfew requirement

18 (1) In this Code "curfew requirement", in relation to a youth rehabilitation order, means a requirement that the offender must remain, for particular periods ("curfew periods"), at a particular place.

(2) A youth rehabilitation 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.

(3) Different places or different curfew periods may be specified for different days.

(4) The curfew periods must amount to—

(a) not less than 2 hours in any day, and

(b) not more than 16 hours in any day.

(5) The specified curfew periods must fall within the period of 12 months beginning with the day on which the requirement first takes effect.

Requirements where court imposes curfew requirement

19 (1) Before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about each place proposed to be specified under paragraph 18(2)(b).

(2) That information must include information as to the attitude of persons likely to be affected by the offender's enforced presence there.

(3) Where the court makes a youth rehabilitation order which imposes a curfew requirement it must also impose an electronic monitoring requirement (see Part 17 of this Schedule) unless—

(a) it is prevented from doing so by paragraph 42, or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

PART 8

EXCLUSION REQUIREMENT

Requirement

20 (1) In this Code "exclusion requirement", in relation to a youth rehabilitation order, means a provision prohibiting the offender from entering a particular place (the "prohibited place") for a particular period (the "exclusion period").

(2) A youth rehabilitation order which imposes an exclusion requirement must specify—

(a) the prohibited place, and

(b) the exclusion period.

(3) The exclusion period must not be more than 3 months.

(4) A youth rehabilitation 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.

(5) A prohibited place may be an area.

Requirement for electronic monitoring where court imposes exclusion requirement

21 Where the court makes a youth rehabilitation order which imposes an exclusion requirement it must also impose an electronic monitoring requirement (see Part 17 of this Schedule) unless—

(a) it is prevented from doing so by paragraph 42, or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

PART 9

RESIDENCE REQUIREMENT

Requirement

22 (1) In this Code "residence requirement", in relation to a youth rehabilitation order, means a requirement that, for a particular period ("the required period"), the offender must—

(a) reside with a particular individual, or

(b) reside—

(i) at a particular place ("the required place"), or

(ii) if the order so permits, at the required place or, with the prior approval of the responsible officer, at some other place.

(2) A youth rehabilitation order which imposes a residence requirement within sub-paragraph (1)(a) must specify—

(a) the required period, and
(b) the individual with whom the offender is required to reside.

(3) A youth rehabilitation order which imposes a residence requirement within sub-paragraph (1)(b) (a "place of residence requirement") must specify—
(a) the required period,
(b) the required place, and
(c) if the offender is to be permitted to reside at some other place with the prior approval of the responsible officer, that fact.

Imposing a residence requirement: restrictions and requirements

23 (1) A youth rehabilitation order which imposes a residence requirement within paragraph 22(1)(a) may not specify, as the individual with whom the offender is required to reside, an individual who has not consented to the requirement.

(2) A court may not include a place of residence requirement in a youth rehabilitation order unless the offender was aged 16 or over at the time of conviction.

(3) Before making a youth rehabilitation order containing a place of residence requirement, the court must consider the home surroundings of the offender.

(4) A hostel or other institution may not be specified as the required place, except on the recommendation of—
(a) a member of a youth offending team,
(b) an officer of a provider of probation services, or
(c) a social worker of a local authority.

(5) In this paragraph, "place of residence requirement" and "the required place" have the same meanings as in paragraph 22.

PART 10

LOCAL AUTHORITY RESIDENCE REQUIREMENT

Requirement

24 (1) In this Code, "local authority residence requirement", in relation to a youth rehabilitation order, means a requirement that, for a particular period ("the required period"), the offender must reside in accommodation provided by or on behalf of a particular local authority.

(2) A youth rehabilitation order which imposes a local authority residence requirement may also stipulate that the offender is not to reside with a particular person.

(3) A youth rehabilitation order which imposes a local authority residence requirement must specify—
(a) the required period,
(b) the local authority which is to receive the offender, and
(c) any person with whom the offender is not to reside by virtue of sub-paragraph (2).

(4) The required period must—

(a) not be longer than 6 months, and

(b) end before the offender reaches the age of 18.

(5) The authority specified must be the local authority in whose area the offender resides or is to reside.

Restrictions on imposing local authority residence requirement

25 (1) A court may not include a local authority residence requirement in a youth rehabilitation order made in respect of an offence unless it is satisfied that—

(a) the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and

(b) imposing that requirement will assist in the offender's rehabilitation.

(2) A court may not include a local authority residence requirement in a youth rehabilitation order unless it has consulted—

(a) a parent or guardian of the offender (unless it is impracticable to do so), and

(b) the local authority which is to receive the offender.

(3) A court may not include a local authority residence requirement in a youth rehabilitation order unless—

(a) the offender was legally represented in court when the court was considering whether to impose that requirement, or

(b) either of the conditions in sub-paragraph (4) is satisfied.

(4) Those conditions are—

(a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender's conduct, or

(b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply.

(5) In sub-paragraph (4) "the proceedings" means—

(a) the whole proceedings, or

(b) the part of the proceedings relating to the imposition of the local authority residence requirement.

PART 11

FOSTERING REQUIREMENT

Requirement

26 (1) In this Code "fostering requirement", in relation to a youth rehabilitation order, means a requirement that, for a particular period ("the fostering period"), the offender must reside with a local authority foster parent.

(2) A youth rehabilitation order which imposes a fostering requirement must specify—

(a) the fostering period, and

(b) the local authority which is to place the offender with a local authority foster parent under—

(i) section 22C of the Children Act 1989, or

(ii) section 81 of the Social Services and Well-being (Wales) Act 2014 (anaw 4).

(3) The fostering period—

(a) must end no later than the end of the period of 12 months beginning with the day on which the requirement took effect, and

(b) must end before the offender reaches the age of 18.

This is subject to paragraphs 10(9) and (10) and 16(3) and (4) of Schedule 7 (substitute fostering requirement).

(4) The authority specified must be the local authority in whose area the offender resides or is to reside.

(5) Sub-paragraph (6) applies if during the fostering period the responsible officer notifies the offender—

(a) that no suitable local authority foster parent is available, and

(b) that the responsible officer has applied, or proposes to apply, under Part 3 or 4 of Schedule 7 for the youth rehabilitation order to be amended or revoked.

(6) The fostering requirement has effect, until the application is determined, as a requirement for the offender to reside in accommodation provided by or on behalf of a local authority.

(7) This paragraph does not affect the power of a local authority to place with a local authority foster parent an offender in respect of whom a local authority residence requirement is imposed.

Restrictions on imposing fostering requirement

27 (1) A court may not make a youth rehabilitation order which imposes a fostering requirement unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent.

(2) The court may not make a youth rehabilitation order which imposes a fostering requirement unless it is satisfied that—

(a) the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and

(b) imposing that requirement would assist in the offender's rehabilitation.

(3) The court may not make a youth rehabilitation order which imposes a fostering requirement unless—

(a) it has consulted the offender's parents or guardians (unless it is impracticable to do so), and

(b) it has consulted the local authority which is to place the offender with a local authority foster parent.

(4) A court may not make a youth rehabilitation order which imposes a fostering requirement unless—

(a) the offender was legally represented in court when the court was considering whether to impose that requirement, or

(b) either of the conditions in sub-paragraph (5) is satisfied.

(5) Those conditions are—

(a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender's conduct, or

(b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply.

(6) In sub-paragraph (5) "the proceedings" means—

(a) the whole proceedings, or

(b) the part of the proceedings relating to the imposition of the fostering requirement.

PART 12

MENTAL HEALTH TREATMENT REQUIREMENT

Mental health treatment requirement

28 (1) In this Code "mental health treatment requirement", in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a particular period or particular periods, to relevant mental health treatment.

(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.

(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 that Act) 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).

(4) A youth rehabilitation 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, and

(b) for each such period—

(i) if the relevant mental health treatment is to be in-patient treatment, the care home or hospital where it is to be provided;

(ii) if it is to be institution-based out-patient treatment, the institution or place where it is to be provided;

(iii) 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.

(5) 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;

(b) in relation to Wales, has the same meaning as in the Care Standards Act 2000;

"registered psychologist" means a person for the time being registered in the part of the register maintained under the Health and Social Work Professions Order 2001 (S.I. 2002/254) which relates to practitioner psychologists.

(6) While the offender is under treatment which is in-patient treatment in pursuance of a mental health treatment requirement of a youth rehabilitation order, the responsible officer is to carry out the supervision of the offender only to the extent necessary for the purpose of revocation or amendment of the order.

Restrictions on imposing mental health treatment requirement

29 (1) A court may not include a mental health treatment requirement in a youth rehabilitation order unless the following conditions are satisfied—

(a) the need for treatment condition,

(b) the arrangements condition, and

(c) the consent condition.

(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.

(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, if that treatment is, or includes, in-patient treatment (see paragraph 28(3)).

(4) The consent condition is that the offender has expressed willingness to comply with the requirement.

Alternative arrangements for mental health treatment

30 (1) Where—

(a) an offender is being treated in pursuance of a mental health treatment requirement, and

(b) the treatment practitioner is of the opinion that part of the treatment can be better or more conveniently given in an institution or at a place—

(i) which is not specified in the youth rehabilitation order, and

(ii) where the treatment of the offender will be given by or under the direction of a registered medical practitioner or registered psychologist,

the treatment practitioner may make arrangements ("alternative arrangements") for the offender to be treated accordingly.

(2) Alternative arrangements may be made only if the offender has expressed willingness for the treatment to be given under those arrangements.

(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 youth rehabilitation order.

(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 is required to 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.

(5) In this paragraph—

"registered psychologist" means a person for the time being registered in the part of the register maintained under the Health and Social Work Professions Order 2001 (S.I. 2002/254) 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.

PART 13

DRUG TREATMENT REQUIREMENT

Requirement

31 (1) In this Code "drug treatment requirement", in relation to a youth rehabilitation order, means a requirement that the offender must submit,

during a period or periods (each, a "treatment period"), to drug rehabilitation treatment.

Such treatment may be resident treatment or non-resident treatment.

(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 having 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 a particular institution or place;

"non-resident treatment" means treatment as a non-resident at a particular institution or place;

"the treatment director" means the person by or under whose direction the treatment is to be provided.

(3) A youth rehabilitation order which imposes a drug treatment requirement must specify—

(a) the treatment period or treatment periods, and

(b) for each treatment period—

(i) the treatment director;

(ii) if the treatment is to be resident treatment, the institution or place where it is to be provided;

(iii) if it is to be non-resident treatment, the institution or place where, and the intervals at which, it is to be provided;

but must not otherwise specify the nature of the treatment.

(4) In this paragraph "drug" means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971.

Restrictions on imposing drug treatment requirement

32 (1) A court may not include a drug treatment requirement in a youth rehabilitation order unless the following conditions are satisfied—

(a) the need for treatment condition,

(b) the availability condition,

(c) the arrangements condition,

(d) the suitability condition, and

(e) the consent condition.

(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.

(3) The availability condition is that the court has been notified by the Secretary of State that arrangements for implementing drug treatment requirements

are in force in the local justice area in which the offender resides or is to reside.

(4) 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 if that treatment is, or includes, resident treatment (within the meaning given in paragraph 31(2)).

(5) The suitability condition is that the requirement has been recommended to the court as suitable for the offender by—

(a) a member of a youth offending team, or

(b) an officer of a provider of probation services.

(6) The consent condition is that the offender has expressed willingness to comply with the requirement.

PART 14

DRUG TESTING REQUIREMENT

Requirement

33 (1) In this Code "drug testing requirement", in relation to a youth rehabilitation order, means a requirement that, during any treatment period, the offender must, for the purpose of ascertaining whether there is any drug in the offender's body during that period, provide samples in accordance with instructions given by—

(a) the responsible officer, or

(b) the treatment director.

(2) A youth rehabilitation order which imposes a drug testing requirement—

(a) must specify, for each month, the minimum number of occasions when samples are to be provided, and

(b) may specify—

(i) when and in what circumstances the responsible officer or treatment director may require the offender to provide samples, and

(ii) the kinds of sample which may be required.

(3) A youth rehabilitation order which imposes a drug testing requirement must provide for the results of tests on samples provided by the offender in pursuance of the requirement to be communicated to the responsible officer, if they are not carried out by the responsible officer.

(4) In this paragraph, the following have the same meanings as in paragraph 31—

"drug";

"treatment director";

"treatment period".

Restrictions on imposing drug testing requirement

34 (1) A youth rehabilitation order may impose a drug testing requirement only if it also imposes a drug treatment requirement.

(2) A court may not include a drug testing requirement in a youth rehabilitation order unless the following are satisfied—

(a) the availability condition, and

(b) the consent condition.

(3) The availability condition is that the court has been notified by the Secretary of State that arrangements for implementing drug testing requirements are in force in the local justice area in which the offender resides or is to reside.

(4) The consent condition is that the offender has expressed willingness to comply with the requirement.

PART 15

INTOXICATING SUBSTANCE TREATMENT REQUIREMENT

Requirement

35 (1) In this Code, "intoxicating substance treatment requirement", in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods (each, a "treatment period") to substance abuse treatment.

Such treatment may be resident treatment or non-resident treatment.

(2) In this paragraph—

"substance abuse treatment" means treatment which is—

(a) by or under the direction of a person having 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 intoxicating substances;

"resident treatment" means treatment as a resident in a particular institution or place;

"non-resident treatment" means treatment as a non-resident at a particular institution or place;

"the treatment director" means the person by or under whose direction the treatment is to be provided.

(3) A youth rehabilitation order which imposes an intoxicating substance treatment requirement must specify—

(a) the treatment period or treatment periods, and

(b) for each treatment period—

(i) the treatment director;

(ii) if the treatment is to be resident treatment, the institution or place where it is to be provided;

(iii) if it is to be non-resident treatment, the institution or place where, and the intervals at which, it is to be provided;

but must not otherwise specify the nature of the treatment.

Restrictions on imposing intoxicating substance treatment requirement

36 (1) A court may not include an intoxicating substance treatment requirement in a youth rehabilitation order 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.

(2) The need for treatment condition is that the court is satisfied—
(a) that the offender—
(i) is dependent on intoxicating substances, or
(ii) has a propensity to misuse intoxicating substances, and
(b) that the offender's dependency or propensity—
(i) requires treatment, and
(ii) may be susceptible to treatment.

(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 if that treatment is, or includes, resident treatment (within the meaning given in paragraph 35(2)).

(4) The suitability condition is that the requirement has been recommended to the court as suitable for the offender by—
(a) a member of a youth offending team, or
(b) an officer of a provider of probation services.

(5) The consent condition is that the offender has expressed willingness to comply with the requirement.

Meaning of "intoxicating substance"

37 In this Part "intoxicating substance" means—
(a) alcohol, or
(b) any other substance or product which—
(i) can be used for the purpose of causing intoxication (whether through inhaling it or its fumes or otherwise), and
(ii) is not a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971.

PART 16

EDUCATION REQUIREMENT

Requirement

38 (1) In this Code "education requirement", in relation to a youth rehabilitation order, means a requirement that the offender must comply, during a particular period or particular periods, with arrangements for the offender's education—

(a) made for the time being by the offender's parent or guardian, and
(b) approved by a relevant authority.

(2) A youth rehabilitation order which imposes an education requirement must specify—
(a) the relevant authority for the purposes of the requirement, and
(b) the period or periods during which the offender must comply with the education arrangements.

(3) The authority specified as the relevant authority must be the local authority (within the meaning of the Education Act 1996) for the area in which the offender resides or is to reside.

(4) Any period specified must end by the time the offender ceases to be of compulsory school age.

(5) In this paragraph, "parent" has the same meaning as in the Education Act 1996.

Restriction on imposing education requirement

39 A court may not include an education requirement in a youth rehabilitation order unless—
(a) it has consulted the authority which is to be specified as the relevant authority (within the meaning of paragraph 38), and
(b) it is satisfied—
(i) that, in the view of that authority, arrangements exist for the offender to receive efficient full-time education suitable to the offender's age, ability, aptitude and special educational needs (if any), and
(ii) that, having regard to the circumstances of the case, it is necessary to include the education requirement in order to secure the good conduct of the offender or to prevent the commission of further offences.

PART 17

ELECTRONIC MONITORING REQUIREMENT

Requirement

40 (1) In this Code "electronic monitoring requirement", in relation to a youth rehabilitation order, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period ("the monitoring period")—
(a) specified in the order, or
(b) determined by the responsible officer in accordance with the order.

(2) Sub-paragraph (3) applies where the responsible officer is to determine the monitoring period in accordance with the order.

(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 42(1)(b).

Person responsible for electronic monitoring

41 (1) A youth rehabilitation order which imposes an electronic monitoring requirement must include provision for making a person responsible for the monitoring.

(2) The person who is made responsible for the monitoring must be of a description specified in regulations made by the Secretary of State.

Restrictions on imposing electronic monitoring

42 (1) Where—

(a) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order, but

(b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,

the requirement may not be included in the order without that person's consent.

(2) A court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court—

(a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available—

(i) in the local justice area proposed to be specified in the order as the offender's home local justice area, and

(ii) for each requirement mentioned in the table in sub-paragraph (3) which the court proposes to include in the order, in the area in which the relevant place specified in the table for that requirement is situated, and

(b) is satisfied that the necessary provision can be made under the arrangements currently available.

(3) That table is—

Proposed requirement of youth rehabilitation order	*Relevant place*
Curfew requirement	The place which the court proposes to specify in the order for the purposes of that requirement.
Exclusion requirement	The prohibited place (within the meaning of paragraph 20) which the court proposes to specify in the order.
Attendance centre requirement	The attendance centre which the court proposes to specify in the order.

SCHEDULE 7

Section 186

BREACH, REVOCATION OR AMENDMENT OF YOUTH REHABILITATION ORDER, AND EFFECT OF FURTHER CONVICTION

PART 1

PRELIMINARY

Interpretation

1 (1) In this Schedule, a reference (however expressed) to an offender's breach of a requirement of a youth rehabilitation order is a reference to any failure of the offender to comply—

(a) with a requirement imposed by the order, or

(b) if the order imposes an attendance centre requirement, with rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 (attendance centre rules).

(2) For the purposes of this Schedule—

(a) a requirement falling within any Part of Schedule 6 is of the same kind as any other requirement falling within that Part, and

(b) an electronic monitoring requirement is a requirement of the same kind as any other youth rehabilitation requirement to which it relates.

Youth rehabilitation order subject to magistrates' court supervision

2 For the purposes of this Schedule—

(a) "Crown Court youth rehabilitation order" means a youth rehabilitation order which—

(i) was made by the Crown Court, and

(ii) does not include a direction under section 180 (power for Crown Court to direct magistrates' court supervision);

(b) a youth rehabilitation order is "subject to magistrates' court supervision" if it—

(i) was made by a magistrates' court, or

(ii) was made by the Crown Court and includes a direction under that section.

Orders made on appeal

3 Where a youth rehabilitation order has been made on appeal, for the purposes of this Schedule it is treated—

(a) if it was made on an appeal from a magistrates' court, as having been made by a magistrates' court;

(b) if it was made on an appeal brought—

(i) from the Crown Court, or

(ii) from the criminal division of the Court of Appeal,

as having been made by the Crown Court.

PART 2

BREACH OF REQUIREMENT OF ORDER

Duty to give warning or lay information relating to breach of order

4 (1) This paragraph applies where the responsible officer is of the opinion that the offender has without reasonable excuse breached a requirement of a youth rehabilitation order.

(2) Sub-paragraph (3) applies if—

(a) the breach occurred during a warned period relating to an earlier breach of the order, and

(b) during that warned period the offender had been given a further warning in relation to the order.

(3) The responsible officer must cause an information to be laid before a justice of the peace in respect of that breach unless of the opinion that there are exceptional circumstances which justify not doing so.

(4) If sub-paragraph (3) does not apply, the responsible officer must either—

(a) give the offender a warning under this paragraph, or

(b) cause an information to be laid before a justice of the peace in respect of that breach.

(5) 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 the offender will be liable to be brought before a court if the offender breaches a requirement of the order again—

(i) more than once during the warned period, or

(ii) if the warning is given during the warned period relating to an earlier breach of the order, during that warned period.

(6) For the purposes of this paragraph, "warned period", in relation to a breach of a requirement of the youth rehabilitation order, means the period of 12 months beginning with the date on which a warning is given under this paragraph in relation to the breach.

(7) As soon as practicable after giving a warning under this paragraph, the responsible officer must record that fact.

Issue of summons or warrant by justice of the peace

5 (1) This paragraph applies where—

(a) a youth rehabilitation order 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.

(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.

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought—

(a) in the case of a Crown Court youth rehabilitation order, before the Crown Court, and

(b) in any other case, before the appropriate court.

(4) In sub-paragraph (3), "appropriate court" means—

(a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and

(b) if the offender is aged 18 or over, a magistrates' court (other than a youth court) acting in that local justice area.

(5) In sub-paragraph (4), "relevant local justice area" means—

(a) the local justice area in which the offender resides, or

(b) if it is not known where the offender resides, the offender's home local justice area.

(6) Sub-paragraphs (7) and (8) apply where—

(a) a summons is issued under this paragraph, and

(b) the offender does not appear in answer to it.

(7) If the summons required the offender to appear before the Crown Court, the Crown Court may—

(a) if the summons was issued by a justice of the peace, issue a further summons requiring the offender to appear at the place and time specified in it, or

(b) in any case, issue a warrant for the arrest of the offender.

(8) If the summons required the offender to appear before a magistrates' court, the magistrates' court may issue a warrant for the arrest of the offender.

Powers of magistrates' court

6 (1) This paragraph applies where—

(a) an offender appears or is brought before a youth court or other magistrates' court under paragraph 5, and

(b) it is proved to the satisfaction of the court that the offender has breached a requirement of the youth rehabilitation order without reasonable excuse.

(2) The court may deal with the case under sub-paragraph (5).

(3) If the youth rehabilitation order was made by the Crown Court, the court may instead—

(a) commit the offender in custody, or

(b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

(4) Where a 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 breached the youth rehabilitation 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.

(5) Where the court deals with the case under this sub-paragraph, it may deal with the offender in respect of the breach in any one of the following ways—

(a) by ordering the offender to pay a fine of an amount not exceeding £2,500;

(b) by amending the terms of the youth rehabilitation order to add or substitute any requirement which it could include in a youth rehabilitation order if, applying the relevant assumptions, it were now making such an order in respect of the relevant offence;

(c) by re-sentencing the offender for the relevant offence.

(6) In this paragraph—

"relevant offence" means the offence in respect of which the youth rehabilitation order was made, and

the "relevant assumptions" are that—

(a) the court has just convicted the offender of the relevant offence, and

(b) the offender is the same age as when in fact convicted of that offence.

(7) Sub-paragraph (5)(b) is subject to paragraph 10.

(8) 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 youth rehabilitation order.

(9) Where the court—

(a) deals with the offender under sub-paragraph (5)(b), and

(b) does not act in the offender's home local justice area,

it may exercise the power in paragraph 14 (amendment by reason of change of residence) as if it were the appropriate court for the purposes of that paragraph.

(10) Where the court deals with the offender under sub-paragraph (5)(c), it must revoke the youth rehabilitation order if it is still in force.

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

Powers of Crown Court

7 (1) This paragraph applies where—

(a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 6(3), and

(b) it is proved to the satisfaction of that court that the offender has breached a requirement of the youth rehabilitation order without reasonable excuse.

(2) The Crown Court may deal with the offender in respect of that breach in any one of the following ways—

(a) by ordering the offender to pay a fine of an amount not exceeding £2,500;

(b) by amending the terms of the youth rehabilitation order to add or substitute any requirement which it could include in a youth rehabilitation order if, applying the relevant assumptions, it were now making such an order in respect of the relevant offence;

(c) by re-sentencing the offender for the offence in respect of the relevant offence.

(3) In this paragraph—

"relevant offence" means the offence in respect of which the youth rehabilitation order was made, and

the "relevant assumptions" are that—

(a) the offender has just been convicted of the relevant offence by or before the court dealing with the offender, and

(b) the offender is the same age as when in fact convicted of that offence.

(4) Sub-paragraph (2)(b) is subject to paragraph 10.

(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 youth rehabilitation order.

(6) Where the Crown Court deals with an offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.

(7) In proceedings before the Crown Court under this paragraph any question whether the offender has breached a requirement of the youth rehabilitation order is to be determined by the court and not by the verdict of a jury.

Restriction of powers in paragraphs 6 and 7 where treatment required

8 (1) Sub-paragraph (2) applies where the offender—

(a) is required by a treatment requirement of the youth rehabilitation order to submit to treatment, 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 6 or 7 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.

(3) In this paragraph, "treatment requirement" means—

(a) a mental health treatment requirement,

(b) a drug treatment requirement, or

(c) an intoxicating substance treatment requirement.

Fines imposed under paragraphs 6 and 7

9 (1) A fine imposed under paragraph 6(5)(a) or 7(2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

(2) Where—

(a) a court is dealing with an offender for breach of a requirement of a youth rehabilitation order,

(b) the offender is aged under 18, and

(c) but for this sub-paragraph, the court would impose a fine under paragraph 6(5)(a) or 7(2)(a),

section 355 (order for payment by parent or guardian) applies to the fine.

Powers in paragraphs 6 and 7 to impose other requirements: further provisions

10 (1) This paragraph applies where—

(a) the magistrates' court deals with the offender under paragraph 6(5)(b), or

(b) the Crown Court deals with the offender under paragraph 7(2)(b).

(2) Paragraphs 6(5)(b) and 7(2)(b) have effect subject to any provision that applies to the court in making a youth rehabilitation order as if the court were imposing the requirements on making the order.

That is subject to the following provisions of this paragraph and to paragraph 11.

(3) Subject to sub-paragraph (4), any requirement imposed under paragraph 6(5)(b) or 7(2)(b) must be capable of being complied with before the end date.

(4) In dealing with an offender under paragraph 6(5)(b) or 7(2)(b) the court may substitute a later date for the end date.

(5) A date substituted under sub-paragraph (4)—

(a) must not be more than 6 months after the existing end date;

(b) subject to that, may be more than 3 years after the date on which the order took effect.

(6) Once the power in sub-paragraph (4) has been exercised in relation to the order, it may not be exercised again in relation to it by any court.

(7) Where—

(a) in dealing with the offender under paragraph 6(5)(b) or 7(2)(b), the court imposes an unpaid work requirement, and

(b) the youth rehabilitation order does not already contain an unpaid work requirement,

the number of hours for which the offender may be required to work under the requirement (see paragraph 10(4) of Schedule 6) must not, in aggregate, be less than 20.

(8) The court may not under paragraph 6(5)(b) or 7(2)(b) impose—

(a) an extended activity requirement, or

(b) a fostering requirement,

if the order does not already impose such a requirement.

(9) Sub-paragraph (10) applies where—

(a) the order includes a fostering requirement (the "original requirement"), and

(b) under paragraph 6(5)(b) or 7(2)(b) the court proposes to substitute a new fostering requirement ("the substitute requirement") for the original requirement.

(10) The fostering period (see paragraph 26(3) of Schedule 6) for the substitute requirement must end—

(a) within 18 months beginning with the day on which the original requirement first took effect, and

(b) before the offender reaches the age of 18.

Powers in paragraphs 6 and 7 to re-sentence: further provisions relating to intensive supervision and surveillance

11 (1) This paragraph applies where—

(a) the court is dealing with the offender under paragraph 6(5)(c) or 7(2)(c) in respect of an offence, and

(b) the offender has wilfully and persistently failed to comply with the youth rehabilitation order.

(2) The court may impose a youth rehabilitation order with intensive supervision and surveillance even if—

(a) the offence is not an imprisonable offence, or

(b) the court is not of the opinion mentioned in section 171(2)(a) (custodial sentence otherwise appropriate).

(3) If—

(a) the order is a youth rehabilitation order with intensive supervision and surveillance, and

(b) the offence is an imprisonable offence,

the court may impose a custodial sentence even if it is not of the opinion mentioned in section 222(2) (threshold for imposing discretionary custodial sentence).

(4) If—

(a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of sub-paragraph (2), and

(b) the offence is not an offence punishable with imprisonment,

the court's powers under paragraph 6(5)(c) or 7(2)(c) to deal with the offender for the offence include power to make a detention and training order for a term not exceeding 4 months.

PART 3

REVOCATION OF ORDER WITH OR WITHOUT RE-SENTENCING

Youth rehabilitation order subject to magistrates' court supervision

12 (1) This paragraph applies where—

(a) a youth rehabilitation order subject to magistrates' court supervision is in force in respect of an offender,

(b) the offender or the responsible officer makes an application to the appropriate court under this sub-paragraph.

(2) In this paragraph, "the appropriate court" means—

(a) if the offender is aged under 18 when the application under sub-paragraph (1) is made, a youth court acting in the offender's home local justice area, and

(b) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area.

(3) No application may be made under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.

(4) Unless the application was made by the offender, the appropriate court—
  (a) must, before exercising its powers under sub-paragraph (5)(b), 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.

(5) If it appears to the appropriate court to be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made, the appropriate court may—
  (a) revoke the order, or
  (b) both—
    (i) revoke the order, and
    (ii) re-sentence the offender for the offence in respect of which the order was made.

(6) The circumstances in which a youth rehabilitation 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).

(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 youth rehabilitation order.

(8) A person sentenced under sub-paragraph (5)(b) for an offence may appeal to the Crown Court against the sentence.

(9) If the application is dismissed, no-one may make a further application under sub-paragraph (1) during the 3 month period beginning with the date of the dismissal, except with the consent of the appropriate court.

Crown Court youth rehabilitation order

13 (1) This paragraph applies where a Crown Court youth rehabilitation order is in force and—
  (a) the offender, or
  (b) the responsible officer,
makes an application to the Crown Court under this sub-paragraph.

(2) No application may be made under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.

(3) Unless the application was made by the offender, the Crown Court—
  (a) must, before exercising its powers under sub-paragraph (4)(b), 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.

(4) If it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made, the Crown Court may—
  (a) revoke the order, or

(b) both—

(i) revoke the order, and

(ii) re-sentence the offender for the offence in respect of which the order was made.

(5) The circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (4) include the offender's—

(a) making good progress, or

(b) responding satisfactorily to supervision or treatment (as the case requires).

(6) If the Crown Court deals with the offender under sub-paragraph (4)(b), it must take into account the extent to which the offender has complied with the requirements of the youth rehabilitation order.

(7) If the application is dismissed, no-one may make a further application under sub-paragraph (1) during the 3 month period beginning with the date of the dismissal, except with the consent of the Crown Court.

PART 4

AMENDMENT OF ORDER

Amendment by appropriate court

14 (1) This paragraph applies where—

(a) a youth rehabilitation order is in force, and

(b) an application for the amendment of the order is made to the appropriate court by—

(i) the offender, or

(ii) the responsible officer.

(2) If the appropriate court is satisfied that the offender proposes to reside, or is residing, in a local justice area (a "new local justice area") other than the offender's home local justice area for the time being specified in the order, the court—

(a) must, if the responsible officer made the application under sub-paragraph (1)(b), or

(b) may, in any other case,

amend the youth rehabilitation order to specify the new local justice area as the offender's home local justice area.

This is subject to paragraph 15.

(3) The appropriate court may by order amend the youth rehabilitation order—

(a) by cancelling any of the youth rehabilitation requirements of the order, or

(b) by replacing any of those requirements with a youth rehabilitation requirement of the same kind which it could include in a youth rehabilitation order if, applying the relevant assumptions, it were now making such an order in respect of the relevant offence.

This is subject to paragraph 16.

(4) In this paragraph—

"relevant offence" means the offence in respect of which the youth rehabilitation order was made, and

the "relevant assumptions" are that—

(a) the offender has just been convicted by or before the appropriate court of the relevant offence, and

(b) the offender is the same age as when in fact convicted of that offence.

(5) 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 youth rehabilitation order,

(ii) replace any such requirement with one of a shorter duration, or

(iii) substitute a new local justice area or place for one specified in the order.

(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.

(7) In this paragraph, "the appropriate court" means—

(a) if the order is subject to magistrates' court supervision—

(i) if the offender is aged under 18 when the application under sub-paragraph (1)(b) is made, a youth court acting in the offender's local justice area, and

(ii) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area;

(b) if the order is a Crown Court youth rehabilitation order, the Crown Court.

Exercise of powers under paragraph 14(2): further provision

15 (1) This paragraph applies where—

(a) an application has been made under paragraph 14(1)(b), and

(b) the court proposes to exercise its powers under paragraph 14(2) to specify a new local justice area in the order.

(2) Sub-paragraphs (3) and (4) apply if the youth rehabilitation order contains one or more requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the area then specified as the offender's home local justice area (each, a "specific area requirement").

(3) The court may not amend the order under paragraph 14(2) to specify a new local justice area unless it also exercises the power in paragraph 14(3) (by cancelling or substituting each specific area requirement) so that the order can be complied with if the offender resides in the new local justice area.

(4) If the application was made by the responsible officer, the court must exercise the power in paragraph 14(3) in that way unless it considers it inappropriate to do so.

(5) Sub-paragraph (6) applies if the youth rehabilitation order imposes a programme requirement.

(6) The court may not amend the order under paragraph 14(2) unless it is satisfied that a programme which—

(a) corresponds as nearly as practicable to the programme specified in the order for the purposes of the programme requirement, and

(b) is suitable for the offender,

is available in the new local justice area.

Exercise of powers under paragraph 14(3): further provision

16 (1) Any requirement imposed under paragraph 14(3)(b) must be capable of being complied with before the end date.

This is subject to paragraph 17.

(2) Any provision that applies to a court where it imposes a requirement on making a youth rehabilitation order applies also to the court where it imposes such a requirement under paragraph 14(3)(b).

That is subject to the following provisions of this paragraph and paragraphs 17 and 18.

(3) Sub-paragraph (4) applies where—

(a) the order includes a fostering requirement (the "original requirement"), and

(b) under paragraph 14(3)(b) the court proposes to substitute a new fostering requirement ("the substitute requirement") for the original requirement.

(4) The fostering period (see paragraph 26(3) of Schedule 6) for the substitute requirement must end—

(a) within 18 months beginning with the day on which the original requirement first took effect, and

(b) before the offender reaches the age of 18.

(5) The court may not under paragraph 14(3) impose—

(a) a mental health treatment requirement,

(b) a drug treatment requirement, or

(c) a drug testing requirement,

unless the offender has expressed willingness to comply with the requirement.

(6) If the offender fails to express willingness to comply with a mental health treatment requirement, a drug treatment requirement or a drug testing requirement which the court proposes to impose under paragraph 14(3), the court may—

(a) revoke the youth rehabilitation order, and

(b) re-sentence the offender for the offence in respect of which the order was made.

(7) If the court deals with the offender under sub-paragraph (6)(b), it must take into account the extent to which the offender has complied with the requirements of the order.

Extension of order

17 (1) The appropriate court may, on the application of—
(a) the offender, or
(b) the responsible officer,
amend a youth rehabilitation order by substituting a later date for the end date.

(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.

(3) A date substituted under sub-paragraph (1)—
(a) must not be more than 6 months after the existing end date;
(b) subject to that, may be more than 3 years after the date on which the order took effect.

(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.

(5) In this paragraph "appropriate court" has the same meaning as in paragraph 14.

Extension of unpaid work requirement

18 (1) This paragraph applies where a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender.

(2) The appropriate court may, on the application of—
(a) the offender, or
(b) the responsible officer,
extend the period of 12 months specified in paragraph 10(1)(b) of Schedule 6, if it appears to the appropriate court to be in the interests of justice to do so having regard to circumstances which have arisen since the order was made.

(3) 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.

(4) In this paragraph "appropriate court" has the same meaning as in paragraph 14.

PART 5

CONVICTION OF FURTHER OFFENCE

Powers of magistrates' court following subsequent conviction

19 Paragraphs 20 and 21 apply where—

(a) a youth rehabilitation order ("the existing youth rehabilitation order") is in force in respect of an offender, and

(b) the offender is convicted of an offence (the "further offence") by a youth court or other magistrates' court ("the convicting court").

20 (1) This paragraph applies if—

(a) the existing youth rehabilitation order is subject to magistrates' court supervision, and

(b) the convicting court is dealing with the offender for the further offence.

(2) If it appears to the convicting court to be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made, the convicting court may—

(a) revoke the existing youth rehabilitation order, or

(b) both—

(i) revoke the existing youth rehabilitation order, and

(ii) re-sentence the offender for the offence in respect of which the order was made.

(3) Unless the offender is before it, the convicting court may not deal with the offender under sub-paragraph (2)(b) unless it summons the offender to appear before it.

(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.

(5) If the convicting 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 order.

(6) A person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

(7) In this paragraph "further offence" and "the convicting court" have the same meanings as in paragraph 19.

21 (1) Sub-paragraph (2) applies if—

(a) the existing youth rehabilitation order was made by the Crown Court but is subject to magistrates' court supervision, and

(b) the convicting court would, but for this paragraph, deal with the offender for the further offence.

(2) The convicting court may, instead of proceeding under paragraph 20—

(a) commit the offender in custody, or

(b) release the offender on bail,

until the offender can be brought before the Crown Court.

(3) Sub-paragraph (4) applies if the youth rehabilitation order is a Crown Court youth rehabilitation order.

(4) The convicting court may—

(a) commit the offender in custody, or

(b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

(5) Where the convicting court deals with an offender's case under sub-paragraph (2) or (4), it must send to the Crown Court such particulars of the case as may be desirable.

(6) Unless the offender is before it, the convicting court may not deal with the offender under this paragraph unless it summons the offender to appear before it.

(7) If the offender fails to appear in answer to a summons under sub-paragraph (6) the court may issue a warrant for the offender's arrest.

(8) In this paragraph "further offence" and "the convicting court" have the same meanings as in paragraph 19.

Powers of Crown Court following subsequent conviction

22 (1) This paragraph applies where a youth rehabilitation order is in force in respect of an offender, and the offender—

(a) is convicted by the Crown Court of an offence, or

(b) is brought or appears before the Crown Court by virtue of paragraph 21(2) or (4).

(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 youth rehabilitation order was made, the Crown Court may—

(a) revoke the order, or

(b) both—

(i) revoke the order, and

(ii) re-sentence the offender for the offence in respect of which the order was made.

(3) 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.

(4) If the offender fails to appear in answer to a summons under sub-paragraph (3) the Crown Court may issue a warrant for the offender's arrest.

(5) 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 order.

(6) If the offender is brought or appears before the Crown Court by virtue of paragraph 21(2) or (4), the Crown Court may deal with the offender for the further offence in any way which the convicting court could have dealt with the offender for that offence.

(7) In sub-paragraph (6), "further offence" and "the convicting court" have the same meanings as in paragraph 19.

PART 6

SUPPLEMENTARY

Provision of copies of orders etc.

23 (1) This paragraph applies on the making of an order by a court under this Schedule revoking or amending a youth rehabilitation order.

(2) The proper officer of the court must forthwith provide copies of the revoking or amending order to—

(a) the offender,

(b) if the offender is aged under 14, to the offender's parent or guardian, and

(c) the responsible officer.

(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 operating in that area, and

(b) the magistrates' court acting in that area.

(4) If the court amends the youth rehabilitation order by imposing or cancelling a requirement specified in column 1 of the table in sub-paragraph (6), the proper officer of the court must also provide the person specified for that requirement in column 2 with a copy of so much of the amending order as relates to that requirement.

(5) If the court revokes the youth rehabilitation order, for each requirement specified in column 1 of that table that the order imposed, the proper officer of the court must provide the person specified for that requirement in column 2 of that table with a copy of the revoking order.

(6) That table is—

Requirement	*Person to whom copy of requirement is to be given*
An activity requirement which comprises or includes a specified place obligation.	The person in charge of each place specified under paragraph 3(1)(b) of Schedule 6.
An activity requirement which comprises or includes a specified activities obligation.	The person in charge of each activity specified under paragraph 4(1)(b) of Schedule 6.
An activity requirement which comprises or includes a specified residential exercise obligation.	The person in charge of each place or activity specified under paragraph 5(1)(b) of Schedule 6.
An attendance centre requirement.	The officer in charge of the attendance centre specified under paragraph 14(2) of Schedule 6.

Requirement	*Person to whom copy of requirement is to be given*
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 requiring residence with an individual.	The individual specified under paragraph 22(2)(b) of Schedule 6.
A place of residence requirement (within the meaning of paragraph 22 of Schedule 6) relating to residence in an institution.	The person in charge of the institution.
A local authority residence requirement.	The local authority specified under paragraph 24(3)(b) of Schedule 6.
A mental health treatment requirement.	The person in charge of the institution or place specified under sub-paragraph (4)(b)(i) or (ii) of paragraph 28 of Schedule 6, or the person specified under sub-paragraph (4)(b)(iii) of that paragraph.
A drug treatment requirement.	The treatment director specified under paragraph 31(3)(b) of Schedule 6.
A drug testing requirement.	The treatment director specified under paragraph 31(3)(b) of Schedule 6.
An intoxicating substance treatment requirement	The treatment director specified under paragraph 35(3)(b) of Schedule 6.
An education requirement.	The relevant authority specified under paragraph 38(2)(a) of Schedule 6.
An electronic monitoring requirement.	Any person who by virtue of paragraph 41(1) of Schedule 6 will be responsible for the electronic monitoring. Any person without whose consent the requirement could not have been included in the order.

(7) If the youth rehabilitation order is revoked by a magistrates' court acting in a local justice area other than the offender's home local justice area, the proper officer of the court must provide a copy of the revoking order to a magistrates' court acting in the offender's home local justice area.

(8) 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 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.

(9) 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.

SCHEDULE 8

Section 187

TRANSFER OF YOUTH REHABILITATION ORDERS TO NORTHERN IRELAND

PART 1

POWERS OF COURT IN ENGLAND AND WALES TO MAKE OR AMEND A YOUTH REHABILITATION ORDER WHERE OFFENDER RESIDES OR PROPOSES TO RESIDE IN NORTHERN IRELAND

Making of youth rehabilitation order where offender will reside in Northern Ireland

1 (1) This paragraph applies where a court—
(a) is considering the making of a youth rehabilitation order, and
(b) is satisfied that the offender—
(i) resides in Northern Ireland, or
(ii) will reside there when the order takes effect.

(2) The court may make the order only if it appears to the court that suitable arrangements for the offender's supervision can be made by—
(a) the Probation Board for Northern Ireland, or
(b) any other body designated by the Secretary of State by regulations.

Amendment of youth rehabilitation order where offender will reside in Northern Ireland

2 (1) This paragraph applies where the appropriate court within the meaning of paragraph 14 of Schedule 7—
(a) is considering exercising its power under Part 4 of that Schedule (amendment of order) ("the amendment power") to amend a youth rehabilitation 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—
(i) the Probation Board for Northern Ireland, or

(ii) any other body designated by the Secretary of State by regulations.

(2) The amendment power includes power to amend the order by requiring the order to be complied with in Northern Ireland.

3 (1) This paragraph applies where—

(a) a court in England and Wales is considering exercising any power to amend a youth rehabilitation order by virtue of paragraph 20(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.

PART 2

REQUIREMENTS ETC: AVAILABILITY AND MODIFICATIONS OF SCHEDULE 6

Requirements: availability and restrictions

4 This Part of this Schedule applies where a court makes or amends a youth rehabilitation order in accordance with Part 1 of this Schedule.

5 The following requirements are not available requirements—

(a) a local authority residence requirement;

(b) a fostering requirement.

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 Northern Ireland in which the offender resides, or will be residing when the order takes effect, and

(b) provision can be made for the offender to comply with the requirement under those arrangements.

(2) For the purpose of this paragraph, "locally based requirement" means any of the following—

(a) an activity requirement (including an extended activity requirement);

(b) an unpaid work requirement;

(c) a programme requirement;

(d) an attendance centre requirement;

(e) a mental health treatment requirement;

(f) a drug treatment requirement;

(g) a drug testing requirement;

(h) an education requirement;

(i) an electronic monitoring requirement.

7 The number of hours, days or months in respect of which any requirement of the order is imposed must not be greater than the number of hours, days or months in respect of which a court in Northern Ireland could impose a similar requirement in a corresponding order.

Further provisions where offender resides or will reside in Northern Ireland

8 In a case where a court makes or amends a youth rehabilitation order in accordance with Part 1 of this Schedule, Schedule 6 has effect as if—

(a) any reference to the responsible officer were a reference to the person who is to be responsible for the offender's supervision under the order;

(b) section 179 (offender's home local justice area to be specified in order) were omitted;

(c) the following provisions of Schedule 6 were omitted—

(i) paragraph 8(1)(a)(i) (consultation of member of youth offending team);

(ii) paragraphs 8(2), 11(1)(b) and 15(a) (availability of arrangements in local area: activity requirement, unpaid work requirement and attendance centre requirement);

(iii) paragraph 23(4) (residence requirement: restriction on requiring residence at hostel or other institution);

(iv) paragraphs 32(3) and 34(3) (availability of requirements to be notified by Secretary of State: drug treatment and testing and electronic monitoring);

(v) paragraph 41(2) (persons responsible for electronic monitoring);

(vi) paragraph 42(2) and (3) (availability of requirements for electronic monitoring);

(d) in Part 5 of that Schedule (attendance centre requirement), any reference to an attendance centre were to an attendance centre as defined by Article 50(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N. I. 9));

(e) in paragraph 28 (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 at such hospital as may be specified in the order, being a hospital within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I. 14)), approved by the Department of Health in Northern Ireland for the purposes of paragraph 4(3) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24));";

(f) in Part 16 of that Schedule (education requirement) references to a relevant authority were to the Education Authority established under section 1 to the Education Act (Northern Ireland) 2014 (c. 12 (N.I.)).

PART 3

MAKING OR AMENDMENT OF ORDER IN ACCORDANCE WITH PART 1 OF THIS SCHEDULE

Application

9 This Part of this Schedule applies in a case where a court makes or amends a youth rehabilitation order in accordance with Part 1 of this Schedule.

Explanation to be given by court before order is made or amended

10 Before making or amending the youth rehabilitation order, the court must explain to the offender in ordinary language—

(a) the effect of paragraph 16(1) (order to be treated as corresponding order),

(b) the requirements of the legislation in Northern Ireland relating to corresponding orders,

(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 youth rehabilitation order under Part 4 of this Schedule.

Matters to be specified in the order

11 (1) The youth rehabilitation order must specify as the corresponding order for the purposes of this Schedule an order that may be made by a court in Northern Ireland.

(2) If the youth rehabilitation order is made by the Crown Court and includes a direction under section 180, the order must specify the youth court or other magistrates' court in England and Wales which is to be the relevant court in England and Wales for the purposes of this Schedule.

Provision of copies

12 (1) The court which makes or amends the youth rehabilitation order must—

(a) provide each of the persons mentioned in sub-paragraph (2) with a copy of the order as made or amended, 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.

(2) Those persons are—

(a) the offender,

(b) if the offender is aged under 14—

(i) the offender's parent or guardian, or

(ii) if an authority in Northern Ireland has parental responsibility for, and is looking after, the offender, the authority, and

(c) the body which is to make suitable arrangements for the offender's supervision under the order.

(3) In sub-paragraph (2)(b)(ii)—

(a) "authority" has the meaning given by Article 2 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)),

(b) the reference to an offender who is looked after by an authority is to be construed in accordance with Article 25 of that Order, and

(c) "parental responsibility" has the same meaning as in that Order.

(4) If the court—

(a) makes a youth rehabilitation order which imposes a requirement specified in column 1 of the following table, or

(b) amends a youth rehabilitation 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 youth rehabilitation order or amending order as relates to the requirement—

Requirement	*Person to whom copy of requirement is to be given*
An activity requirement which comprises or includes a specified place obligation.	The person in charge of each place specified under paragraph 3(1)(b) of Schedule 6.
An activity requirement which comprises or includes a specified activities obligation.	The person in charge of each activity specified under paragraph 4(1)(b) of Schedule 6.
An activity requirement which comprises or includes a specified residential exercise obligation.	The person in charge of each place or activity specified under paragraph 5(1)(b) of Schedule 6.
An attendance centre requirement.	The officer in charge of the attendance centre specified under paragraph 14(2) of Schedule 6.
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 requiring residence with an individual.	The individual specified under paragraph 22(2)(b) of Schedule 6.
A place of residence requirement (within the meaning of paragraph 22 of Schedule 6) relating to residence in an institution.	The person in charge of the institution.
A mental health treatment requirement.	The person in charge of the institution or place specified under sub-paragraph (4)(b)(i) or (ii) of paragraph 28 of Schedule 6, or the person specified under sub-paragraph (4)(b)(iii) of that paragraph.
A drug treatment requirement.	The treatment director specified under paragraph 31(3)(b) of Schedule 6.

Requirement	*Person to whom copy of requirement is to be given*
A drug testing requirement.	The treatment director specified under paragraph 31(3)(b) of Schedule 6.
An intoxicating substance treatment requirement	The treatment director specified under paragraph 35(3)(b) of Schedule 6.
An education requirement.	The Education Authority established under section 1 to the Education Act (Northern Ireland) 2014 (c. 12 (N.I.)).
An electronic monitoring requirement.	Any person who by virtue of paragraph 41(1) of Schedule 6 will be responsible for the electronic monitoring. Any person without whose consent the requirement could not have been included in the order.

(5) This paragraph has effect in place of section 181.

PART 4

EFFECT OF ORDER MADE OR AMENDED IN ACCORDANCE WITH PART 1 OF THIS SCHEDULE

Application

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

Duty of offender to keep in touch with relevant officer

14 (1) The offender—
(a) must keep in touch with the relevant officer in accordance with any instructions the relevant officer may give the offender from time to time, and
(b) must notify the relevant officer of any change of address.

(2) This obligation has effect as a youth rehabilitation requirement of the youth rehabilitation order.

(3) This paragraph has effect in place of section 184.

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

15 Where the youth rehabilitation order was made or amended by the Crown Court, the Crown Court in Northern Ireland may direct that any proceedings in Northern Ireland in relation to the order be before a court of summary jurisdiction.

Effect of the youth rehabilitation order in Northern Ireland

16 (1) The youth rehabilitation order is to be treated in Northern Ireland as if it were a corresponding order and the legislation which has effect in Northern Ireland in relation to such orders applies accordingly.

(2) Sub-paragraph (1) is subject to paragraphs 17 to 20.

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

17 (1) The home court may exercise any relevant local power in relation to the youth rehabilitation order.

(2) A "relevant local power" means a power which the home court could exercise in relation to a corresponding order by virtue of the legislation that applies in Northern Ireland in relation to such orders.

(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 youth rehabilitation order was made.

(6) If the youth rehabilitation order imposes a curfew requirement, the home court may not vary the order so as to specify curfew periods (within the meaning of paragraph 18 of Schedule 6) that could not be specified by a court in England and Wales if it were imposing the requirement on the relevant assumptions.

(7) For that purpose "the relevant assumptions" are that the offender—

(a) has just been convicted by or before the court in England and Wales of the offence in respect of which the youth rehabilitation order was made, but

(b) is the same age as when in fact convicted of the offence.

18 (1) The home court may require the offender to appear before the relevant court in England or Wales if sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies where it appears to the home court upon a complaint being made to a lay magistrate in Northern Ireland that the offender has breached one or more requirements of the order.

(3) This sub-paragraph applies where it appears to the home court, on the application of the offender or the relevant officer, that it would be in the interests of justice for any of the following powers to be exercised—

(a) a power conferred by Part 3 of Schedule 7 (revocation of order with or without re-sentencing);

(b) a power conferred by paragraph 14 of that Schedule (amendment by appropriate court).

Breach of requirement: certificate of home court

19 (1) Where the home court requires the offender to appear before the relevant court in England and Wales by virtue of paragraph 18(2) (breach of a requirement of the order) the home court must send to the court in England and Wales—

(a) a certificate certifying that the offender has breached a requirement of the 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) purporting to be signed by the clerk of the home court (or, if the home court is the Crown Court in Northern Ireland, by the chief clerk) is admissible as evidence of the breach before the relevant court in England or Wales.

Powers of court in England or Wales where offender required to appear under paragraph 18

20 (1) In any case where under paragraph 18 the home court requires the offender to appear before the relevant court in England or Wales, the relevant court may—

(a) issue a warrant for the offender's arrest, and

(b) exercise any power which it could exercise in respect of the youth rehabilitation order if the offender resided in England or Wales.

(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 to the relevant officer.

(3) If the offender resides in Northern Ireland, a power may be exercised by virtue of sub-paragraph (1)(b) only in accordance with paragraph 3.

PART 5

INTERPRETATION

21 In this Schedule—

"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 youth rehabilitation order, means the order specified under paragraph 11(1);

"home court" means—

(a) a court of summary jurisdiction in Northern Ireland, or

(b) where the youth rehabilitation order was made or amended by the Crown Court and the Crown Court in Northern Ireland has not made a direction under paragraph 15, the Crown Court in Northern Ireland;

"supervision" means the performance of supervisory, enforcement and other related functions conferred by the legislation which has effect in Northern Ireland relating to the corresponding order;

"the relevant court in England or Wales" means—

(a) the court in England and Wales which made or which last amended the order, or

(b) if the order was made by the Crown Court and includes a direction under section 180, such youth court or other magistrates' court as may be specified in the order;

"the relevant officer" means the person responsible for the offender's supervision under the order;

"the relevant time", in relation to an order made or amended in accordance with Part 1 of this Schedule, means the time when the order or the amendment to it comes into force.

SCHEDULE 9

Sections 197 and 282

COMMUNITY ORDERS AND SUSPENDED SENTENCE 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.

(2) Paragraph (1)(b) is subject to—

(a) paragraph 21 of Schedule 10 (community order: power to extend unpaid work requirement);

(b) paragraph 28(2) of Schedule 17 (suspended sentence order: extension of unpaid work requirement).

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.

(2) Sub-paragraph (1)(b)(i) is subject to paragraph 13(4) of Schedule 10 (breach of community order: power to impose unpaid work requirement).

(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.

(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)).

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.

(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.

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.

(2) The maximum number of days on which the offender may be instructed to participate in activities must be specified in the relevant order.

(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.

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.

(2) Sub-paragraph (1) does not prevent the responsible officer giving instructions with a view to other purposes in addition to rehabilitation.

(3) The responsible officer may instruct the offender to attend appointments with the responsible officer or with someone else.

(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.

(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.

(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.

(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.

(8) In sub-paragraph (7) "victim" means a victim of, or other person affected by, the offending concerned.

(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.

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.

(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.

(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.

(4) In this paragraph "programme" means a systematic set of activities.

(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.

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) for a particular period.

(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 for which, the offender must refrain from those activities.

(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.

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.

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.

(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.

(3) Different places or different curfew periods may be specified for different days.

(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.

(5) The specified curfew periods must fall within the period of 12 months beginning with the day on which the requirement first takes effect.

Requirements where court imposes 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.

(2) That information must include information as to the attitude of persons likely to be affected by the offender's enforced presence there.

(3) Where the court makes a relevant order imposing a curfew requirement it must also impose an electronic compliance monitoring requirement (see paragraph 29) unless—

(a) it is prevented from doing so by—

(i) paragraph 33 (consent of person whose co-operation is required), or

(ii) paragraph 34(1) (arrangements in relevant area), or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

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").

(2) A relevant order which imposes an exclusion requirement must specify—

(a) the prohibited place, and

(b) the exclusion period.

(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.

(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.

(5) A prohibited place may be an area.

Requirement where court imposes 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 29) unless—

(a) it is prevented from doing so by—

(i) paragraph 33 (consent of person whose co-operation is required), or

(ii) paragraph 34(1) (arrangements in relevant area), or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

PART 7

RESIDENCE REQUIREMENT

Requirement

13 (1) In this Code "residence requirement", in relation to a relevant order, means a requirement that, for 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.

(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.

(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.

Requirement where court imposes residence requirement

14 Before making a relevant order containing a residence requirement, the court must consider the home surroundings of the offender.

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.

(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.

(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.

(4) A period specified under that sub-paragraph may not exceed 12 months beginning with the day on which the relevant order is made.

(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.

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.

(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.

(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).

(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, and

(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.

(5) Different treatment may be specified for different periods.

(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.

(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.

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.

(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.

(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.

(4) The consent condition is that the offender has expressed willingness to comply with the requirement.

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.

(2) The treatment practitioner may make arrangements ("alternative arrangements") for the offender to be treated accordingly.

(3) Alternative arrangements may be made only if the offender has expressed willingness for the treatment to be given under those arrangements.

(4) 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.

(5) 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.

(6) 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.

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 there is any drug in the offender's body during that period, must provide samples in accordance with directions given by—

(i) the responsible officer, or

(ii) the treatment director.

(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.

(3) Relevant drug rehabilitation treatment means drug rehabilitation treatment which is—

(a) resident treatment, or

(b) non-resident treatment.

(4) A relevant order which imposes a drug rehabilitation requirement 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.

(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).

(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.

(7) In this paragraph and paragraph 20 "drug" means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971.

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.

(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.

(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.

(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.

(5) The consent condition is that the offender expresses willingness to comply with the requirement.

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.

(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.

(3) Paragraphs (b) and (c) of sub-paragraph (2) are subject to paragraph 22(7) (hearing not necessary for review).

(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.

(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.

(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.

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.

(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.

(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.

(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 sub-paragraph (4)(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.

(5) If the relevant 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 (4)(b) is power to deal with the offender in any way in which the magistrates court could deal with the offender if it had just convicted the offender of the offence.

(6) 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 even if it is not of the opinion mentioned in section 222(2) (general restrictions on imposing discretionary custodial sentences).

(7) 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.

(8) 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.

(9) 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.

(10) In this section "review hearing" has the meaning given by paragraph 21(2)(b).

(11) 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.

(12) 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 10 (amendment of requirements of community order) to the appropriate court (within the meaning of that Schedule) for the order to be amended.

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.

(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.

(3) Relevant alcohol dependency treatment means alcohol dependency treatment which is—

(a) resident treatment,

(b) institution-based treatment, or

(c) practitioner-based treatment.

(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.

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.

(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.

(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.

(4) The consent condition is that the offender expresses willingness to comply with the requirement.

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).

(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.

(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.

(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.

(5) The level of alcohol specified under sub-paragraph (2)(b) must be the level prescribed under sub-paragraph (7)(b).

(6) The arrangements for monitoring specified under sub-paragraph (2)(c) must be consistent with those prescribed by regulations under sub-paragraph (7)(c).

(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).

(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.

(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.

(10) In this paragraph and paragraph 26, "alcohol" includes anything containing alcohol.

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.

(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.

(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.

(4) The non-dependency condition is that the court is satisfied that the offender is not dependent on alcohol.

(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.

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 at an attendance centre for a particular number of hours.

(2) A relevant order which imposes an attendance centre requirement must specify the aggregate number of hours for which the offender may be required to attend at an attendance centre

(3) That number must be—

(a) not less than 12, and

(b) not more than 36.

(4) 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.

(5) 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.

(6) 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.

(7) The subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances.

(8) The offender may not be required under this paragraph to attend at an attendance centre—
  (a) more than once on any day, or
  (b) for more than 3 hours at a time.

(9) A requirement under this paragraph to attend at an attendance centre for any period on any occasion 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.

Restriction on imposing attendance centre requirement

28 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.

PART 14

ELECTRONIC MONITORING

Electronic compliance monitoring requirement

29 (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.

(2) Sub-paragraph (3) applies where the responsible officer is to determine the monitoring period in accordance with the relevant order.

(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 33(b).

(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.

(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.

Electronic whereabouts monitoring requirement

30 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.

Electronic monitoring: person responsible for monitoring

31 (1) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring.

(2) The person who is made responsible for the monitoring must be of a description specified in regulations made by the Secretary of State.

Electronic monitoring: general

32 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.

Restriction on imposing electronic monitoring: general

33 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.

Restriction on imposing an electronic compliance monitoring requirement

34 (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.

(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.

(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.

(4) In the case of any other relevant order, the relevant area is the local justice area proposed to be specified in the order.

Restriction on imposing electronic whereabouts monitoring requirement

35 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.

SCHEDULE 10

Section 210

BREACH, REVOCATION OR AMENDMENT OF COMMUNITY ORDER, AND EFFECT OF FURTHER CONVICTION

PART 1

PRELIMINARY

Meaning of particular expressions relating to an order

1 (1) In this Schedule, in relation to a community order—

"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 9);

(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.

(2) In this Schedule, in relation to a community order, any reference (however expressed) to breach of a requirement of the order is a reference to any failure of the offender to comply—

(a) with a requirement imposed by the order, or

(b) if the order imposes an attendance centre requirement, with rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 (attendance centre rules).

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.

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 203 (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.

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 9;

(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).

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.

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.

(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.

(3) Otherwise the officer must either—

(a) give the offender a warning under this paragraph, or

(b) refer the matter to an enforcement officer.

(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 period of 12 months beginning with the date on which the warning was given, the offender will be liable to be brought before a court.

(5) As soon as practicable after giving a warning under this paragraph, the responsible officer must record that fact.

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.

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.

(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.

(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.

(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.

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.

(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.

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

(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.

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.

(2) The court must deal with the case under sub-paragraph (5).

(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.

(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.

(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 ordering the offender to pay a fine not exceeding £2,500;

(b) by amending the terms of the community order so as to impose more onerous requirements which the court could include if it had just convicted the offender of the offence in respect of which the order was made and were then making the order;

(c) if the community order was made by a magistrates' court, by re-sentencing the offender for the offence in respect of which the order was made.

(6) Where the court deals with the case under sub-paragraph (5), the criminal courts charge duty (see section 44) applies to the court.

(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.

(8) A fine imposed under sub-paragraph (5)(a) is to be treated for the purposes of any enactment as being a sum adjudged to be paid by a conviction.

(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 even if it is not of the opinion mentioned in section 222(2) (general restriction on imposing discretionary custodial sentences).

(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.

(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.

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.

(2) The Crown Court must deal with the offender in respect of the breach in any one of the following ways—

(a) by ordering the offender to pay a fine of an amount not exceeding £2,500;

(b) by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could include if the offender had just been convicted of the offence in respect of which the order was made and it were then making the order;

(c) by re-sentencing the offender for the offence in respect of which the order was made.

(3) Where the court deals with the case under sub-paragraph (2), the criminal courts charge duty (see section 44) applies to the court.

(4) In dealing with the offender under sub-paragraph (2), the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order.

(5) A fine imposed under sub-paragraph (2)(a) is to be treated for the purposes of any enactment as being a sum adjudged to be paid by a conviction.

(6) 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 even if it is not of the opinion mentioned in section 222(2) (general restriction on imposing discretionary custodial sentences).

(7) 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.

(8) 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.

Treatment requirement: reasonable refusal to undergo treatment

12 (1) Sub-paragraph (2) applies where the offender—

(a) is required by a treatment requirement of the community order to submit to treatment, 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 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.

Powers in paragraphs 10 and 11 to impose more onerous requirements: further provision

13 (1) In dealing with an offender under paragraph 10(5)(b) or 11(2)(b), the court may—

(a) extend the duration of particular requirements, subject to any limit imposed by Schedule 9;

(b) substitute a later date for the end date.

(2) An date substituted under sub-paragraph (1)(b)—

(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.

(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.

(4) Where—

(a) a community order does not contain an unpaid work requirement, and

(b) in dealing with the offender under paragraph 10(5)(b) or 11(2)(b), 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 9) must not, in aggregate, be less than 20.

(5) Paragraphs 10(5)(b) and 11(2)(b) (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.

PART 3

REVOCATION OF ORDER WITH OR WITHOUT RE-SENTENCING

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.

(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.

(3) No application may be made under this paragraph while an appeal against the community order is pending.

(4) Unless the application was made by the offender, the appropriate court—

(a) must, before exercising its powers under sub-paragraph (5)(b), 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.

(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) re-sentence the offender for the offence in respect of which the order was made.

(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).

(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.

(8) A person sentenced under sub-paragraph (5)(b) for an offence may appeal to the Crown Court against the sentence.

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.

(2) No application may be made under this paragraph while an appeal against the community order is pending.

(3) Unless the application was made by the offender, the Crown Court—

(a) must, before exercising its powers under sub-paragraph (4)(b), 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.

(4) 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) re-sentence the offender for the offence in respect of which the order was made.

(5) The circumstances in which a community order may be revoked under sub-paragraph (4) include the offender's—

(a) making good progress, or

(b) responding satisfactorily to supervision or treatment (as the case requires).

(6) If the Crown Court deals with the offender under sub-paragraph (4)(b), it must take into account the extent to which the offender has complied with the requirements of the order.

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 209 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.

(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.

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.

(2) The court must amend the order to specify the new local justice area as the offender's home local justice area.

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 the offender had just been convicted by or before it of the offence in respect of which the order was made and it were then making the order.

(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 192, and

(b) an electronic compliance monitoring requirement is a requirement of the same kind as any requirement within that table to which it relates.

(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.

(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) replace any such requirement with one of a shorter duration, or

(iii) substitute a new place for one specified in the order.

(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.

(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.

(7) The court may not under this paragraph amend a treatment requirement unless the offender expresses willingness to comply with the requirement as amended.

(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) re-sentence the offender for the offence in respect of which the order was made.

(9) 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 even if it is not of the opinion mentioned in section 222(2) (general restrictions on imposing discretionary custodial sentences).

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.

(2) The treatment practitioner must make a report in writing to that effect to the responsible officer.

(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.

(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.

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.

(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.

(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.

(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.

(5) No application may be made under this paragraph while an appeal against the community order is pending.

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.

(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 9, 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.

(3) No application may be made under this paragraph while an appeal against the community order is pending.

(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.

PART 5

CONVICTION OF FURTHER OFFENCE

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").

23 (1) This paragraph applies if the existing community order was made by a magistrates' court.

(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) re-sentence the offender for the offence in respect of which the order was made.

(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.

(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.

(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.

(6) A person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

24 (1) This paragraph applies if the existing community order was made by the Crown Court.

(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.

(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.

(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.

(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.

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 by virtue of paragraph 24.

(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) re-sentence the offender for the offence in respect of which the order was made.

(3) 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.

(4) If the offender fails to appear in answer to a summons under sub-paragraph (3) the Crown Court may issue a warrant for the offender's arrest.

(5) 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.

PART 6

SUPPLEMENTARY

Duties to provide copies of orders

26 (1) This paragraph applies on the making of an order by a court under this Schedule revoking or amending a community order.

(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.

(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.

(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
A mental health treatment requirement	The person specified under paragraph 16(4)(d) of Schedule 9 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 9

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 9 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 31(1) of Schedule 9 will be responsible for the electronic monitoring Any person by virtue of whose consent the requirement is included in the order.

(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.

(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.

(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.

SCHEDULE 11

Section 211

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.

(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.

Amendment of community order where offender will reside in Scotland

2 (1) This paragraph applies where the appropriate court (within the meaning of Schedule 10)—
(a) is considering exercising its power under Part 4 of Schedule 10 ("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.

(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).

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 27(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.

References to making or amending an order in accordance with this Part of this Schedule

4 In this Schedule, references to making or amending an order in accordance with this Part of this Schedule are to doing so in accordance with paragraph 1, 2 or 3.

Requirements: availability and restrictions

5 Paragraphs 6 and 7 apply where a court makes or amends an order in accordance with this Part of this Schedule.

6 The following are not available requirements—
(a) an alcohol abstinence and monitoring requirement;
(b) an attendance centre requirement.

7 (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.

(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.

Modifications of requirements etc where court exercises powers by virtue of this Part of this Schedule

8 In a case where a court makes or amends a community order in accordance with this Part of this Schedule, Schedule 9 (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 31(2) (responsible person to be of prescribed description);

(iii) paragraph 34 (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;".

PART 2

NORTHERN IRELAND

Making of community order where offender will reside in Northern Ireland

9 (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.

(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.

Amendment of community order where offender will reside in Northern Ireland

10 (1) This paragraph applies where the appropriate court (within the meaning of Schedule 10)—

(a) is considering exercising its power under Part 4 of Schedule 10 ("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.

(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).

11 (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 27(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.

References to making or amending an order in accordance with this Part of this Schedule

12 In this Schedule, references to making or amending an order in accordance with this Part of this Schedule are to doing so in accordance with paragraph 9, 10 or 11.

Requirements: availability and restrictions

13 Paragraphs 14 and 15 apply where a court makes or amends an order in accordance with this Part of this Schedule.

14 An alcohol abstinence and monitoring requirement is not an available requirement.

15 (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.

(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.

Further provision where offender resides or will reside in Northern Ireland

16 In a case where a court makes or amends a community order in accordance with this Part of this Schedule, Schedule 9 (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 31(2) (responsible person to be of prescribed description);
(iii) paragraph 34 (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)).

PART 3

MAKING OR AMENDMENT OF ORDER IN ACCORDANCE WITH PART 1 OR 2 OF THIS SCHEDULE

Application

17 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.

Explanation to be given by court before order is made or amended

18 Before making or amending the community order, the court must explain to the offender in ordinary language—

(a) the effect of paragraph 23 (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).

Matters to be specified in the order

19 (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.

(2) Sub-paragraph (1) has effect in place of section 202 (offender's home local justice area to be specified).

(3) The community order must specify a corresponding order for the purposes of this Schedule (see Part 4 of this Schedule).

(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.

(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.

(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.

Provision of copies

20 (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.

(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.

(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 9 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 9
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 9 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 31(1) of Schedule 9 will be responsible for the electronic monitoring Any person by virtue of whose consent the requirement is included in the order.

(4) This paragraph has effect in place of section 205 (provision of copies of relevant orders).

PART 4

EFFECT OF ORDER MADE OR AMENDED IN ACCORDANCE WITH PART 1 OR 2 OF THIS SCHEDULE

Application

21 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.

Duty to keep in touch with responsible officer

22 (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 208.

Order to be treated as corresponding order in certain circumstances

23 (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.

Powers of home court

24 (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 9;

(b) if the order imposes a curfew requirement, so as to specify any curfew periods (within the meaning of paragraph 9 of Schedule 9) that fall after the end of the period specified in sub-paragraph (5) of that paragraph.

Power of home court to require offender to appear before court in England and Wales

25 (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 10 (revocation of order with or without re-sentencing) 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.

Home court to certify breach of requirement

26 (1) Where the home court requires the offender to appear before a court in England and Wales by virtue of paragraph 25(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.

Powers of court in England and Wales where offender required to appear under paragraph 25

27 (1) In any case where under paragraph 25 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.

(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.

(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 11, if the offender resides in Northern Ireland.

PART 5

INTERPRETATION

28 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 19(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 23(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.

SCHEDULE 12

Section 236

DETENTION AND TRAINING ORDERS: BREACH OF SUPERVISION REQUIREMENTS AND FURTHER OFFENCES

Interpretation

1 In this Schedule—

"breach", in relation to a supervision requirement, means a failure to comply with it, and related expressions are to be read accordingly;

"supervision requirement" means a requirement with which an offender must comply under—

(a) section 235(4)(b), or

(b) paragraph 4(4)(b);

"further detention order" means an order under paragraph 3(2)(a);

"further supervision order" means an order under paragraph 3(2)(b).

Breach of supervision requirement: issue of summons or warrant by justice of the peace

2 (1) Sub-paragraph (2) applies where—

(a) a detention and training order, or a further supervision order, is in force in respect of an offender, and

(b) it appears on information to a justice of the peace that the offender has breached any of the supervision requirements imposed under the order.

(2) The justice—

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

(b) if the information is in writing and on oath, may issue a warrant for the offender's arrest.

(3) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

(a) before a youth court acting for the local justice area in which the offender resides, or

(b) if it is not known where the offender resides, before a youth court acting for same local justice area as the justice who issued the summons or warrant.

Power of youth court to deal with offender for breach of supervision requirement

3 (1) Sub-paragraph (2) applies if it is proved to the satisfaction of the youth court before which an offender appears or is brought under paragraph 2 that the offender has breached a supervision requirement imposed under a relevant order.

(2) The court may—

(a) order the offender to be detained for such period, not exceeding the maximum period found under sub-paragraph (3), as the court may specify,

(b) order the offender to be subject to such period of supervision, not exceeding the maximum period found under sub-paragraph (3), as the court may specify, or

(c) impose on the offender a fine not exceeding level 3 on the standard scale.

(3) The maximum period referred to in sub-paragraph (2)(a) and (b) is the shorter of—

(a) 3 months, and

(b) the period between—

(i) the date of the offender's breach, and

(ii) the last day of the term of the relevant order.

(4) For the purposes of sub-paragraph (3) a breach that is found to have occurred—

(a) over 2 or more days, or

(b) at some time during a period of 2 or more days,

is to be taken to have occurred on the first of those days.

(5) A court may make an order under sub-paragraph (2) before or after the end of the term of the relevant order.

(6) A period of detention or supervision ordered under sub-paragraph (2)—

(a) begins with the day on which the order is made, and

(b) may overlap to any extent with the period of supervision under the relevant order.

This is subject to paragraph 5(1) (further detention order made where offender detained under other detention and training order).

(7) An offender detained under a further detention order is in legal custody.

(8) Detention under a further detention order is—

(a) if the offender has reached the age of 21, to be in prison,

(b) otherwise, to be in such youth detention accommodation as the Secretary of State may determine.

(9) Where—

(a) the offender is aged under 18, and

(b) but for this sub-paragraph, the court would impose a fine on the offender under sub-paragraph (2)(c),

section 355 (order for payment by parent or guardian) applies to the fine.

(10) A fine imposed under sub-paragraph (2)(c) is deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(11) An offender may appeal to the Crown Court against any order made under sub-paragraph (2).

(12) In this paragraph—

(a) "relevant order" means—

(i) a detention and training order, or

(ii) a further supervision order;

(b) any reference to the term of a relevant order is—

(i) in the case of a detention and training order, to the term of the order, and

(ii) in the case of a further supervision order, to the period of supervision imposed by the order.

Supervision where order made under paragraph 3(2)(b)

4 (1) This paragraph applies where an offender is subject to a period of supervision by virtue of a further supervision order.

(2) During that period of supervision, the offender—

(a) is to be under the supervision of—

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

(ii) a member of a youth offending team, and

(b) may be required to comply with particular requirements.

(3) Any such requirements, and the category of person to supervise the offender, are to be determined from time to time by the Secretary of State.

(4) The offender must be notified by the Secretary of State of—

(a) the category of person responsible for the offender's supervision, and

(b) any requirements with which the offender must comply.

(5) A notice under sub-paragraph (4) must be given to the offender—

(a) as soon as reasonably practicable after the further supervision order is made, and

(b) before any change in the matters mentioned in that sub-paragraph.

(6) Where the supervision is to be provided by an officer of a provider of probation services, that officer must be an officer acting in the local justice area within which the offender resides for the time being.

(7) Where the supervision is to be provided by a member of a youth offending team, the member must be a member of a youth offending team established by the local authority in whose area the offender resides for the time being.

Interaction of further detention order with other detention and training orders

5 (1) Where—

(a) an offender is subject to a detention and training order,

(b) the offender has not at any time been released for supervision under that order, and

(c) a court makes a further detention order for a failure to comply with a supervision requirement under a different detention and training order,

the court may order that the further detention order is to take effect at the time when the offender would otherwise be released for supervision under the detention and training order mentioned in paragraph (a).

(2) Subject to sub-paragraph (3), where at any time an offender is subject concurrently to—

(a) a detention and training order, and

(b) a further detention order,

the offender is to be treated for the purposes of sections 234 to 236 and this Schedule as if subject only to the detention and training order.

(3) Nothing in sub-paragraph (2) requires the offender to be released in respect of either the detention and training order or the further detention order unless and until the offender is required to be released in respect of each of them.

Interaction of further detention order with other custodial sentences

6 (1) The Secretary of State may by regulations make provision about the interaction between a further detention order and a custodial sentence in a case where—

(a) an offender who is subject to a further detention order becomes subject to a custodial sentence, or

(b) an offender who is subject to a custodial sentence becomes subject to a further detention order.

(2) The provision that may be made by regulations under sub-paragraph (1) includes—

(a) provision as to the time at which the further detention order or the custodial sentence is to take effect;

(b) provision for the offender to be treated, for the purposes of the enactments specified in the regulations, as subject only to the further detention order or the custodial sentence;

(c) provision about the effect of enactments relating to the person's release from detention or imprisonment in a case where that release is not to take effect immediately by virtue of provision in the regulations.

Offence after release for supervision or during further supervision period

7 (1) This paragraph applies where an offender commits an imprisonable offence ("the new offence")—

(a) after having been released for supervision under a detention and training order but before the date on which the term of the order ends, or

(b) during a period of supervision under a further supervision order.

(2) The court by or before which the offender is convicted of the new offence may order the offender to be detained for all or part of the period mentioned in sub-paragraph (3).
This is subject to section 25(4) (duty of adult magistrates' court to remit young offender to youth court for sentence).

(3) That period is the period which—
(a) begins with the date of the order under sub-paragraph (2), and
(b) is equal in length to the period between—
(i) the date on which the new offence was committed, and
(ii) the date on which the term of the detention and training order, or the period of supervision, mentioned in subsection (1) ends.

(4) A court may make an order under sub-paragraph (2) whether or not it passes any other sentence on the offender.

(5) Detention under sub-paragraph (2) is to be in such youth detention accommodation as the Secretary of State may determine.

(6) The period for which an offender is ordered under sub-paragraph (2) to be detained—
(a) must, as the court may direct—
(i) be served before and be followed by, or
(ii) be served concurrently with,
any sentence imposed for the new offence, and
(b) in either case, is to be disregarded in determining the appropriate length of that sentence.

(7) Where the new 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 be taken for the purposes of this paragraph to have been committed on the last of those days.

(8) A person detained under an order under sub-paragraph (2) is in legal custody.

SCHEDULE 13

Section 242

OFFENDER UNDER 18: OFFENCES FOR WHICH SENTENCE OF DETENTION UNDER SECTION 242 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.

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).

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.

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).

SCHEDULE 14

Sections 258 and 271

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 68 that the offence has such a connection.

SCHEDULE 15

Sections 260 and 273

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.

2 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).

3 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).

4 An offence under section 28 of that Act (causing bodily injury by explosives).

5 An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm.

6 An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).

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).

8 An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).

9 An offence under section 16 of the Firearms Act 1968 (possession of a firearm with intent to endanger life).

10 An offence under section 17(1) of that Act (use of a firearm to resist arrest).

11 An offence under section 18 of that Act (carrying a firearm with criminal intent).

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.

13 An offence under section 1 of the Protection of Children Act 1978 (indecent images of children).

14 An offence under section 54 of the Terrorism Act 2000 (weapons training).

15 An offence under section 56 of that Act (directing terrorist organisation).

16 An offence under section 57 of that Act (possession of article for terrorist purposes).

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.

18 An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).

19 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).

20 An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).

21 An offence under section 1 of the Sexual Offences Act 2003 (rape).

22 An offence under section 2 of that Act (assault by penetration).

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.

24 An offence under section 5 of that Act (rape of a child under 13).

25 An offence under section 6 of that Act (assault of a child under 13 by penetration).

26 An offence under section 7 of that Act (sexual assault of a child under 13).

27 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).

28 An offence under section 9 of that Act (sexual activity with a child).

29 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).

30 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).

31 An offence under section 12 of that Act (causing a child to watch a sexual act).

32 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).

33 An offence under section 15 of that Act (meeting a child following sexual grooming etc).

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.

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.

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.

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.

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.

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.

40 An offence under section 47 of that Act (paying for sexual services of a child) against a person aged under 16.

41 An offence under section 48 of that Act (causing or inciting child prostitution or pornography).

42 An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography).

43 An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography).

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.

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).

46 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).

47 An offence under section 6 of that Act (training for terrorism).

48 An offence under section 9 of that Act (making or possession of radioactive device or materials).

49 An offence under section 10 of that Act (misuse of radioactive devices or material and misuse and damage of facilities).

50 An offence under section 11 of that Act (terrorist threats relating to radioactive devices, materials or facilities).

51 An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).

52 An offence under section 2 of that Act (human trafficking).

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.

54 Murder.

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 260(1)(a) or 273(1)(a) (as appropriate), have constituted an offence specified in any of the preceding paragraphs in this Part of this Schedule.

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.

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.

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.

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.

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.

PART 4

INTERPRETATION

61 In this Schedule "imprisonment for life" includes custody for life and detention for life.

SCHEDULE 16

Sections 266 and 276

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

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.

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.

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.

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.

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.

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.

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.

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.

(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.

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 266 or 276 (as appropriate).

SCHEDULE 17

Section 296

BREACH OR AMENDMENT OF SUSPENDED SENTENCE ORDER, AND EFFECT OF FURTHER CONVICTION

PART 1

PRELIMINARY

Interpretation: general

1 (1) In this Schedule, in relation to a suspended sentence order—

"activation order" has the meaning given by paragraph 14(1);

"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.

(2) In this Schedule, in relation to a suspended sentence order, any reference (however expressed) to breach of a community requirement of the order is a reference to any failure of the offender to comply—

(a) with a community requirement imposed by the order, or

(b) if the order imposes an attendance centre requirement, with rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 (attendance centre rules).

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.

"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.

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 286(1), or

(b) the order imposes a drug rehabilitation requirement which is subject to review in accordance with paragraph 21 of Schedule 9.

(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 286(4), or

(b) in paragraph 21(4) of Schedule 9,

(as the case may be).

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.

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.

(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.

(3) Otherwise the officer must either—

(a) give the offender a warning under this paragraph, or

(b) refer the matter to an enforcement officer.

(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.

(5) As soon as practicable after giving a warning under this paragraph, the responsible officer must record that fact.

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.

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.

(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.

(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.

(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.

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.

(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.

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

(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.

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 287(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.

(2) If the suspended sentence order was made by a magistrates' court, the present court must deal with the case under paragraph 13.

(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.

(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.

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.

(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.

(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 20.

(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).

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.

(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 287(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.

(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).

(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.

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 the offender had just been convicted by or before it of the offence in respect of which the order was made and it were then making the order,

(ii) subject to section 280(4), extending the supervision period, or

(iii) subject to section 280(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 280(2), amend the order by extending the operational period.

(2) The criminal courts charge duty (see section 44) 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).

(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.

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.

(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.

Activation orders: further provision

15 (1) This paragraph applies where a court makes an activation order relating to a suspended sentence.

(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 218 (restriction on consecutive sentences for released prisoners).

(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 44 (criminal courts charge duty) when making the activation order.

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.

(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.

Treatment requirement: reasonable refusal to undergo certain treatment

17 (1) Sub-paragraph (2) applies where the offender—

(a) is required by a treatment requirement of a suspended sentence order to submit to treatment, 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) In this paragraph, "treatment requirement" means—

(a) a mental health treatment requirement,

(b) a drug rehabilitation requirement, or

(c) an alcohol treatment requirement.

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.

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.

(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.

(3) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.

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.

(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).

(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.

(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.

PART 3

AMENDMENT OF 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.

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.

(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.

(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.

(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending.

Amendment by reason of change of residence

23 (1) This paragraph applies where—

(a) the offender is given permission under section 295 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.

(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.

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.

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 the offender had just been convicted by or before it of the offence in respect of which the order was made and it were then making the order.

(2) For the purposes of sub-paragraph (1)—

(a) a requirement falling within any entry in the table in section 279 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.

(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.

(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.

(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.

(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.

(7) 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) re-sentence the offender for the offence in respect of which the suspended sentence was imposed.

(8) In dealing with the offender under sub-paragraph (7)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.

(9) In this paragraph "treatment requirement" means—

(a) a mental health treatment requirement,

(b) a drug rehabilitation requirement, or

(c) an alcohol treatment requirement.

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.

(2) The treatment practitioner must make a report in writing to that effect to the responsible officer.

(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.

(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.

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 9)—
  (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.

(2) The officer must apply under paragraph 25 to the court responsible for the order for the suspended sentence order to be amended.

Extension of unpaid work requirement

28 (1) This paragraph applies where the suspended sentence order imposes an unpaid work requirement.

(2) The appropriate court may, in relation to the order, extend the period of 12 months specified in paragraph 1(1) of Schedule 9.

(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.

(4) No application may be made under this paragraph while an appeal against the suspended sentence is pending.

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.

(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.

(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.

(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.

(5) The powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

(6) This paragraph—

(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.

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.

(2) The proper officer of the court must provide copies of the amending order to—

(a) the offender, and

(b) the responsible officer.

(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.

(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 9 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 9
An alcohol treatment requirement	The person specified under paragraph 23(4)(e) of Schedule 9 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 31(1) of Schedule 9 will be responsible for the electronic monitoring Any person by virtue of whose consent the requirement is included in the order.

(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.

(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.

(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.

SCHEDULE 18

Section 297

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 17 (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).

(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 286(1), or

(b) the order imposes a drug rehabilitation requirement which is subject to review in accordance with paragraph 21 of Schedule 9.

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.

(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.

(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.

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 17 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.

(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).

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.

(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.

Amendment of SSSO under Schedule 17

5 (1) This paragraph applies where—
(a) a court in Scotland is considering exercising a power conferred by Part 3 of Schedule 17 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 17 to amend an SSSO (see paragraphs 28(2) and 35 of this Schedule for cases in which it may do so).

(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.

(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.

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.

(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.

(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.

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 17 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.

(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).

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.

(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.

Amendment of NISSO under Schedule 17

9 (1) This paragraph applies where—

(a) a court in Northern Ireland is considering exercising the power in Part 3 of Schedule 17 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 17 to amend an NISSO (see paragraphs 28(2) and 35 of this Schedule for cases in which it may do so).

(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.

(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.

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.

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.

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.

(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.

13 Schedule 9 (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 31(2) (person for electronic monitoring to be of prescribed description);

(iii) paragraph 34 (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)).

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.

(2) This paragraph has effect in place of section 289 (offender's home local justice area to be specified).

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.

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.

(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.

(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.

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.

18 Paragraphs 16 and 17 apply in place of—

(a) section 291 (provision of copies of suspended sentence orders), and

(b) paragraph 30 of Schedule 17 (provision of copies following amendment of suspended sentence order).

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).

Role of responsible officer to be carried out by relevant officer

20 Sections 293 to 295 (role of responsible officer) apply as if any reference to the responsible officer were to the relevant officer.

Community requirements

21 Schedule 9 (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 31(2) (person for electronic monitoring to be of prescribed description);

(iii) paragraph 34 (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)).

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 17 (breach of community requirement or conviction of further offence).

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.

(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.

(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.

(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.

(5) As soon as practicable after giving a warning under this paragraph, the relevant officer must record that fact.

(6) For the purposes of sub-paragraph (2), a relevant warning is a warning under—

(a) this paragraph, or
(b) paragraph 7 of Schedule 17 (corresponding provision for order not transferred to Scotland or Northern Ireland).

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.

(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.

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.

(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.

(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.

(4) Sub-paragraph (5) applies when the offender appears before the original court by virtue of sub-paragraph (3).

(5) Paragraph 10 or, as the case may be, 12 of Schedule 17 (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.

(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.

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.

(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.

(3) Where the court makes a determination under paragraph 25(1)(a), the evidence of one witness is sufficient.

(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).

27 Paragraphs 23 to 26 have effect in place of paragraphs 6 to 9 of Schedule 17 (breach or amendment of suspended sentence order).

Modifications of Part 2 of Schedule 17

28 (1) Part 2 of Schedule 17 (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.

(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.

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 17 (amendment of suspended sentence order).

Modifications of Part 3 of Schedule 17

30 Part 3 of Schedule 17 (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 17 (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.

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 17 (amendment of suspended sentence order) as if it were the original court.

(2) Sub-paragraph (1) is subject to—

(a) sub-paragraph (3),

(b) paragraph 35, and

(c) Parts 2 to 4 of this Schedule.

(3) Where paragraph 25(7) of Schedule 17 (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.

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 17 (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.

(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.

(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.

(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.

Modification of sections 293 to 295 and Schedule 9

33 (1) This paragraph applies where the home court is considering amending an SSSO or an NISSO under Part 3 of Schedule 17 by virtue of this Part of this Schedule.

(2) Sections 293 to 295 (functions of responsible officer) and Schedule 9 (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.

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 17 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.

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 17 (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).

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.

(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.

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 17 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.

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.

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.

(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").

(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 17 (amendment of suspended sentence order: provision of copies).

(4) The relevant suspended sentence order ceases to be an SSSO or NISSO.

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.

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.

(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.

SCHEDULE 19

Section 299

SPECIFIED OFFENCES FOR PURPOSES OF SECTION 299

PART 1

SPECIFIED VIOLENT OFFENCES

Common law offences

1 Manslaughter.

2 Kidnapping.

3 False imprisonment.

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).

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)

Infant Life (Preservation) Act 1929

6 An offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

Children and Young Persons Act 1933

7 An offence under section 1 of the Children and Young Persons Act 1933 (cruelty to children).

Infanticide Act 1938

8 An offence under section 1 of the Infanticide Act 1938 (infanticide).

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).

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.

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.

Taking of Hostages Act 1982

12 An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

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).

Mental Health Act 1983

14 An offence under section 127 of the Mental Health Act 1983 (ill-treatment of patients).

Prohibition of Female Circumcision Act 1985

15 An offence under section 1 of the Prohibition of Female Circumcision Act 1985 (prohibition of female circumcision).

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)

Criminal Justice Act 1988

17 An offence under section 134 of the Criminal Justice Act 1988 (torture).

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).

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).

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).

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).

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).

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).

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.

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).

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).

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).

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).

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.

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.

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.

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).

Mental Health Act 1959

33 An offence under section 128 of the Mental Health Act 1959 (sexual intercourse with patients).

Indecency with Children Act 1960

34 An offence under section 1 of the Indecency with Children Act 1960 (indecent conduct towards young child).

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).

Theft Act 1968

36 An offence under section 9 of the Theft Act 1968 of burglary with intent to commit rape.

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).

Protection of Children Act 1978

38 An offence under section 1 of the Protection of Children Act 1978 (indecent photographs of children).

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).

Criminal Justice Act 1988

40 An offence under section 160 of the Criminal Justice Act 1988 (possession of indecent photograph of a child).

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).

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).

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.

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.

SCHEDULE 20

Section 300

SCHEDULE 20 OFFENCES

PART 1

SERIOUS VIOLENT OFFENCES

1 Manslaughter.

2 Kidnapping.

3 False imprisonment.

4 An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).

5 An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).

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).

7 An offence under section 22 of that Act (using chloroform etc to commit or assist in the committing of any indictable offence).

8 An offence under section 28 of that Act (causing bodily injury by explosives).

9 An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm).

10 An offence under section 32 of that Act (endangering the safety of railway passengers).

11 An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).

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).

13 An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances) committed on or after 13 April 2015.

14 An offence under section 1 of the Infant Life (Preservation) Act 1929 (child destruction).

15 An offence under section 1 of the Infanticide Act 1938 (infanticide).

16 An offence under section 16 of the Firearms Act 1968 (possession of firearm with intent to endanger life).

17 An offence under section 17(1) of that Act (use of firearm to resist arrest).

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).

19 An offence under section 18 of that Act (carrying a firearm with criminal intent).

20 An offence under section 8 of the Theft Act 1968 (robbery or assault with intent to rob).

21 An offence under section 10 of that Act (aggravated burglary).

22 An offence of arson under section 1 of the Criminal Damage Act 1971.

23 An offence under section 1(2) of that Act (destroying or damaging property) other than an offence of arson.

24 An offence under section 1 of the Taking of Hostages Act 1982 (hostage-taking).

25 An offence under section 1 of the Aviation Security Act 1982 (hijacking).

26 An offence under section 2 of that Act (destroying, damaging or endangering safety of aircraft).

27 An offence under section 3 of that Act (other acts endangering or likely to endanger safety of aircraft).

28 An offence under section 134 of the Criminal Justice Act 1988 (torture).

29 An offence under section 1 of the Aviation and Maritime Security Act 1990 (endangering safety at aerodromes).

30 An offence under section 9 of that Act (hijacking of ships).

31 An offence under section 10 of that Act (seizing or exercising control of fixed platforms).

32 An offence under section 11 of that Act (destroying fixed platforms or endangering their safety).

33 An offence under section 12 of that Act (other acts endangering or likely to endanger safe navigation).

34 An offence under section 13 of that Act (offences involving threats).

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).

36 An offence under section 54 of the Terrorism Act 2000 (weapons training) committed on or after 13 April 2015.

37 An offence under section 56 of that Act (directing terrorist organisation) committed on or after 12 January 2010.

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.

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.

40 An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas) committed on or after 12 January 2010.

41 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts) committed on or after 12 January 2010.

42 An offence under section 6 of that Act (training for terrorism) committed on or after 13 April 2015.

43 An offence under section 9 of that Act (making or possession of radioactive device or material) committed on or after 12 January 2010.

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.

45 An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc) committed on or after 12 January 2010.

46 An offence under section 1 of the Modern Slavery Act 2015 (slavery, servitude and forced or compulsory labour).

47 An offence under section 2 of that Act (human trafficking) which is not within Part 2 of this Schedule.

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.

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.

PART 2

SERIOUS SEXUAL OFFENCES

50 An offence under section 1 of the Sexual Offences Act 1956 (rape).

51 An offence under section 5 of that Act (intercourse with girl under thirteen).

52 An offence under section 10 of that Act (incest by a man) with a girl under 13 and so charged in the indictment.

53 An offence under section 25 of that Act (permitting girl under thirteen to use premises for intercourse).

54 An offence under section 1 of the Sexual Offences Act 2003 (rape).

55 An offence under section 2 of that Act (assault by penetration).

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).

57 An offence under section 5 of that Act (rape of a child under 13).

58 An offence under section 6 of that Act (assault of a child under 13 by penetration).

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).

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).

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).

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).

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).

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).

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).

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).

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.

SCHEDULE 21

Section 312

DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE FOR MURDER ETC

Interpretation

1 In this Schedule—

"child" means a person aged under 18;

"mandatory life sentence" means a mandatory life sentence passed in circumstances where the sentence is fixed by law.

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.

(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.

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.

(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.

(3) An offence is aggravated in any of the ways mentioned in sub-paragraph (2)(g) or (h) if section 67 requires the court to treat the fact that it is so aggravated as an aggravating factor.

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.

(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.

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.

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.

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.

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.

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.

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.

11 Nothing in this Schedule restricts the application of—

(a) section 66 (previous convictions),

(b) section 65 (bail), or

(c) section 70 (guilty plea),

or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006.

Offences committed before 18 December 2003

12 (1) This paragraph applies where the offence was committed before 18 December 2003.

(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.

(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.

SCHEDULE 22

Section 380

AMENDMENTS OF THE SENTENCING CODE AND RELATED AMENDMENTS OF OTHER LEGISLATION

[To be added]

SCHEDULE 23

Section 381

POWERS TO AMEND THE SENTENCING CODE

[To be added]

SCHEDULE 24

Section 382

TRANSITIONAL PROVISIONS AND SAVINGS

[To be added]

SCHEDULE 25

Section 383

CONSEQUENTIAL AMENDMENTS, REPEALS AND REVOCATIONS

[To be added]