Criminal Justice Act 2003

2003 CHAPTER 44

PART 1

AMENDMENTS OF POLICE AND CRIMINAL EVIDENCE ACT 1984

1 Extension of powers to stop and search

(1) In this Part, "the 1984 Act" means the Police and Criminal Evidence Act 1984 (c. 60).

(2) In section 1(8) of the 1984 Act (offences for purpose of definition of prohibited article), at the end of paragraph (d) there is inserted "; and

(e) offences under section 1 of the Criminal Damage Act 1971 (destroying or damaging property)."

2 Warrants to enter and search

In section 16 of the 1984 Act (execution of warrants), after subsection (2) there is inserted—

"(2A) A person so authorised has the same powers as the constable whom he accompanies in respect of—

(a) the execution of the warrant, and

(b) the seizure of anything to which the warrant relates.

(2B) But he may exercise those powers only in the company, and under the supervision, of a constable."

3 Arrestable offences

(1) Schedule 1A to the 1984 Act (specific offences which are arrestable offences) is amended as follows.

(2) After paragraph 2 there is inserted—

"Criminal Justice Act 1925

2ZA An offence under section 36 of the Criminal Justice Act 1925 (untrue statement for procuring a passport)."

(3) After paragraph 6 there is inserted—

"Misuse of Drugs Act 1971

6A An offence under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) in respect of cannabis or cannabis resin (within the meaning of that Act)."

(4) After paragraph 17 there is inserted—

"17A An offence under section 174 of the Road Traffic Act 1988 (false statements and withholding material information)."

4 Bail elsewhere than at police station

(1) Section 30 of the 1984 Act (arrest elsewhere than at police station) is amended as follows.

(2) For subsection (1) there is substituted—

"(1) Subsection (1A) applies where a person is, at any place other than a police station—

(a) arrested by a constable for an offence, or

(b) taken into custody by a constable after being arrested for an offence by a person other than a constable.

(1A) The person must be taken by a constable to a police station as soon as practicable after the arrest.

(1B) Subsection (1A) has effect subject to section 30A (release on bail) and subsection (7) (release without bail)."

(3) In subsection (2) for "subsection (1)" there is substituted "subsection (1A)".

(4) For subsection (7) there is substituted—

"(7) A person arrested by a constable at any place other than a police station must be released without bail if the condition in subsection (7A) is satisfied.

(7A) The condition is that, at any time before the person arrested reaches a police station, a constable is satisfied that there are no grounds for keeping him under arrest or releasing him on bail under section 30A."

(5) For subsections (10) and (11) there is substituted—

"(10) Nothing in subsection (1A) or in section 30A prevents a constable delaying taking a person to a police station or releasing him on bail if the condition in subsection (10A) is satisfied.

(10A) The condition is that the presence of the person at a place (other than a police station) is necessary in order to carry out such investigations as it is reasonable to carry out immediately.

(11) Where there is any such delay the reasons for the delay must be recorded when the person first arrives at the police station or (as the case may be) is released on bail."

(6) In subsection (12) for "subsection (1)" there is substituted "subsection (1A) or section 30A".

(7) After section 30 there is inserted—

"**30A Bail elsewhere than at police station**

(1) A constable may release on bail a person who is arrested or taken into custody in the circumstances mentioned in section 30(1).

(2) A person may be released on bail under subsection (1) at any time before he arrives at a police station.

(3) A person released on bail under subsection (1) must be required to attend a police station.

(4) No other requirement may be imposed on the person as a condition of bail.

(5) The police station which the person is required to attend may be any police station.

30B Bail under section 30A: notices

(1) Where a constable grants bail to a person under section 30A, he must give that person a notice in writing before he is released.

(2) The notice must state—

(a) the offence for which he was arrested, and

(b) the ground on which he was arrested.

(3) The notice must inform him that he is required to attend a police station.

(4) It may also specify the police station which he is required to attend and the time when he is required to attend.

(5) If the notice does not include the information mentioned in subsection (4), the person must subsequently be given a further notice in writing which contains that information.

(6) The person may be required to attend a different police station from that specified in the notice under subsection (1) or (5) or to attend at a different time.

(7) He must be given notice in writing of any such change as is mentioned in subsection (6) but more than one such notice may be given to him.

30C Bail under section 30A: supplemental

(1) A person who has been required to attend a police station is not required to do so if he is given notice in writing that his attendance is no longer required.

(2) If a person is required to attend a police station which is not a designated police station he must be—

(a) released, or

(b) taken to a designated police station,

not more than six hours after his arrival.

(3) Nothing in the Bail Act 1976 applies in relation to bail under section 30A.

(4) Nothing in section 30A or 30B or in this section prevents the re-arrest without a warrant of a person released on bail under section 30A if new evidence justifying a further arrest has come to light since his release.

30D Failure to answer to bail under section 30A

(1) A constable may arrest without a warrant a person who—

(a) has been released on bail under section 30A subject to a requirement to attend a specified police station, but

(b) fails to attend the police station at the specified time.

(2) A person arrested under subsection (1) must be taken to a police station (which may be the specified police station or any other police station) as soon as practicable after the arrest.

(3) In subsection (1), "specified" means specified in a notice under subsection (1) or (5) of section 30B or, if notice of change has been given under subsection (7) of that section, in that notice.

(4) For the purposes of—

(a) section 30 (subject to the obligation in subsection (2)), and

(b) section 31,

an arrest under this section is to be treated as an arrest for an offence."

5 Drug testing for under-eighteens

(1) The 1984 Act is amended as follows.

(2) In section 38 (duties of custody officer after charge)—

(a) in subsection (1)—

(i) for sub-paragraph (iiia) of paragraph (a) there is substituted—

"(iiia) except in a case where (by virtue of subsection (9) of section 63B below) that section does not apply, the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable a sample to be taken from him under that section;",

(ii) in sub-paragraph (i) of paragraph (b), after "satisfied" there is inserted "(but, in the case of paragraph (a)(iiia) above, only if the arrested juvenile has attained the minimum age)",

(b) in subsection (6A), after the definition of "local authority accommodation" there is inserted—

""minimum age" means the age specified in section 63B(3) below;".

(3) In section 63B (testing for presence of Class A drugs)—

(a) in subsection (3), for "18" there is substituted "14",

(b) after subsection (5) there is inserted—

"(5A) In the case of a person who has not attained the age of 17—

(a) the making of the request under subsection (4) above;

(b) the giving of the warning and (where applicable) the information under subsection (5) above; and

(c) the taking of the sample,

may not take place except in the presence of an appropriate adult.",

(c) after subsection (6) there is inserted—

"(6A) The Secretary of State may by order made by statutory instrument amend subsection (3) above by substituting for the age for the time being specified a different age specified in the order.

(6B) A statutory instrument containing an order under subsection (6A) above shall not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.",

(d) after subsection (8) there is inserted—

"(9) In relation to a person who has not attained the age of 18, this section applies only where—

(a) the relevant chief officer has been notified by the Secretary of State that arrangements for the taking of samples under this section from persons who have not attained the age of 18 have been made for the police area as a whole, or for the particular police station, in which the person is in police detention; and

(b) the notice has not been withdrawn.

(10) In this section—

"appropriate adult", in relation to a person who has not attained the age of 17, means—

(a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation; or

(b) a social worker of a local authority social services department; or

(c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

"relevant chief officer" means—

(a) in relation to a police area, the chief officer of police of the police force for that police area; or

(b) in relation to a police station, the chief officer of police of the police force for the police area in which the police station is situated."

6 Use of telephones for review of police detention

For section 40A(1) and (2) of the 1984 Act (use of telephone for review under s.40) there is substituted—

"(1) A review under section 40(1)(b) may be carried out by means of a discussion, conducted by telephone, with one or more persons at the police station where the arrested person is held.

(2) But subsection (1) does not apply if—

(a) the review is of a kind authorised by regulations under section 45A to be carried out using video-conferencing facilities; and

(b) it is reasonably practicable to carry it out in accordance with those regulations."

7 Limits on period of detention without charge

In section 42(1) of the 1984 Act (conditions to be satisfied before detention without charge may be extended from 24 to 36 hours), for paragraph (b) there is substituted—

"(b) an offence for which he is under arrest is an arrestable offence; and".

8 Property of detained persons

(1) In subsection (1) of section 54 of the 1984 Act (which requires the custody officer at a police station to ascertain and record everything which a detained person has with him), there is omitted "and record or cause to be recorded".

(2) For subsection (2) of that section (record of arrested person to be made as part of custody record) there is substituted—

"(2) The custody officer may record or cause to be recorded all or any of the things which he ascertains under subsection (1).

(2A) In the case of an arrested person, any such record may be made as part of his custody record."

9 Taking fingerprints without consent

(1) Section 61 of the 1984 Act (fingerprinting) is amended as follows.

(2) For subsections (3) and (4) (taking of fingerprints without appropriate consent) there is substituted—

"(3) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

(a) he is detained in consequence of his arrest for a recordable offence; and

(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police.

(4) The fingerprints of a person detained at a police station may be taken without the appropriate consent if—

(a) he has been charged with a recordable offence or informed that he will be reported for such an offence; and

(b) he has not had his fingerprints taken in the course of the investigation of the offence by the police."

(3) In subsection (3A) (disregard of incomplete or unsatisfactory fingerprints) for the words from the beginning to "subsection (3) above" there is substituted "Where a person mentioned in paragraph (a) of subsection (3) or (4) has already had his fingerprints taken in the course of the investigation of the offence by the police".

(4) In subsection (5) (authorisation to be given or confirmed in writing) for "subsection (3)(a) or (4A)" there is substituted "subsection (4A)".

(5) In subsection (7) (reasons for taking of fingerprints without consent) for "subsection (3) or (6)" there is substituted "subsection (3), (4) or (6)".

10 Taking non-intimate samples without consent

(1) Section 63 of the 1984 Act (other samples) is amended as follows.

(2) After subsection (2) (consent to be given in writing) there is inserted—

"(2A) A non-intimate sample may be taken from a person without the appropriate consent if two conditions are satisfied.

(2B) The first is that the person is in police detention in consequence of his arrest for a recordable offence.

(2C) The second is that—

(a) he has not had a non-intimate sample of the same type and from the same part of the body taken in the course of the investigation of the offence by the police, or

(b) he has had such a sample taken but it proved insufficient."

(3) In subsection (3)(a) (taking of samples without appropriate consent) the words "is in police detention or" are omitted.

(4) In subsection (3A) (taking of samples without appropriate consent after charge) for "(whether or not he falls within subsection (3)(a) above)" there is substituted "(whether or not he is in police detention or held in custody by the police on the authority of a court)".

(5) In subsection (8A) (reasons for taking of samples without consent) for "subsection (3A)" there is substituted "subsection (2A), (3A)".

11 Codes of practice

(1) In section 67 of the 1984 Act (supplementary provisions about codes), for subsections (1) to (7C) there is substituted—

"(1) In this section, "code" means a code of practice under section 60, 60A or 66.

(2) The Secretary of State may at any time revise the whole or any part of a code.

(3) A code may be made, or revised, so as to—

(a) apply only in relation to one or more specified areas,

(b) have effect only for a specified period,

(c) apply only in relation to specified offences or descriptions of offender.

(4) Before issuing a code, or any revision of a code, the Secretary of State must consult—

(a) persons whom he considers to represent the interests of police authorities,

(b) persons whom he considers to represent the interests of chief officers of police,

(c) the General Council of the Bar,

(d) the Law Society of England and Wales,

(e) the Institute of Legal Executives, and

(f) such other persons as he thinks fit.

(5) A code, or a revision of a code, does not come into operation until the Secretary of State by order so provides.

(6) The power conferred by subsection (5) is exercisable by statutory instrument.

(7) An order bringing a code into operation may not be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7A) An order bringing a revision of a code into operation must be laid before Parliament if the order has been made without a draft having been so laid and approved by a resolution of each House.

(7B) When an order or draft of an order is laid, the code or revision of a code to which it relates must also be laid.

(7C) No order or draft of an order may be laid until the consultation required by subsection (4) has taken place.

(7D) An order bringing a code, or a revision of a code, into operation may include transitional or saving provisions."

(2) Section 113 of the 1984 Act (application of Act to armed forces) is amended as follows.

(3) After subsection (3) there is inserted—

"(3A) In subsections (4) to (10), "code" means a code of practice under subsection (3)."

(4) For subsections (5) to (7) there is substituted—

"(5) The Secretary of State may at any time revise the whole or any part of a code.

(6) A code may be made, or revised, so as to—

(a) apply only in relation to one or more specified areas,

(b) have effect only for a specified period,

(c) apply only in relation to specified offences or descriptions of offender.

(7) The Secretary of State must lay a code, or any revision of a code, before Parliament."

12 Amendments related to Part 1

Schedule 1 (which makes amendments related to the provisions of this Part) has effect.

PART 2

BAIL

13 Grant and conditions of bail

(1) In section 3(6) of the 1976 Act (which sets out cases where bail conditions may be imposed)—

(a) the words "to secure that" are omitted,

(b) the words "to secure that" are inserted at the beginning of each of paragraphs (a) to (e),

(c) after paragraph (c) there is inserted—

"(ca) for his own protection or, if he is a child or young person, for his own welfare or in his own interests,",

(d) for "or (c)" there is substituted ", (c) or (ca)".

(2) In section 3A(5) of the 1976 Act (no conditions may be imposed under section 3(4), (5), (6) or (7) unless necessary for certain purposes)—

(a) the words "for the purpose of preventing that person from" are omitted,

(b) the words "for the purpose of preventing that person from" are inserted at the beginning of each of paragraphs (a) to (c),

(c) after paragraph (c) there is inserted "or

(d) for that person's own protection or, if he is a child or young person, for his own welfare or in his own interests."

(3) In paragraph 8(1) of Part 1 of Schedule 1 to the 1976 Act (no conditions may be imposed under section 3(4) to (7) unless necessary to do so for certain purposes) for the words from "that it is necessary to do so" onwards there is substituted "that it is necessary to do so—

(a) for the purpose of preventing the occurrence of any of the events mentioned in paragraph 2(1) of this Part of this Schedule, or

(b) for the defendant's own protection or, if he is a child or young person, for his own welfare or in his own interests."

(4) For paragraph 5 of Part 2 of that Schedule (defendant need not be granted bail if having been released on bail he has been arrested in pursuance of section 7) there is substituted—

"5 The defendant need not be granted bail if—

(a) having been released on bail in or in connection with the proceedings for the offence, he has been arrested in pursuance of section 7 of this Act; and

(b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody, commit an offence on bail or interfere with witnesses or otherwise obstruct the course of justice (whether in relation to himself or any other person).”

14 Offences committed on bail

(1) For paragraph 2A of Part 1 of Schedule 1 to the 1976 Act (defendant need not be granted bail where he was on bail on date of offence) there is substituted—

“2A (1) If the defendant falls within this paragraph he may not be granted bail unless the court is satisfied that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

(2) The defendant falls within this paragraph if—

(a) he is aged 18 or over, and

(b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.”

(2) After paragraph 9 of that Part there is inserted—

“9AA (1) This paragraph applies if—

(a) the defendant is under the age of 18, and

(b) it appears to the court that he was on bail in criminal proceedings on the date of the offence.

(2) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the court shall give particular weight to the fact that the defendant was on bail in criminal proceedings on the date of the offence.”

15 Absconding by persons released on bail

(1) For paragraph 6 of Part 1 of Schedule 1 to the 1976 Act (defendant need not be granted bail if having been released on bail he has been arrested in pursuance of section 7) there is substituted—

“6 (1) If the defendant falls within this paragraph, he may not be granted bail unless the court is satisfied that there is no significant risk that, if released on bail (whether subject to conditions or not), he would fail to surrender to custody.

(2) Subject to sub-paragraph (3) below, the defendant falls within this paragraph if—

(a) he is aged 18 or over, and

(b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.

(3) Where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, he does not fall within this paragraph unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

(4) For the purposes of sub-paragraph (3) above, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody."

(2) After paragraph 9AA of that Part (inserted by section 14(2)) there is inserted—

"9AB (1) Subject to sub-paragraph (2) below, this paragraph applies if—

(a) the defendant is under the age of 18, and

(b) it appears to the court that, having been released on bail in or in connection with the proceedings for the offence, he failed to surrender to custody.

(2) Where it appears to the court that the defendant had reasonable cause for his failure to surrender to custody, this paragraph does not apply unless it also appears to the court that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

(3) In deciding for the purposes of paragraph 2(1) of this Part of this Schedule whether it is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would fail to surrender to custody, the court shall give particular weight to—

(a) where the defendant did not have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody, or

(b) where he did have reasonable cause for his failure to surrender to custody, the fact that he failed to surrender to custody at the appointed place as soon as reasonably practicable after the appointed time.

(4) For the purposes of this paragraph, a failure to give to the defendant a copy of the record of the decision to grant him bail shall not constitute a reasonable cause for his failure to surrender to custody."

(3) In section 6 of the 1976 Act (offence of absconding by person released on bail) after subsection (9) there is inserted—

"(10) Section 127 of the Magistrates' Courts Act 1980 shall not apply in relation to an offence under subsection (1) or (2) above.

(11) Where a person has been released on bail in criminal proceedings and that bail was granted by a constable, a magistrates' court shall not try that person for an offence under subsection (1) or (2) above in relation to that bail (the "relevant offence") unless either or both of subsections (12) and (13) below applies.

(12) This subsection applies if an information is laid for the relevant offence within 6 months from the time of the commission of the relevant offence.

(13) This subsection applies if an information is laid for the relevant offence no later than 3 months from the time of the occurrence of the first of the events mentioned in subsection (14) below to occur after the commission of the relevant offence.

(14) Those events are—

(a) the person surrenders to custody at the appointed place;

(b) the person is arrested, or attends at a police station, in connection with the relevant offence or the offence for which he was granted bail;

(c) the person appears or is brought before a court in connection with the relevant offence or the offence for which he was granted bail.”

16 Appeal to Crown Court

(1) This section applies where a magistrates' court grants bail to a person (“the person concerned”) on adjourning a case under—

(a) section 10 of the Magistrates' Courts Act 1980 (c. 43) (adjournment of trial),

(b) section 17C of that Act (intention as to plea: adjournment),

(c) section 18 of that Act (initial procedure on information against adult for offence triable either way),

(d) section 24C of that Act (intention as to plea by child or young person: adjournment),

(e) section 52(5) of the Crime and Disorder Act 1998 (c. 37) (adjournment of proceedings under section 51 etc), or

(f) section 11 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (remand for medical examination).

(2) Subject to the following provisions of this section, the person concerned may appeal to the Crown Court against any condition of bail falling within subsection (3).

(3) A condition of bail falls within this subsection if it is a requirement—

(a) that the person concerned resides away from a particular place or area,

(b) that the person concerned resides at a particular place other than a bail hostel,

(c) for the provision of a surety or sureties or the giving of a security,

(d) that the person concerned remains indoors between certain hours,

(e) imposed under section 3(6ZAA) of the 1976 Act (requirements with respect to electronic monitoring), or

(f) that the person concerned makes no contact with another person.

(4) An appeal under this section may not be brought unless subsection (5) or (6) applies.

(5) This subsection applies if an application to the magistrates' court under section 3(8)(a) of the 1976 Act (application by or on behalf of person granted bail) was made and determined before the appeal was brought.

(6) This subsection applies if an application to the magistrates' court—

(a) under section 3(8)(b) of the 1976 Act (application by constable or prosecutor), or

(b) under section 5B(1) of that Act (application by prosecutor),

was made and determined before the appeal was brought.

(7) On an appeal under this section the Crown Court may vary the conditions of bail.

(8) Where the Crown Court determines an appeal under this section, the person concerned may not bring any further appeal under this section in respect of the conditions of bail unless an application or a further application to the magistrates' court under section 3(8)(a) of the 1976 Act is made and determined after the appeal.

17 Appeals to High Court

(1) In section 22(1) of the Criminal Justice Act 1967 (c. 80) (extension of power of High Court to grant, or vary conditions of, bail)—

(a) after "Where" there is inserted "(a)", and

(b) after "proceedings,", in the second place where it occurs, there is inserted "and

(b) it does so where an application to the court to state a case for the opinion of the High Court is made,".

(2) The inherent power of the High Court to entertain an application in relation to bail where a magistrates' court—

(a) has granted or withheld bail, or

(b) has varied the conditions of bail,

is abolished.

(3) The inherent power of the High Court to entertain an application in relation to bail where the Crown Court has determined—

(a) an application under section 3(8) of the 1976 Act, or

(b) an application under section 81(1)(a), (b), (c) or (g) of the Supreme Court Act 1981 (c. 54),

is abolished.

(4) The High Court is to have no power to entertain an application in relation to bail where the Crown Court has determined an appeal under section 16 of this Act.

(5) The High Court is to have no power to entertain an application in relation to bail where the Crown Court has granted or withheld bail under section 88 or 89 of this Act.

(6) Nothing in this section affects—

(a) any other power of the High Court to grant or withhold bail or to vary the conditions of bail, or

(b) any right of a person to apply for a writ of habeas corpus or any other prerogative remedy.

(7) Any reference in this section to an application in relation to bail is to be read as including—

(a) an application for bail to be granted,

(b) an application for bail to be withheld,

(c) an application for the conditions of bail to be varied.

(8) Any reference in this section to the withholding of bail is to be read as including a reference to the revocation of bail.

18 Appeal by prosecution

(1) Section 1 of the Bail (Amendment) Act 1993 (c. 26) (prosecution right of appeal) is amended as follows.

(2) For subsection (1) (prosecution may appeal to Crown Court judge against bail in case of offence punishable by imprisonment for five years or more etc) there is substituted—

"(1) Where a magistrates' court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to a judge of the Crown Court against the granting of bail."

(3) In subsection (10)(a) for "punishable by a term of imprisonment" there is substituted "punishable by imprisonment".

19 Drug users: restriction on bail

(1) The 1976 Act is amended as follows.

(2) In section 3 (general provisions), after subsection (6B) there is inserted—

"(6C) Subsection (6D) below applies where—

(a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the petty sessions area in which it appears to the court that the person referred to in subsection (6D) would reside if granted bail; and

(b) the notice has not been withdrawn.

(6D) In the case of a person ("P")—

(a) in relation to whom paragraphs (a) to (c) of paragraph 6B(1) of Part 1 of Schedule 1 to this Act apply;

(b) who, after analysis of the sample referred to in paragraph (b) of that paragraph, has been offered a relevant assessment or, if a relevant assessment has been carried out, has had relevant follow-up proposed to him; and

(c) who has agreed to undergo the relevant assessment or, as the case may be, to participate in the relevant follow-up,

the court, if it grants bail, shall impose as a condition of bail that P both undergo the relevant assessment and participate in any relevant follow-up proposed to him or, if a relevant assessment has been carried out, that P participate in the relevant follow-up.

(6E) In subsections (6C) and (6D) above—

(a) "relevant assessment" means an assessment conducted by a suitably qualified person of whether P is dependent upon or has a propensity to misuse any specified Class A drugs;

(b) "relevant follow-up" means, in a case where the person who conducted the relevant assessment believes P to have such a dependency or propensity, such further assessment, and such assistance or treatment (or both) in connection with the dependency or propensity, as the person who conducted the relevant assessment

(or conducts any later assessment) considers to be appropriate in P's case,

and in paragraph (a) above "Class A drug" and "misuse" have the same meaning as in the Misuse of Drugs Act 1971, and "specified" (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

(6F) In subsection (6E)(a) above, "suitably qualified person" means a person who has such qualifications or experience as are from time to time specified by the Secretary of State for the purposes of this subsection."

(3) In section 3A(3) (conditions of bail in case of police bail), for ", (6A) and (6B)" there is substituted "and (6A) to (6F)".

(4) In Schedule 1 (which contains supplementary provisions about bail), in Part 1 (imprisonable offences)—

(a) after paragraph 6 there is inserted—

"Exception applicable to drug users in certain areas

6A Subject to paragraph 6C below, a defendant who falls within paragraph 6B below may not be granted bail unless the court is satisfied that there is no significant risk of his committing an offence while on bail (whether subject to conditions or not).

6B (1) A defendant falls within this paragraph if—

(a) he is aged 18 or over;

(b) a sample taken—

(i) under section 63B of the Police and Criminal Evidence Act 1984 (testing for presence of Class A drugs) in connection with the offence; or

(ii) under section 161 of the Criminal Justice Act 2003 (drug testing after conviction of an offence but before sentence),

has revealed the presence in his body of a specified Class A drug;

(c) either the offence is one under section 5(2) or (3) of the Misuse of Drugs Act 1971 and relates to a specified Class A drug, or the court is satisfied that there are substantial grounds for believing—

(i) that misuse by him of any specified Class A drug caused or contributed to the offence; or

(ii) (even if it did not) that the offence was motivated wholly or partly by his intended misuse of such a drug; and

(d) the condition set out in sub-paragraph (2) below is satisfied or (if the court is considering on a second or subsequent occasion whether or not to grant bail) has been, and continues to be, satisfied.

(2) The condition referred to is that after the taking and analysis of the sample—

(a) a relevant assessment has been offered to the defendant but he does not agree to undergo it; or

(b) he has undergone a relevant assessment, and relevant follow-up has been proposed to him, but he does not agree to participate in it.

(3) In this paragraph and paragraph 6C below—

(a) "Class A drug" and "misuse" have the same meaning as in the Misuse of Drugs Act 1971;

(b) "relevant assessment" and "relevant follow-up" have the meaning given by section 3(6E) of this Act;

(c) "specified" (in relation to a Class A drug) has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000.

6C Paragraph 6A above does not apply unless—

(a) the court has been notified by the Secretary of State that arrangements for conducting a relevant assessment or, as the case may be, providing relevant follow-up have been made for the petty sessions area in which it appears to the court that the defendant would reside if granted bail; and

(b) the notice has not been withdrawn.",

(b) in paragraph 8(1), for "(4) to (7)" there is substituted "(4) to (6B) or (7)".

20 Supplementary amendments to the Bail Act 1976

(1) In Part 1 of Schedule 1 to the 1976 Act (supplementary provisions relating to bail of defendant accused or convicted of imprisonable offence) the existing text of paragraph 2 is to be sub-paragraph (1) of that paragraph, and after that sub-paragraph (as so re-numbered) there is inserted—

"(2) Where the defendant falls within one or more of paragraphs 2A, 6 and 6B of this Part of this Schedule, this paragraph shall not apply unless—

(a) where the defendant falls within paragraph 2A, the court is satisfied as mentioned in sub-paragraph (1) of that paragraph;

(b) where the defendant falls within paragraph 6, the court is satisfied as mentioned in sub-paragraph (1) of that paragraph;

(c) where the defendant falls within paragraph 6B, the court is satisfied as mentioned in paragraph 6A of this Part of this Schedule or paragraph 6A does not apply by virtue of paragraph 6C of this Part of this Schedule."

(2) In paragraph 9 of that Part (matters to be taken into account in making decisions under paragraph 2 or 2A of that Part) for "2 or 2A" there is substituted "2(1), or in deciding whether it is satisfied as mentioned in paragraph 2A(1), 6(1) or 6A,".

21 Interpretation of Part 2

In this Part—

"bail" means bail in criminal proceedings (within the meaning of the 1976 Act),

"bail hostel" has the meaning given by section 2(2) of the 1976 Act,

"the 1976 Act" means the Bail Act 1976 (c. 63),
"vary" has the same meaning as in the 1976 Act.

PART 3

CONDITIONAL CAUTIONS

22 Conditional cautions

(1) An authorised person may give a conditional caution to a person aged 18 or over ("the offender") if each of the five requirements in section 23 is satisfied.

(2) In this Part "conditional caution" means a caution which is given in respect of an offence committed by the offender and which has conditions attached to it with which the offender must comply.

(3) The conditions which may be attached to such a caution are those which have either or both of the following objects—

(a) facilitating the rehabilitation of the offender,

(b) ensuring that he makes reparation for the offence.

(4) In this Part "authorised person" means—

(a) a constable,

(b) an investigating officer, or

(c) a person authorised by a relevant prosecutor for the purposes of this section.

23 The five requirements

(1) The first requirement is that the authorised person has evidence that the offender has committed an offence.

(2) The second requirement is that a relevant prosecutor decides—

(a) that there is sufficient evidence to charge the offender with the offence, and

(b) that a conditional caution should be given to the offender in respect of the offence.

(3) The third requirement is that the offender admits to the authorised person that he committed the offence.

(4) The fourth requirement is that the authorised person explains the effect of the conditional caution to the offender and warns him that failure to comply with any of the conditions attached to the caution may result in his being prosecuted for the offence.

(5) The fifth requirement is that the offender signs a document which contains—

(a) details of the offence,

(b) an admission by him that he committed the offence,

(c) his consent to being given the conditional caution, and

(d) the conditions attached to the caution.

24 Failure to comply with conditions

(1) If the offender fails, without reasonable excuse, to comply with any of the conditions attached to the conditional caution, criminal proceedings may be instituted against the person for the offence in question.

(2) The document mentioned in section 23(5) is to be admissible in such proceedings.

(3) Where such proceedings are instituted, the conditional caution is to cease to have effect.

25 Code of practice

(1) The Secretary of State must prepare a code of practice in relation to conditional cautions.

(2) The code may, in particular, include provision as to—

(a) the circumstances in which conditional cautions may be given,

(b) the procedure to be followed in connection with the giving of such cautions,

(c) the conditions which may be attached to such cautions and the time for which they may have effect,

(d) the category of constable or investigating officer by whom such cautions may be given,

(e) the persons who may be authorised by a relevant prosecutor for the purposes of section 22,

(f) the form which such cautions are to take and the manner in which they are to be given and recorded,

(g) the places where such cautions may be given, and

(h) the monitoring of compliance with conditions attached to such cautions.

(3) After preparing a draft of the code the Secretary of State—

(a) must publish the draft,

(b) must consider any representations made to him about the draft, and

(c) may amend the draft accordingly,

but he may not publish or amend the draft without the consent of the Attorney General.

(4) After the Secretary of State has proceeded under subsection (3) he must lay the code before each House of Parliament.

(5) When he has done so he may bring the code into force by order.

(6) The Secretary of State may from time to time revise a code of practice brought into force under this section.

(7) Subsections (3) to (6) are to apply (with appropriate modifications) to a revised code as they apply to an original code.

26 Assistance of National Probation Service

(1) Section 1 of the Criminal Justice and Court Services Act 2000 (c. 43) (purposes of Chapter 1) is amended as follows.

(2) After subsection (1) there is inserted—

"(1A) This Chapter also has effect for the purposes of providing for—

(a) authorised persons to be given assistance in determining whether conditional cautions should be given and which conditions to attach to conditional cautions, and

(b) the supervision and rehabilitation of persons to whom conditional cautions are given."

(3) After subsection (3) there is inserted—

"(4) In this section "authorised person" and "conditional caution" have the same meaning as in Part 3 of the Criminal Justice Act 2003."

27 Interpretation of Part 3

In this Part—

"authorised person" has the meaning given by section 22(4),

"conditional caution" has the meaning given by section 22(2),

"investigating officer" means a person designated as an investigating officer under section 38 of the Police Reform Act 2002 (c. 30),

"the offender" has the meaning given by section 22(1),

"relevant prosecutor" means—

(a) the Attorney General,

(b) the Director of the Serious Fraud Office,

(c) the Director of Public Prosecutions,

(d) a Secretary of State,

(e) the Commissioners of Inland Revenue,

(f) the Commissioners of Customs and Excise, or

(g) a person who is specified in an order made by the Secretary of State as being a relevant prosecutor for the purposes of this Part.

PART 4

CHARGING ETC

28 Charging or release of persons in police detention

Schedule 2 (which makes provision in relation to the charging or release of persons in police detention) shall have effect.

29 New method of instituting proceedings

(1) A public prosecutor may institute criminal proceedings against a person by issuing a document (a "written charge") which charges the person with an offence.

(2) Where a public prosecutor issues a written charge, it must at the same time issue a document (a "requisition") which requires the person to appear before a magistrates' court to answer the written charge.

(3) The written charge and requisition must be served on the person concerned, and a copy of both must be served on the court named in the requisition.

(4) In consequence of subsections (1) to (3), a public prosecutor is not to have the power to lay an information for the purpose of obtaining the issue of a summons under section 1 of the Magistrates' Courts Act 1980 (c. 43).

(5) In this section "public prosecutor" means—

(a) a police force or a person authorised by a police force to institute criminal proceedings,

(b) the Director of the Serious Fraud Office or a person authorised by him to institute criminal proceedings,

(c) the Director of Public Prosecutions or a person authorised by him to institute criminal proceedings,

(d) the Attorney General or a person authorised by him to institute criminal proceedings,

(e) a Secretary of State or a person authorised by a Secretary of State to institute criminal proceedings,

(f) the Commissioners of Inland Revenue or a person authorised by them to institute criminal proceedings,

(g) the Commissioners of Customs and Excise or a person authorised by them to institute criminal proceedings, or

(h) a person specified in an order made by the Secretary of State for the purposes of this section or a person authorised by such a person to institute criminal proceedings.

(6) In subsection (5) "police force" has the meaning given by section 3(3) of the Prosecution of Offences Act 1985 (c. 23).

30 Further provision about new method

(1) Rules under section 144 of the Magistrates' Courts Act 1980 may make—

(a) provision as to the form, content, recording, authentication and service of written charges or requisitions, and

(b) such other provision in relation to written charges or requisitions as appears to the Lord Chancellor to be necessary or expedient.

(2) Without limiting subsection (1), the provision which may be made by virtue of that subsection includes provision—

(a) which applies (with or without modifications), or which disapplies, the provision of any enactment relating to the service of documents,

(b) for or in connection with the issue of further requisitions.

(3) Nothing in subsection (1) or (2) is to be taken as affecting the generality of section 144(1) of that Act.

(4) Nothing in section 29 affects—

(a) the power of a public prosecutor to lay an information for the purpose of obtaining the issue of a warrant under section 1 of the Magistrates' Courts Act 1980 (c. 43),

(b) the power of a person who is not a public prosecutor to lay an information for the purpose of obtaining the issue of a summons or warrant under section 1 of that Act, or

(c) any power to charge a person with an offence whilst he is in custody.

(5) Except where the context otherwise requires, in any enactment contained in an Act passed before this Act—

(a) any reference (however expressed) which is or includes a reference to an information within the meaning of section 1 of the Magistrates' Courts Act 1980 (c. 43) (or to the laying of such an information) is to be read as including a reference to a written charge (or to the issue of a written charge),

(b) any reference (however expressed) which is or includes a reference to a summons under section 1 of the Magistrates' Courts Act 1980 (or to a justice of the peace issuing such a summons) is to be read as including a reference to a requisition (or to a public prosecutor issuing a requisition).

(6) Subsection (5) does not apply to section 1 of the Magistrates' Courts Act 1980.

(7) The reference in subsection (5) to an enactment contained in an Act passed before this Act includes a reference to an enactment contained in that Act as a result of an amendment to that Act made by this Act or by any other Act passed in the same Session as this Act.

(8) In this section "public prosecutor", "requisition" and "written charge" have the same meaning as in section 29.

31 Removal of requirement to substantiate information on oath

(1) In section 1(3) of the Magistrates' Courts Act 1980 (warrant may not be issued unless information substantiated on oath) the words "and substantiated on oath" are omitted.

(2) In section 13 of that Act (non-appearance of defendant: issue of warrant) in subsection (3)(a) the words "the information has been substantiated on oath and" are omitted.

(3) For subsection (3A)(a) of that section there is substituted—

"(a) the offence to which the warrant relates is punishable, in the case of a person who has attained the age of 18, with imprisonment, or".

PART 5

DISCLOSURE

32 Initial duty of disclosure by prosecutor

In the Criminal Procedure and Investigations Act 1996 (c. 25) (in this Part referred to as "the 1996 Act"), in subsection (1)(a) of section 3 (primary disclosure by prosecutor) —

(a) for "in the prosecutor's opinion might undermine" there is substituted "might reasonably be considered capable of undermining";

(b) after "against the accused" there is inserted "or of assisting the case for the accused".

33 Defence disclosure

(1) In section 5 of the 1996 Act (compulsory disclosure by accused), after subsection (5) there is inserted—

"(5A) Where there are other accused in the proceedings and the court so orders, the accused must also give a defence statement to each other accused specified by the court.

(5B) The court may make an order under subsection (5A) either of its own motion or on the application of any party.

(5C) A defence statement that has to be given to the court and the prosecutor (under subsection (5)) must be given during the period which, by virtue of section 12, is the relevant period for this section.

(5D) A defence statement that has to be given to a co-accused (under subsection (5A)) must be given within such period as the court may specify."

(2) After section 6 of that Act there is inserted—

"**6A Contents of defence statement**

(1) For the purposes of this Part a defence statement is a written statement—

(a) setting out the nature of the accused's defence, including any particular defences on which he intends to rely,

(b) indicating the matters of fact on which he takes issue with the prosecution,

(c) setting out, in the case of each such matter, why he takes issue with the prosecution, and

(d) indicating any point of law (including any point as to the admissibility of evidence or an abuse of process) which he wishes to take, and any authority on which he intends to rely for that purpose.

(2) A defence statement that discloses an alibi must give particulars of it, including—

(a) the name, address and date of birth of any witness the accused believes is able to give evidence in support of the alibi, or as many of those details as are known to the accused when the statement is given;

(b) any information in the accused's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the accused when the statement is given.

(3) For the purposes of this section evidence in support of an alibi is evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

(4) The Secretary of State may by regulations make provision as to the details of the matters that, by virtue of subsection (1), are to be included in defence statements."

(3) After section 6A of that Act (inserted by subsection (2) above) there is inserted—

"**6B Updated disclosure by accused**

(1) Where the accused has, before the beginning of the relevant period for this section, given a defence statement under section 5 or 6, he must during that period give to the court and the prosecutor either—

(a) a defence statement under this section (an "updated defence statement"), or

(b) a statement of the kind mentioned in subsection (4).

(2) The relevant period for this section is determined under section 12.

(3) An updated defence statement must comply with the requirements imposed by or under section 6A by reference to the state of affairs at the time when the statement is given.

(4) Instead of an updated defence statement, the accused may give a written statement stating that he has no changes to make to the defence statement which was given under section 5 or 6.

(5) Where there are other accused in the proceedings and the court so orders, the accused must also give either an updated defence statement or a statement of the kind mentioned in subsection (4), within such period as may be specified by the court, to each other accused so specified.

(6) The court may make an order under subsection (5) either of its own motion or on the application of any party."

34 Notification of intention to call defence witnesses

After section 6B of the 1996 Act (inserted by section 33 above) there is inserted—

"**6C Notification of intention to call defence witnesses**

(1) The accused must give to the court and the prosecutor a notice indicating whether he intends to call any persons (other than himself) as witnesses at his trial and, if so—

(a) giving the name, address and date of birth of each such proposed witness, or as many of those details as are known to the accused when the notice is given;

(b) providing any information in the accused's possession which might be of material assistance in identifying or finding any such proposed witness in whose case any of the details mentioned in paragraph (a) are not known to the accused when the notice is given.

(2) Details do not have to be given under this section to the extent that they have already been given under section 6A(2).

(3) The accused must give a notice under this section during the period which, by virtue of section 12, is the relevant period for this section.

(4) If, following the giving of a notice under this section, the accused—

(a) decides to call a person (other than himself) who is not included in the notice as a proposed witness, or decides not to call a person who is so included, or

(b) discovers any information which, under subsection (1), he would have had to include in the notice if he had been aware of it when giving the notice,

he must give an appropriately amended notice to the court and the prosecutor."

35 Notification of names of experts instructed by defendant

After section 6C of the 1996 Act (inserted by section 34 above) there is inserted—

"**6D Notification of names of experts instructed by accused**

(1) If the accused instructs a person with a view to his providing any expert opinion for possible use as evidence at the trial of the accused, he must give to the court and the prosecutor a notice specifying the person's name and address.

(2) A notice does not have to be given under this section specifying the name and address of a person whose name and address have already been given under section 6C.

(3) A notice under this section must be given during the period which, by virtue of section 12, is the relevant period for this section."

36 Further provisions about defence disclosure

After section 6D of the 1996 Act (inserted by section 35 above) there is inserted—

"**6E Disclosure by accused: further provisions**

(1) Where an accused's solicitor purports to give on behalf of the accused—

(a) a defence statement under section 5, 6 or 6B, or

(b) a statement of the kind mentioned in section 6B(4),

the statement shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(2) If it appears to the judge at a pre-trial hearing that an accused has failed to comply fully with section 5, 6B or 6C, so that there is a possibility of comment being made or inferences drawn under section 11(5), he shall warn the accused accordingly.

(3) In subsection (2) "pre-trial hearing" has the same meaning as in Part 4 (see section 39).

(4) The judge in a trial before a judge and jury—

(a) may direct that the jury be given a copy of any defence statement, and

(b) if he does so, may direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

(5) A direction under subsection (4)—

(a) may be made either of the judge's own motion or on the application of any party;

(b) may be made only if the judge is of the opinion that seeing a copy of the defence statement would help the jury to understand the case or to resolve any issue in the case.

(6) The reference in subsection (4) to a defence statement is a reference—

(a) where the accused has given only an initial defence statement (that is, a defence statement given under section 5 or 6), to that statement;

(b) where he has given both an initial defence statement and an updated defence statement (that is, a defence statement given under section 6B), to the updated defence statement;

(c) where he has given both an initial defence statement and a statement of the kind mentioned in section 6B(4), to the initial defence statement."

37 Continuing duty of disclosure by prosecutor

Before section 8 of the 1996 Act there is inserted—

"**7A Continuing duty of prosecutor to disclose**

(1) This section applies at all times—

(a) after the prosecutor has complied with section 3 or purported to comply with it, and

(b) before the accused is acquitted or convicted or the prosecutor decides not to proceed with the case concerned.

(2) The prosecutor must keep under review the question whether at any given time (and, in particular, following the giving of a defence statement) there is prosecution material which—

(a) might reasonably be considered capable of undermining the case for the prosecution against the accused or of assisting the case for the accused, and

(b) has not been disclosed to the accused.

(3) If at any time there is any such material as is mentioned in subsection (2) the prosecutor must disclose it to the accused as soon as is reasonably practicable (or within the period mentioned in subsection (5)(a), where that applies).

(4) In applying subsection (2) by reference to any given time the state of affairs at that time (including the case for the prosecution as it stands at that time) must be taken into account.

(5) Where the accused gives a defence statement under section 5, 6 or 6B—

(a) if as a result of that statement the prosecutor is required by this section to make any disclosure, or further disclosure, he must do so during the period which, by virtue of section 12, is the relevant period for this section;

(b) if the prosecutor considers that he is not so required, he must during that period give to the accused a written statement to that effect.

(6) For the purposes of this section prosecution material is material—

(a) which is in the prosecutor's possession and came into his possession in connection with the case for the prosecution against the accused, or

(b) which, in pursuance of a code operative under Part 2, he has inspected in connection with the case for the prosecution against the accused.

(7) Subsections (3) to (5) of section 3 (method by which prosecutor discloses) apply for the purposes of this section as they apply for the purposes of that.

(8) Material must not be disclosed under this section to the extent that the court, on an application by the prosecutor, concludes it is not in the public interest to disclose it and orders accordingly.

(9) Material must not be disclosed under this section to the extent that it is material the disclosure of which is prohibited by section 17 of the Regulation of Investigatory Powers Act 2000 (c. 23)."

38 Application by defence for disclosure

In section 8 of the 1996 Act (application by accused for disclosure), for subsections (1) and (2) there is substituted—

"(1) This section applies where the accused has given a defence statement under section 5, 6 or 6B and the prosecutor has complied with section 7A(5) or has purported to comply with it or has failed to comply with it.

(2) If the accused has at any time reasonable cause to believe that there is prosecution material which is required by section 7A to be disclosed to him and has not been, he may apply to the court for an order requiring the prosecutor to disclose it to him."

39 Faults in defence disclosure

For section 11 of the 1996 Act there is substituted—

"**11 Faults in disclosure by accused**

(1) This section applies in the three cases set out in subsections (2), (3) and (4).

(2) The first case is where section 5 applies and the accused—

(a) fails to give an initial defence statement,

(b) gives an initial defence statement but does so after the end of the period which, by virtue of section 12, is the relevant period for section 5,

(c) is required by section 6B to give either an updated defence statement or a statement of the kind mentioned in subsection (4) of that section but fails to do so,

(d) gives an updated defence statement or a statement of the kind mentioned in section 6B(4) but does so after the end of the period which, by virtue of section 12, is the relevant period for section 6B,

(e) sets out inconsistent defences in his defence statement, or

(f) at his trial—

(i) puts forward a defence which was not mentioned in his defence statement or is different from any defence set out in that statement,

(ii) relies on a matter which, in breach of the requirements imposed by or under section 6A, was not mentioned in his defence statement,

(iii) adduces evidence in support of an alibi without having given particulars of the alibi in his defence statement, or

(iv) calls a witness to give evidence in support of an alibi without having complied with section 6A(2)(a) or (b) as regards the witness in his defence statement.

(3) The second case is where section 6 applies, the accused gives an initial defence statement, and the accused—

(a) gives the initial defence statement after the end of the period which, by virtue of section 12, is the relevant period for section 6, or

(b) does any of the things mentioned in paragraphs (c) to (f) of subsection (2).

(4) The third case is where the accused—

(a) gives a witness notice but does so after the end of the period which, by virtue of section 12, is the relevant period for section 6C, or

(b) at his trial calls a witness (other than himself) not included, or not adequately identified, in a witness notice.

(5) Where this section applies—

(a) the court or any other party may make such comment as appears appropriate;

(b) the court or jury may draw such inferences as appear proper in deciding whether the accused is guilty of the offence concerned.

(6) Where—

(a) this section applies by virtue of subsection (2)(f)(ii) (including that provision as it applies by virtue of subsection (3)(b)), and

(b) the matter which was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority,

comment by another party under subsection (5)(a) may be made only with the leave of the court.

(7) Where this section applies by virtue of subsection (4), comment by another party under subsection (5)(a) may be made only with the leave of the court.

(8) Where the accused puts forward a defence which is different from any defence set out in his defence statement, in doing anything under subsection (5) or in deciding whether to do anything under it the court shall have regard—

(a) to the extent of the differences in the defences, and

(b) to whether there is any justification for it.

(9) Where the accused calls a witness whom he has failed to include, or to identify adequately, in a witness notice, in doing anything under subsection (5) or in deciding whether to do anything under it the court shall have regard to whether there is any justification for the failure.

(10) A person shall not be convicted of an offence solely on an inference drawn under subsection (5).

(11) Where the accused has given a statement of the kind mentioned in section 6B(4), then, for the purposes of subsections (2)(f)(ii) and (iv), the question as to whether there has been a breach of the requirements imposed by or under section 6A or a failure to comply with section 6A(2)(a) or (b) shall be determined—

(a) by reference to the state of affairs at the time when that statement was given, and

(b) as if the defence statement was given at the same time as that statement.

(12) In this section—

(a) "initial defence statement" means a defence statement given under section 5 or 6;

(b) "updated defence statement" means a defence statement given under section 6B;

(c) a reference simply to an accused's "defence statement" is a reference—

(i) where he has given only an initial defence statement, to that statement;

(ii) where he has given both an initial and an updated defence statement, to the updated defence statement;

(iii) where he has given both an initial defence statement and a statement of the kind mentioned in section 6B(4), to the initial defence statement;

(d) a reference to evidence in support of an alibi shall be construed in accordance with section 6A(3);

(e) "witness notice" means a notice given under section 6C."

40 Code of practice for police interviews of witnesses notified by accused

In Part 1 of the 1996 Act after section 21 there is inserted—

"**21A Code of practice for police interviews of witnesses notified by accused**

(1) The Secretary of State shall prepare a code of practice which gives guidance to police officers, and other persons charged with the duty of investigating offences, in relation to the arranging and conducting of interviews of persons—

(a) particulars of whom are given in a defence statement in accordance with section 6A(2), or

(b) who are included as proposed witnesses in a notice given under section 6C.

(2) The code must include (in particular) guidance in relation to—

(a) information that should be provided to the interviewee and the accused in relation to such an interview;

(b) the notification of the accused's solicitor of such an interview;

(c) the attendance of the interviewee's solicitor at such an interview;

(d) the attendance of the accused's solicitor at such an interview;

(e) the attendance of any other appropriate person at such an interview taking into account the interviewee's age or any disability of the interviewee.

(3) Any police officer or other person charged with the duty of investigating offences who arranges or conducts such an interview shall have regard to the code.

(4) In preparing the code, the Secretary of State shall consult—

(a) to the extent the code applies to England and Wales—

(i) any person who he considers to represent the interests of chief officers of police;

(ii) the General Council of the Bar;

(iii) the Law Society of England and Wales;

(iv) the Institute of Legal Executives;

(b) to the extent the code applies to Northern Ireland—

(i) the Chief Constable of the Police Service of Northern Ireland;

(ii) the General Council of the Bar of Northern Ireland;

(iii) the Law Society of Northern Ireland;

(c) such other persons as he thinks fit.

(5) The code shall not come into operation until the Secretary of State by order so provides.

(6) The Secretary of State may from time to time revise the code and subsections (4) and (5) shall apply to a revised code as they apply to the code as first prepared.

(7) An order bringing the code into operation may not be made unless a draft of the order has been laid before each House of Parliament and approved by a resolution of each House.

(8) An order bringing a revised code into operation shall be laid before each House of Parliament if the order has been made without a draft having been so laid and approved by a resolution of each House.

(9) When an order or a draft of an order is laid in accordance with subsection (7) or (8), the code to which it relates shall also be laid.

(10) No order or draft of an order may be laid until the consultation required by subsection (4) has taken place.

(11) A failure by a person mentioned in subsection (3) to have regard to any provision of a code for the time being in operation by virtue of an order under this section shall not in itself render him liable to any criminal or civil proceedings.

(12) In all criminal and civil proceedings a code in operation at any time by virtue of an order under this section shall be admissible in evidence.

(13) If it appears to a court or tribunal conducting criminal or civil proceedings that—

(a) any provision of a code in operation at any time by virtue of an order under this section, or

(b) any failure mentioned in subsection (11),

is relevant to any question arising in the proceedings, the provision or failure shall be taken into account in deciding the question."

PART 6

ALLOCATION AND SENDING OF OFFENCES

41 Allocation of offences triable either way, and sending cases to Crown Court

Schedule 3 (which makes provision in relation to the allocation and other treatment of offences triable either way, and the sending of cases to the Crown Court) shall have effect.

42 Mode of trial for certain firearms offences: transitory arrangements

(1) The Magistrates' Courts Act 1980 is amended as follows.

(2) In section 24 (summary trial of information against child or young person for indictable offence)—

(a) in subsection (1), for "homicide" there is substituted "one falling within subsection (1B) below",

(b) in subsection (1A)(a), for "of homicide" there is substituted "falling within subsection (1B) below",

(c) after subsection (1A), there is inserted—

"(1B) An offence falls within this subsection if—

(a) it is an offence of homicide; or

(b) each of the requirements of section 51A(1) of the Firearms Act 1968 would be satisfied with respect to—

(i) the offence; and

(ii) the person charged with it,

if he were convicted of the offence."

(3) In section 25 (power to change from summary trial to committal proceedings and vice versa), in subsection (5), for "homicide" there is substituted "one falling within section 24(1B) above".

PART 7

TRIALS ON INDICTMENT WITHOUT A JURY

43 Applications by prosecution for certain fraud cases to be conducted without a jury

(1) This section applies where—

(a) one or more defendants are to be tried on indictment for one or more offences, and

(b) notice has been given under section 51B of the Crime and Disorder Act 1998 (c. 37) (notices in serious or complex fraud cases) in respect of that offence or those offences.

(2) The prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury.

(3) If an application under subsection (2) is made and the judge is satisfied that the condition in subsection (5) is fulfilled, he may make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application.

(4) The judge may not make such an order without the approval of the Lord Chief Justice or a judge nominated by him.

(5) The condition is that the complexity of the trial or the length of the trial (or both) is likely to make the trial so burdensome to the members of a jury hearing the trial that the interests of justice require that serious consideration should be given to the question of whether the trial should be conducted without a jury.

(6) In deciding whether or not he is satisfied that that condition is fulfilled, the judge must have regard to any steps which might reasonably be taken to reduce the complexity or length of the trial.

(7) But a step is not to be regarded as reasonable if it would significantly disadvantage the prosecution.

44 Application by prosecution for trial to be conducted without a jury where danger of jury tampering

(1) This section applies where one or more defendants are to be tried on indictment for one or more offences.

(2) The prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury.

(3) If an application under subsection (2) is made and the judge is satisfied that both of the following two conditions are fulfilled, he must make an order that the trial is to be conducted without a jury; but if he is not so satisfied he must refuse the application.

(4) The first condition is that there is evidence of a real and present danger that jury tampering would take place.

(5) The second condition is that, notwithstanding any steps (including the provision of police protection) which might reasonably be taken to prevent jury tampering, the likelihood that it would take place would be so substantial as to make it necessary in the interests of justice for the trial to be conducted without a jury.

(6) The following are examples of cases where there may be evidence of a real and present danger that jury tampering would take place—

(a) a case where the trial is a retrial and the jury in the previous trial was discharged because jury tampering had taken place,

(b) a case where jury tampering has taken place in previous criminal proceedings involving the defendant or any of the defendants,

(c) a case where there has been intimidation, or attempted intimidation, of any person who is likely to be a witness in the trial.

45 Procedure for applications under sections 43 and 44

(1) This section applies—

(a) to an application under section 43, and

(b) to an application under section 44.

(2) An application to which this section applies must be determined at a preparatory hearing (within the meaning of the 1987 Act or Part 3 of the 1996 Act).

(3) The parties to a preparatory hearing at which an application to which this section applies is to be determined must be given an opportunity to make representations with respect to the application.

(4) In section 7(1) of the 1987 Act (which sets out the purposes of preparatory hearings) for paragraphs (a) to (c) there is substituted—

"(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial,

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,

(c) determining an application to which section 45 of the Criminal Justice Act 2003 applies,".

(5) In section 9(11) of that Act (appeal to Court of Appeal) after "above," there is inserted "from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section 43 or 44 of that Act which is made on the determination of such an application,".

(6) In section 29 of the 1996 Act (power to order preparatory hearing) after subsection (1) there is inserted—

"(1A) A judge of the Crown Court may also order that a preparatory hearing shall be held if an application to which section 45 of the Criminal Justice Act 2003 applies (application for trial without jury) is made."

(7) In subsection (2) of that section (which sets out the purposes of preparatory hearings) for paragraphs (a) to (c) there is substituted—

"(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial,

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them,

(c) determining an application to which section 45 of the Criminal Justice Act 2003 applies,".

(8) In subsections (3) and (4) of that section for "subsection (1)" there is substituted "this section".

(9) In section 35(1) of that Act (appeal to Court of Appeal) after "31(3)," there is inserted "from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section 43 or 44 of that Act which is made on the determination of such an application,".

(10) In this section—

"the 1987 Act" means the Criminal Justice Act 1987 (c. 38),

"the 1996 Act" means the Criminal Procedure and Investigations Act 1996 (c. 25).

46 Discharge of jury because of jury tampering

(1) This section applies where—

(a) a judge is minded during a trial on indictment to discharge the jury, and
(b) he is so minded because jury tampering appears to have taken place.

(2) Before taking any steps to discharge the jury, the judge must—
(a) inform the parties that he is minded to discharge the jury,
(b) inform the parties of the grounds on which he is so minded, and
(c) allow the parties an opportunity to make representations.

(3) Where the judge, after considering any such representations, discharges the jury, he may make an order that the trial is to continue without a jury if, but only if, he is satisfied—
(a) that jury tampering has taken place, and
(b) that to continue the trial without a jury would be fair to the defendant or defendants;
but this is subject to subsection (4).

(4) If the judge considers that it is necessary in the interests of justice for the trial to be terminated, he must terminate the trial.

(5) Where the judge terminates the trial under subsection (4), he may make an order that any new trial which is to take place must be conducted without a jury if he is satisfied in respect of the new trial that both of the conditions set out in section 44 are likely to be fulfilled.

(6) Subsection (5) is without prejudice to any other power that the judge may have on terminating the trial.

(7) Subject to subsection (5), nothing in this section affects the application of section 43 or 44 in relation to any new trial which takes place following the termination of the trial.

47 Appeals

(1) An appeal shall lie to the Court of Appeal from an order under section 46(3) or (5).

(2) Such an appeal may be brought only with the leave of the judge or the Court of Appeal.

(3) An order from which an appeal under this section lies is not to take effect—
(a) before the expiration of the period for bringing an appeal under this section, or
(b) if such an appeal is brought, before the appeal is finally disposed of or abandoned.

(4) On the termination of the hearing of an appeal under this section, the Court of Appeal may confirm or revoke the order.

(5) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions)—
(a) the jurisdiction of the Court of Appeal under this section is to be exercised by the criminal division of that court, and
(b) references in this section to the Court of Appeal are to be construed as references to that division.

(6) In section 33(1) of the Criminal Appeal Act 1968 (c. 19) (right of appeal to House of Lords) after "1996" there is inserted "or section 47 of the Criminal Justice Act 2003".

(7) In section 36 of that Act (bail on appeal by defendant) after "hearings)" there is inserted "or section 47 of the Criminal Justice Act 2003".

(8) The Secretary of State may make an order containing provision, in relation to proceedings before the Court of Appeal under this section, which corresponds to any provision, in relation to appeals or other proceedings before that court, which is contained in the Criminal Appeal Act 1968 (subject to any specified modifications).

48 Further provision about trials without a jury

(1) The effect of an order under section 43, 44 or 46(5) is that the trial to which the order relates is to be conducted without a jury.

(2) The effect of an order under section 46(3) is that the trial to which the order relates is to be continued without a jury.

(3) Where a trial is conducted or continued without a jury, the court is to have all the powers, authorities and jurisdiction which the court would have had if the trial had been conducted or continued with a jury (including power to determine any question and to make any finding which would be required to be determined or made by a jury).

(4) Except where the context otherwise requires, any reference in an enactment to a jury, the verdict of a jury or the finding of a jury is to be read, in relation to a trial conducted or continued without a jury, as a reference to the court, the verdict of the court or the finding of the court.

(5) Where a trial is conducted or continued without a jury and the court convicts a defendant—

(a) the court must give a judgment which states the reasons for the conviction at, or as soon as reasonably practicable after, the time of the conviction, and

(b) the reference in section 18(2) of the Criminal Appeal Act 1968 (c. 19) (notice of appeal or of application for leave to appeal to be given within 28 days from date of conviction etc) to the date of the conviction is to be read as a reference to the date of the judgment mentioned in paragraph (a).

(6) Nothing in this Part affects—

(a) the requirement under section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84) that a question of fitness to be tried be determined by a jury, or

(b) the requirement under section 4A of that Act that any question, finding or verdict mentioned in that section be determined, made or returned by a jury.

49 Rules of court

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Without limiting subsection (1), rules of court may in particular make provision for time limits within which applications under this Part must be made or within which other things in connection with this Part must be done.

(3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court.

50 Application of Part 7 to Northern Ireland

(1) In its application to Northern Ireland this Part is to have effect—

(a) subject to subsection (2), and

(b) subject to the modifications in subsections (3) to (16).

(2) This Part does not apply in relation to a trial to which section 75 of the Terrorism Act 2000 (c. 11) (trial without jury for certain offences) applies.

(3) For section 45 substitute—

"**45 Procedure for applications under sections 43 and 44**

(1) This section applies—

(a) to an application under section 43, and

(b) to an application under section 44.

(2) An application to which this section applies must be determined—

(a) at a preparatory hearing (within the meaning of the 1988 Order), or

(b) at a hearing specified in, or for which provision is made by, Crown Court rules.

(3) The parties to a hearing mentioned in subsection (2) at which an application to which this section applies is to be determined must be given an opportunity to make representations with respect to the application.

(4) In Article 6(1) of the 1988 Order (which sets out the purposes of preparatory hearings) for sub-paragraphs (a) to (c) there is substituted—

"(a) identifying issues which are likely to be material to the determinations and findings which are likely to be required during the trial;

(b) if there is to be a jury, assisting their comprehension of those issues and expediting the proceedings before them;

(c) determining an application to which section 45 of the Criminal Justice Act 2003 applies; or".

(5) In Article 8(11) of the 1988 Order (appeal to Court of Appeal) after "(3)," there is inserted "from the refusal by a judge of an application to which section 45 of the Criminal Justice Act 2003 applies or from an order of a judge under section 43 or 44 of that Act which is made on the determination of such an application,".

(6) In this section "the 1988 Order" means the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988."

(4) For section 47(1) substitute—

"(1) An appeal shall lie to the Court of Appeal—

(a) from the refusal by a judge at a hearing mentioned in section 45(2)(b) of an application to which section 45 applies or from an order of a judge at such a hearing under section 43 or 44 which is made on the determination of such an application,

(b) from an order under section 46(3) or (5)."

(5) In section 47(3) after "order" insert "or a refusal of an application".

(6) In section 47(4) for "confirm or revoke the order" substitute—

"(a) where the appeal is from an order, confirm or revoke the order, or

(b) where the appeal is from a refusal of an application, confirm the refusal or make the order which is the subject of the application".

(7) Omit section 47(5).

(8) For section 47(6) substitute—

"(6) In section 31(1) of the Criminal Appeal (Northern Ireland) Act 1980 (right of appeal to House of Lords) after "1988" there is inserted "or section 47 of the Criminal Justice Act 2003"."

(9) For section 47(7) substitute—

"(7) In section 35 of that Act (bail) after "hearings)" there is inserted "or section 47 of the Criminal Justice Act 2003"."

(10) In section 47(8) for "Criminal Appeal Act 1968" substitute "Criminal Appeal (Northern Ireland) Act 1980".

(11) In section 48(4) after "enactment" insert "(including any provision of Northern Ireland legislation)".

(12) For section 48(5)(b) substitute—

"(b) the reference in section 16(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (notice of appeal or application for leave) to the date of the conviction is to be read as a reference to the date of the judgment mentioned in paragraph (a)."

(13) In section 48(6)—

(a) for "section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84)" substitute "Article 49 of the Mental Health (Northern Ireland) Order 1986",

(b) for "section 4A of that Act" substitute "Article 49A of that Order", and

(c) for "that section" substitute "that Article".

(14) After section 48 insert—

"**48A Reporting restrictions**

(1) Sections 41 and 42 of the Criminal Procedure and Investigations Act 1996 (c. 25) are to apply in relation to—

(a) a hearing of the kind mentioned in section 45(2)(b), and

(b) any appeal or application for leave to appeal relating to such a hearing,

as they apply in relation to a ruling under section 40 of that Act, but subject to the following modifications.

(2) Section 41(2) of that Act is to have effect as if for paragraphs (a) to (d) there were substituted—

"(a) a hearing of the kind mentioned in section 45(2)(b) of the Criminal Justice Act 2003;

(b) any appeal or application for leave to appeal relating to such a hearing."

(3) Section 41(3) of that Act is to have effect as if—

(a) for "(2)" there were substituted "(2)(a) or an application to that judge for leave to appeal to the Court of Appeal", and

(b) after "matter" in the second place where it occurs there were inserted "or application".

(4) Section 41 of that Act is to have effect as if after subsection (3) there were inserted—

"(3A) The Court of Appeal may order that subsection (1) shall not apply, or shall not apply to a specified extent, to a report of—

(a) an appeal to that Court, or

(b) an application to that Court for leave to appeal.

(3B) The House of Lords may order that subsection (1) shall not apply, or shall not apply to a specified extent, to a report of—

(a) an appeal to that House, or

(b) an application to that House for leave to appeal."

(5) Section 41(4) of that Act is to have effect as if for "(3) the judge" there were substituted "(3), (3A) or (3B), the judge, the Court of Appeal or the House of Lords".

(6) Section 41(5) of that Act is to have effect as if for "(3) the judge" there were substituted "(3), (3A) or (3B), the judge, the Court of Appeal or the House of Lords"."

(15) For section 49(2) substitute—

"(2) Without limiting subsection (1), rules of court may in particular make provision—

(a) for time limits within which applications under this Part must be made or within which other things in connection with this Part must be done;

(b) in relation to hearings of the kind mentioned in section 45(2)(b) and appeals under section 47."

(16) In section 49(3)—

(a) after "section" insert "or section 45(2)(b)", and

(b) after "enactment" insert "(including any provision of Northern Ireland legislation)".

PART 8

LIVE LINKS

51 Live links in criminal proceedings

(1) A witness (other than the defendant) may, if the court so directs, give evidence through a live link in the following criminal proceedings.

(2) They are—

(a) a summary trial,

(b) an appeal to the Crown Court arising out of such a trial,

(c) a trial on indictment,

(d) an appeal to the criminal division of the Court of Appeal,

(e) the hearing of a reference under section 9 or 11 of the Criminal Appeal Act 1995 (c. 35),

(f) a hearing before a magistrates' court or the Crown Court which is held after the defendant has entered a plea of guilty, and

(g) a hearing before the Court of Appeal under section 80 of this Act.

(3) A direction may be given under this section—

(a) on an application by a party to the proceedings, or

(b) of the court's own motion.

(4) But a direction may not be given under this section unless—

(a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link,

(b) it has been notified by the Secretary of State that suitable facilities for receiving evidence through a live link are available in the area in which it appears to the court that the proceedings will take place, and

(c) that notification has not been withdrawn.

(5) The withdrawal of such a notification is not to affect a direction given under this section before that withdrawal.

(6) In deciding whether to give a direction under this section the court must consider all the circumstances of the case.

(7) Those circumstances include in particular—

(a) the availability of the witness,

(b) the need for the witness to attend in person,

(c) the importance of the witness's evidence to the proceedings,

(d) the views of the witness,

(e) the suitability of the facilities at the place where the witness would give evidence through a live link,

(f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.

(8) The court must state in open court its reasons for refusing an application for a direction under this section and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

52 Effect of, and rescission of, direction

(1) Subsection (2) applies where the court gives a direction under section 51 for a person to give evidence through a live link in particular proceedings.

(2) The person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link (but this is subject to the following provisions of this section).

(3) The court may rescind a direction under section 51 if it appears to the court to be in the interests of justice to do so.

(4) Where it does so, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 51 in relation to him.

(5) A direction under section 51 may be rescinded under subsection (3)—

(a) on an application by a party to the proceedings, or

(b) of the court's own motion.

(6) But an application may not be made under subsection (5)(a) unless there has been a material change of circumstances since the direction was given.

(7) The court must state in open court its reasons—

(a) for rescinding a direction under section 51, or

(b) for refusing an application to rescind such a direction,

and, if it is a magistrates' court, must cause them to be entered in the register of its proceedings.

53 Magistrates' courts permitted to sit at other locations

(1) This section applies where—

(a) a magistrates' court is minded to give a direction under section 51 for evidence to be given through a live link in proceedings before the court, and

(b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which the court can (apart from subsection (2)) lawfully sit.

(2) The court may sit for the purposes of the whole or any part of the proceedings at any place at which such facilities are available and which has been appointed for the purposes of this section by the justices acting for the petty sessions area for which the court acts.

(3) A place appointed under subsection (2) may be outside the petty sessions area for which it is appointed; but (if so) it shall be deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area.

54 Warning to jury

(1) This section applies where, as a result of a direction under section 51, evidence has been given through a live link in proceedings before the Crown Court.

(2) The judge may give the jury (if there is one) such direction as he thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

55 Rules of court

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Rules of court may in particular make provision—

(a) as to the procedure to be followed in connection with applications under section 51 or 52, and

(b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision—

(a) for uncontested applications to be determined by the court without a hearing,

(b) for preventing the renewal of an unsuccessful application under section 51 unless there has been a material change of circumstances,

(c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 51 or 52 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this section is to be taken as affecting the generality of any enactment conferring power to make rules of court.

56 Interpretation of Part 8

(1) In this Part—

"legal representative" means an authorised advocate or authorised litigator (as defined by section 119(1) of the Courts and Legal Services Act 1990 (c. 41)),

"petty-sessional court-house" has the same meaning as in the Magistrates' Courts Act 1980 (c. 43),

"petty sessions area" has the same meaning as in the Justices of the Peace Act 1997 (c. 25),

"rules of court" means Magistrates' Courts Rules, Crown Court Rules or Criminal Appeal Rules,

"witness", in relation to any criminal proceedings, means a person called, or proposed to be called, to give evidence in the proceedings.

(2) In this Part "live link" means a live television link or other arrangement by which a witness, while at a place in the United Kingdom which is outside the building where the proceedings are being held, is able to see and hear a person at the place where the proceedings are being held and to be seen and heard by the following persons.

(3) They are—

(a) the defendant or defendants,

(b) the judge or justices (or both) and the jury (if there is one),

(c) legal representatives acting in the proceedings, and

(d) any interpreter or other person appointed by the court to assist the witness.

(4) The extent (if any) to which a person is unable to see or hear by reason of any impairment of eyesight or hearing is to be disregarded for the purposes of subsection (2).

(5) Nothing in this Part is to be regarded as affecting any power of a court—

(a) to make an order, give directions or give leave of any description in relation to any witness (including the defendant or defendants), or

(b) to exclude evidence at its discretion (whether by preventing questions being put or otherwise).

PART 9

PROSECUTION APPEALS

Introduction

57 Introduction

(1) In relation to a trial on indictment, the prosecution is to have the rights of appeal for which provision is made by this Part.

(2) But the prosecution is to have no right of appeal under this Part in respect of—

(a) a ruling that a jury be discharged, or

(b) a ruling from which an appeal lies to the Court of Appeal by virtue of any other enactment.

(3) An appeal under this Part is to lie to the Court of Appeal.

(4) Such an appeal may be brought only with the leave of the judge or the Court of Appeal.

General right of appeal in respect of rulings

58 General right of appeal in respect of rulings

(1) This section applies where a judge makes a ruling in relation to a trial on indictment at an applicable time and the ruling relates to one or more offences included in the indictment.

(2) The prosecution may appeal in respect of the ruling in accordance with this section.

(3) The ruling is to have no effect whilst the prosecution is able to take any steps under subsection (4).

(4) The prosecution may not appeal in respect of the ruling unless—

(a) following the making of the ruling, it—

(i) informs the court that it intends to appeal, or

(ii) requests an adjournment to consider whether to appeal, and

(b) if such an adjournment is granted, it informs the court following the adjournment that it intends to appeal.

(5) If the prosecution requests an adjournment under subsection (4)(a)(ii), the judge may grant such an adjournment.

(6) Where the ruling relates to two or more offences—

(a) any one or more of those offences may be the subject of the appeal, and

(b) if the prosecution informs the court in accordance with subsection (4) that it intends to appeal, it must at the same time inform the court of the offence or offences which are the subject of the appeal.

(7) Where—

(a) the ruling is a ruling that there is no case to answer, and

(b) the prosecution, at the same time that it informs the court in accordance with subsection (4) that it intends to appeal, nominates one or more other rulings which have been made by a judge in relation to the trial on indictment at an applicable time and which relate to the offence or offences which are the subject of the appeal,

that other ruling, or those other rulings, are also to be treated as the subject of the appeal.

(8) The prosecution may not inform the court in accordance with subsection (4) that it intends to appeal, unless, at or before that time, it informs the court that it agrees that, in respect of the offence or each offence which is the subject of the appeal, the defendant in relation to that offence should be acquitted of that offence if either of the conditions mentioned in subsection (9) is fulfilled.

(9) Those conditions are—

(a) that leave to appeal to the Court of Appeal is not obtained, and

(b) that the appeal is abandoned before it is determined by the Court of Appeal.

(10) If the prosecution informs the court in accordance with subsection (4) that it intends to appeal, the ruling mentioned in subsection (1) is to continue to have no effect in relation to the offence or offences which are the subject of the appeal whilst the appeal is pursued.

(11) If and to the extent that a ruling has no effect in accordance with this section—

(a) any consequences of the ruling are also to have no effect,

(b) the judge may not take any steps in consequence of the ruling, and

(c) if he does so, any such steps are also to have no effect.

(12) Where the prosecution has informed the court of its agreement under subsection (8) and either of the conditions mentioned in subsection (9) is fulfilled, the judge or the Court of Appeal must order that the defendant in relation to the offence or each offence concerned be acquitted of that offence.

(13) In this section "applicable time", in relation to a trial on indictment, means any time (whether before or after the commencement of the trial) before the start of the judge's summing-up to the jury.

59 Expedited and non-expedited appeals

(1) Where the prosecution informs the court in accordance with section 58(4) that it intends to appeal, the judge must decide whether or not the appeal should be expedited.

(2) If the judge decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge decides that the appeal should not be expedited, he may—

(a) order an adjournment, or

(b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in subsection (3)(a) or (b).

60 Continuation of proceedings for offences not affected by ruling

(1) This section applies where the prosecution informs the court in accordance with section 58(4) that it intends to appeal.

(2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

61 Determination of appeal by Court of Appeal

(1) On an appeal under section 58, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) Subsections (3) to (5) apply where the appeal relates to a single ruling.

(3) Where the Court of Appeal confirms the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(4) Where the Court of Appeal reverses or varies the ruling, it must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

(a) order that proceedings for that offence may be resumed in the Crown Court,

(b) order that a fresh trial may take place in the Crown Court for that offence,

(c) order that the defendant in relation to that offence be acquitted of that offence.

(5) But the Court of Appeal may not make an order under subsection (4)(a) or (b) in respect of an offence unless it considers it necessary in the interests of justice to do so.

(6) Subsections (7) and (8) apply where the appeal relates to a ruling that there is no case to answer and one or more other rulings.

(7) Where the Court of Appeal confirms the ruling that there is no case to answer, it must, in respect of the offence or each offence which is the subject of the appeal, order that the defendant in relation to that offence be acquitted of that offence.

(8) Where the Court of Appeal reverses or varies the ruling that there is no case to answer, it must in respect of the offence or each offence which is the subject of the appeal, make any of the orders mentioned in subsection (4)(a) to (c) (but subject to subsection (5)).

Right of appeal in respect of evidentiary rulings

62 Right of appeal in respect of evidentiary rulings

(1) The prosecution may, in accordance with this section and section 63, appeal in respect of—

(a) a single qualifying evidentiary ruling, or

(b) two or more qualifying evidentiary rulings.

(2) A "qualifying evidentiary ruling" is an evidentiary ruling of a judge in relation to a trial on indictment which is made at any time (whether before or after the commencement of the trial) before the opening of the case for the defence.

(3) The prosecution may not appeal in respect of a single qualifying evidentiary ruling unless the ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(4) The prosecution may not appeal in respect of two or more qualifying evidentiary rulings unless each ruling relates to one or more qualifying offences (whether or not it relates to any other offence).

(5) If the prosecution intends to appeal under this section, it must before the opening of the case for the defence inform the court—

(a) of its intention to do so, and

(b) of the ruling or rulings to which the appeal relates.

(6) In respect of the ruling, or each ruling, to which the appeal relates—

(a) the qualifying offence, or at least one of the qualifying offences, to which the ruling relates must be the subject of the appeal, and

(b) any other offence to which the ruling relates may, but need not, be the subject of the appeal.

(7) The prosecution must, at the same time that it informs the court in accordance with subsection (5), inform the court of the offence or offences which are the subject of the appeal.

(8) For the purposes of this section, the case for the defence opens when, after the conclusion of the prosecution evidence, the earliest of the following events occurs—

(a) evidence begins to be adduced by or on behalf of a defendant,

(b) it is indicated to the court that no evidence will be adduced by or on behalf of a defendant,

(c) a defendant's case is opened, as permitted by section 2 of the Criminal Procedure Act 1865 (c. 18).

(9) In this section—

"evidentiary ruling" means a ruling which relates to the admissibility or exclusion of any prosecution evidence,

"qualifying offence" means an offence described in Part 1 of Schedule 4.

(10) The Secretary of State may by order amend that Part by doing any one or more of the following—

(a) adding a description of offence,

(b) removing a description of offence for the time being included,

(c) modifying a description of offence for the time being included.

(11) Nothing in this section affects the right of the prosecution to appeal in respect of an evidentiary ruling under section 58.

63 Condition that evidentiary ruling significantly weakens prosecution case

(1) Leave to appeal may not be given in relation to an appeal under section 62 unless the judge or, as the case may be, the Court of Appeal is satisfied that the relevant condition is fulfilled.

(2) In relation to an appeal in respect of a single qualifying evidentiary ruling, the relevant condition is that the ruling significantly weakens the prosecution's case in relation to the offence or offences which are the subject of the appeal.

(3) In relation to an appeal in respect of two or more qualifying evidentiary rulings, the relevant condition is that the rulings taken together significantly weaken the prosecution's case in relation to the offence or offences which are the subject of the appeal.

64 Expedited and non-expedited appeals

(1) Where the prosecution informs the court in accordance with section 62(5), the judge must decide whether or not the appeal should be expedited.

(2) If the judge decides that the appeal should be expedited, he may order an adjournment.

(3) If the judge decides that the appeal should not be expedited, he may—

(a) order an adjournment, or

(b) discharge the jury (if one has been sworn).

(4) If he decides that the appeal should be expedited, he or the Court of Appeal may subsequently reverse that decision and, if it is reversed, the judge may act as mentioned in subsection (3)(a) or (b).

65 Continuation of proceedings for offences not affected by ruling

(1) This section applies where the prosecution informs the court in accordance with section 62(5).

(2) Proceedings may be continued in respect of any offence which is not the subject of the appeal.

66 Determination of appeal by Court of Appeal

(1) On an appeal under section 62, the Court of Appeal may confirm, reverse or vary any ruling to which the appeal relates.

(2) In addition, the Court of Appeal must, in respect of the offence or each offence which is the subject of the appeal, do any of the following—

(a) order that proceedings for that offence be resumed in the Crown Court,

(b) order that a fresh trial may take place in the Crown Court for that offence,

(c) order that the defendant in relation to that offence be acquitted of that offence.

(3) But no order may be made under subsection (2)(c) in respect of an offence unless the prosecution has indicated that it does not intend to continue with the prosecution of that offence.

Miscellaneous and supplemental

67 Reversal of rulings

The Court of Appeal may not reverse a ruling on an appeal under this Part unless it is satisfied—

(a) that the ruling was wrong in law,

(b) that the ruling involved an error of law or principle, or

(c) that the ruling was a ruling that it was not reasonable for the judge to have made.

68 Appeals to the House of Lords

(1) In section 33(1) of the 1968 Act (right of appeal to House of Lords) after "this Act" there is inserted "or Part 9 of the Criminal Justice Act 2003".

(2) In section 36 of the 1968 Act (bail on appeal by defendant) after "under" there is inserted "Part 9 of the Criminal Justice Act 2003 or".

(3) In this Part "the 1968 Act" means the Criminal Appeal Act 1968 (c. 19).

69 Costs

(1) The Prosecution of Offences Act 1985 (c. 23) is amended as follows.

(2) In section 16(4A) (defence costs on an appeal under section 9(11) of Criminal Justice Act 1987 may be met out of central funds) after "hearings)" there is inserted "or under Part 9 of the Criminal Justice Act 2003".

(3) In section 18 (award of costs against accused) after subsection (2) there is inserted—

"(2A) Where the Court of Appeal reverses or varies a ruling on an appeal under Part 9 of the Criminal Justice Act 2003, it may make such order as to the costs to be paid by the accused, to such person as may be named in the order, as it considers just and reasonable."

(4) In subsection (6) after "subsection (2)" there is inserted "or (2A)".

70 Effect on time limits in relation to preliminary stages

(1) Section 22 of the Prosecution of Offences Act 1985 (c. 23) (power of Secretary of State to set time limits in relation to preliminary stages of criminal proceedings) is amended as follows.

(2) After subsection (6A) there is inserted—

"(6B) Any period during which proceedings for an offence are adjourned pending the determination of an appeal under Part 9 of the Criminal Justice Act 2003 shall be disregarded, so far as the offence is concerned, for the purposes of the overall time limit and the custody time limit which applies to the stage which the proceedings have reached when they are adjourned."

71 Restrictions on reporting

(1) Except as provided by this section no publication shall include a report of—

(a) anything done under section 58, 59, 62, 63 or 64,

(b) an appeal under this Part,

(c) an appeal under Part 2 of the 1968 Act in relation to an appeal under this Part, or

(d) an application for leave to appeal in relation to an appeal mentioned in paragraph (b) or (c).

(2) The judge may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—

(a) anything done under section 58, 59, 62, 63 or 64, or

(b) an application to the judge for leave to appeal to the Court of Appeal under this Part.

(3) The Court of Appeal may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—

(a) an appeal to the Court of Appeal under this Part,

(b) an application to that Court for leave to appeal to it under this Part, or

(c) an application to that Court for leave to appeal to the House of Lords under Part 2 of the 1968 Act.

(4) The House of Lords may order that subsection (1) is not to apply, or is not to apply to a specified extent, to a report of—

(a) an appeal to that House under Part 2 of the 1968 Act, or

(b) an application to that House for leave to appeal to it under Part 2 of that Act.

(5) Where there is only one defendant and he objects to the making of an order under subsection (2), (3) or (4)—

(a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of the defendant, that it is in the interests of justice to do so, and

(b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.

(6) Where there are two or more defendants and one or more of them object to the making of an order under subsection (2), (3) or (4)—

(a) the judge, the Court of Appeal or the House of Lords are to make the order if (and only if) satisfied, after hearing the representations of each of the defendants, that it is in the interests of justice to do so, and

(b) the order (if made) is not to apply to the extent that a report deals with any such objection or representations.

(7) Subsection (1) does not apply to the inclusion in a publication of a report of—

(a) anything done under section 58, 59, 62, 63 or 64,

(b) an appeal under this Part,

(c) an appeal under Part 2 of the 1968 Act in relation to an appeal under this Part, or

(d) an application for leave to appeal in relation to an appeal mentioned in paragraph (b) or (c),

at the conclusion of the trial of the defendant or the last of the defendants to be tried.

(8) Subsection (1) does not apply to a report which contains only one or more of the following matters—

(a) the identity of the court and the name of the judge,

(b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses,

(c) the offence or offences, or a summary of them, with which the defendant or defendants are charged,

(d) the names of counsel and solicitors in the proceedings,

(e) where the proceedings are adjourned, the date and place to which they are adjourned,

(f) any arrangements as to bail,

(g) whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service was granted to the defendant or any of the defendants.

(9) The addresses that may be included in a report by virtue of subsection (8) are addresses—

(a) at any relevant time, and

(b) at the time of their inclusion in the publication.

(10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication.

(11) In this section—

"programme service" has the same meaning as in the Broadcasting Act 1990 (c. 42),

"publication" includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings,

"relevant time" means a time when events giving rise to the charges to which the proceedings relate are alleged to have occurred,

"relevant programme" means a programme included in a programme service.

72 Offences in connection with reporting

(1) This section applies if a publication includes a report in contravention of section 71.

(2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.

(3) Where the publication is a relevant programme—

(a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and

(b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

is guilty of an offence.

(4) In the case of any other publication, any person publishing it is guilty of an offence.

(5) If an offence under this section committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of, or

(b) to be attributable to any neglect on the part of,

an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In subsection (5), "officer" means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(7) If the affairs of a body corporate are managed by its members, "director" in subsection (6) means a member of that body.

(8) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Proceedings for an offence under this section may not be instituted—

(a) in England and Wales otherwise than by or with the consent of the Attorney General, or

(b) in Northern Ireland otherwise than by or with the consent of—

(i) before the relevant date, the Attorney General for Northern Ireland, or

(ii) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.

(11) In subsection (10) "the relevant date" means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

73 Rules of court

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Without limiting subsection (1), rules of court may in particular make provision—

(a) for time limits which are to apply in connection with any provisions of this Part,

(b) as to procedures to be applied in connection with this Part,

(c) enabling a single judge of the Court of Appeal to give leave to appeal under this Part or to exercise the power of the Court of Appeal under section 58(12).

(3) Nothing in this section is to be taken as affecting the generality of any enactment conferring powers to make rules of court.

74 Interpretation of Part 9

(1) In this Part—

"programme service" has the meaning given by section 71(11),

"publication" has the meaning given by section 71(11),

"qualifying evidentiary ruling" is to be construed in accordance with section 62(2),

"the relevant condition" is to be construed in accordance with section 63(2) and (3),

"relevant programme" has the meaning given by section 71(11),

"ruling" includes a decision, determination, direction, finding, notice, order, refusal, rejection or requirement,

"the 1968 Act" means the Criminal Appeal Act 1968 (c. 19).

(2) Any reference in this Part (other than section 73(2)(c)) to a judge is a reference to a judge of the Crown Court.

(3) There is to be no right of appeal under this Part in respect of a ruling in relation to which the prosecution has previously informed the court of its intention to appeal under either section 58(4) or 62(5).

(4) Where a ruling relates to two or more offences but not all of those offences are the subject of an appeal under this Part, nothing in this Part is to be regarded as affecting the ruling so far as it relates to any offence which is not the subject of the appeal.

(5) Where two or more defendants are charged jointly with the same offence, the provisions of this Part are to apply as if the offence, so far as relating to each defendant, were a separate offence (so that, for example, any reference in this Part to a ruling which relates to one or more offences includes a ruling which relates to one or more of those separate offences).

(6) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions)—

(a) the jurisdiction of the Court of Appeal under this Part is to be exercised by the criminal division of that court, and

(b) references in this Part to the Court of Appeal are to be construed as references to that division.

PART 10

RETRIAL FOR SERIOUS OFFENCES

Cases that may be retried

75 Cases that may be retried

(1) This Part applies where a person has been acquitted of a qualifying offence in proceedings—

(a) on indictment in England and Wales,

(b) on appeal against a conviction, verdict or finding in proceedings on indictment in England and Wales, or

(c) on appeal from a decision on such an appeal.

(2) A person acquitted of an offence in proceedings mentioned in subsection (1) is treated for the purposes of that subsection as also acquitted of any qualifying offence of

which he could have been convicted in the proceedings because of the first-mentioned offence being charged in the indictment, except an offence—

(a) of which he has been convicted,

(b) of which he has been found not guilty by reason of insanity, or

(c) in respect of which, in proceedings where he has been found to be under a disability (as defined by section 4 of the Criminal Procedure (Insanity) Act 1964 (c. 84)), a finding has been made that he did the act or made the omission charged against him.

(3) References in subsections (1) and (2) to a qualifying offence do not include references to an offence which, at the time of the acquittal, was the subject of an order under section 77(1) or (3).

(4) This Part also applies where a person has been acquitted, in proceedings elsewhere than in the United Kingdom, of an offence under the law of the place where the proceedings were held, if the commission of the offence as alleged would have amounted to or included the commission (in the United Kingdom or elsewhere) of a qualifying offence.

(5) Conduct punishable under the law in force elsewhere than in the United Kingdom is an offence under that law for the purposes of subsection (4), however it is described in that law.

(6) This Part applies whether the acquittal was before or after the passing of this Act.

(7) References in this Part to acquittal are to acquittal in circumstances within subsection (1) or (4).

(8) In this Part "qualifying offence" means an offence listed in Part 1 of Schedule 5.

Application for retrial

76 Application to Court of Appeal

(1) A prosecutor may apply to the Court of Appeal for an order—

(a) quashing a person's acquittal in proceedings within section 75(1), and

(b) ordering him to be retried for the qualifying offence.

(2) A prosecutor may apply to the Court of Appeal, in the case of a person acquitted elsewhere than in the United Kingdom, for—

(a) a determination whether the acquittal is a bar to the person being tried in England and Wales for the qualifying offence, and

(b) if it is, an order that the acquittal is not to be a bar.

(3) A prosecutor may make an application under subsection (1) or (2) only with the written consent of the Director of Public Prosecutions.

(4) The Director of Public Prosecutions may give his consent only if satisfied that—

(a) there is evidence as respects which the requirements of section 78 appear to be met,

(b) it is in the public interest for the application to proceed, and

(c) any trial pursuant to an order on the application would not be inconsistent with obligations of the United Kingdom under Article 31 or 34 of the Treaty on European Union relating to the principle of *ne bis in idem*.

(5) Not more than one application may be made under subsection (1) or (2) in relation to an acquittal.

77 Determination by Court of Appeal

(1) On an application under section 76(1), the Court of Appeal—

(a) if satisfied that the requirements of sections 78 and 79 are met, must make the order applied for;

(b) otherwise, must dismiss the application.

(2) Subsections (3) and (4) apply to an application under section 76(2).

(3) Where the Court of Appeal determines that the acquittal is a bar to the person being tried for the qualifying offence, the court—

(a) if satisfied that the requirements of sections 78 and 79 are met, must make the order applied for;

(b) otherwise, must make a declaration to the effect that the acquittal is a bar to the person being tried for the offence.

(4) Where the Court of Appeal determines that the acquittal is not a bar to the person being tried for the qualifying offence, it must make a declaration to that effect.

78 New and compelling evidence

(1) The requirements of this section are met if there is new and compelling evidence against the acquitted person in relation to the qualifying offence.

(2) Evidence is new if it was not adduced in the proceedings in which the person was acquitted (nor, if those were appeal proceedings, in earlier proceedings to which the appeal related).

(3) Evidence is compelling if—

(a) it is reliable,

(b) it is substantial, and

(c) in the context of the outstanding issues, it appears highly probative of the case against the acquitted person.

(4) The outstanding issues are the issues in dispute in the proceedings in which the person was acquitted and, if those were appeal proceedings, any other issues remaining in dispute from earlier proceedings to which the appeal related.

(5) For the purposes of this section, it is irrelevant whether any evidence would have been admissible in earlier proceedings against the acquitted person.

79 Interests of justice

(1) The requirements of this section are met if in all the circumstances it is in the interests of justice for the court to make the order under section 77.

(2) That question is to be determined having regard in particular to—

(a) whether existing circumstances make a fair trial unlikely;

(b) for the purposes of that question and otherwise, the length of time since the qualifying offence was allegedly committed;

(c) whether it is likely that the new evidence would have been adduced in the earlier proceedings against the acquitted person but for a failure by an officer or by a prosecutor to act with due diligence or expedition;

(d) whether, since those proceedings or, if later, since the commencement of this Part, any officer or prosecutor has failed to act with due diligence or expedition.

(3) In subsection (2) references to an officer or prosecutor include references to a person charged with corresponding duties under the law in force elsewhere than in England and Wales.

(4) Where the earlier prosecution was conducted by a person other than a prosecutor, subsection (2)(c) applies in relation to that person as well as in relation to a prosecutor.

80 Procedure and evidence

(1) A prosecutor who wishes to make an application under section 76(1) or (2) must give notice of the application to the Court of Appeal.

(2) Within two days beginning with the day on which any such notice is given, notice of the application must be served by the prosecutor on the person to whom the application relates, charging him with the offence to which it relates or, if he has been charged with it in accordance with section 87(4), stating that he has been so charged.

(3) Subsection (2) applies whether the person to whom the application relates is in the United Kingdom or elsewhere, but the Court of Appeal may, on application by the prosecutor, extend the time for service under that subsection if it considers it necessary to do so because of that person's absence from the United Kingdom.

(4) The Court of Appeal must consider the application at a hearing.

(5) The person to whom the application relates—

(a) is entitled to be present at the hearing, although he may be in custody, unless he is in custody elsewhere than in England and Wales or Northern Ireland, and

(b) is entitled to be represented at the hearing, whether he is present or not.

(6) For the purposes of the application, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice—

(a) order the production of any document, exhibit or other thing, the production of which appears to the court to be necessary for the determination of the application, and

(b) order any witness who would be a compellable witness in proceedings pursuant to an order or declaration made on the application to attend for examination and be examined before the court.

(7) The Court of Appeal may at one hearing consider more than one application (whether or not relating to the same person), but only if the offences concerned could be tried on the same indictment.

81 Appeals

(1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.

(2) In section 33 (right of appeal to House of Lords), after subsection (1A) there is inserted—

"(1B) An appeal lies to the House of Lords, at the instance of the acquitted person or the prosecutor, from any decision of the Court of Appeal on an application under section 76(1) or (2) of the Criminal Justice Act 2003 (retrial for serious offences)."

(3) At the end of that section there is inserted—

"(4) In relation to an appeal under subsection (1B), references in this Part to a defendant are references to the acquitted person."

(4) In section 34(2) (extension of time for leave to appeal), after "defendant" there is inserted "or, in the case of an appeal under section 33(1B), by the prosecutor".

(5) In section 38 (presence of defendant at hearing), for "has been convicted of an offence and" substitute "has been convicted of an offence, or in whose case an order under section 77 of the Criminal Justice Act 2003 or a declaration under section 77(4) of that Act has been made, and who".

82 Restrictions on publication in the interests of justice

(1) Where it appears to the Court of Appeal that the inclusion of any matter in a publication would give rise to a substantial risk of prejudice to the administration of justice in a retrial, the court may order that the matter is not to be included in any publication while the order has effect.

(2) In subsection (1) "retrial" means the trial of an acquitted person for a qualifying offence pursuant to any order made or that may be made under section 77.

(3) The court may make an order under this section only if it appears to it necessary in the interests of justice to do so.

(4) An order under this section may apply to a matter which has been included in a publication published before the order takes effect, but such an order—

(a) applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication), and

(b) does not otherwise affect the earlier publication.

(5) After notice of an application has been given under section 80(1) relating to the acquitted person and the qualifying offence, the court may make an order under this section only—

(a) of its own motion, or

(b) on the application of the Director of Public Prosecutions.

(6) Before such notice has been given, an order under this section—

(a) may be made only on the application of the Director of Public Prosecutions, and

(b) may not be made unless, since the acquittal concerned, an investigation of the commission by the acquitted person of the qualifying offence has been commenced by officers.

(7) The court may at any time, of its own motion or on an application made by the Director of Public Prosecutions or the acquitted person, vary or revoke an order under this section.

(8) Any order made under this section before notice of an application has been given under section 80(1) relating to the acquitted person and the qualifying offence must specify the time when it ceases to have effect.

(9) An order under this section which is made or has effect after such notice has been given ceases to have effect, unless it specifies an earlier time—

(a) when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application, or

(b) if he is tried pursuant to such an order, at the conclusion of the trial.

(10) Nothing in this section affects any prohibition or restriction by virtue of any other enactment on the inclusion of any matter in a publication or any power, under an enactment or otherwise, to impose such a prohibition or restriction.

(11) In this section—

"programme service" has the same meaning as in the Broadcasting Act 1990 (c. 42),

"publication" includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme is to be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings,

"relevant programme" means a programme included in a programme service.

83 Offences in connection with publication restrictions

(1) This section applies if—

(a) an order under section 82 is made, whether in England and Wales or Northern Ireland, and

(b) while the order has effect, any matter is included in a publication, in any part of the United Kingdom, in contravention of the order.

(2) Where the publication is a newspaper or periodical, any proprietor, editor or publisher of the newspaper or periodical is guilty of an offence.

(3) Where the publication is a relevant programme—

(a) any body corporate or Scottish partnership engaged in providing the programme service in which the programme is included, and

(b) any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

is guilty of an offence.

(4) In the case of any other publication, any person publishing it is guilty of an offence.

(5) If an offence under this section committed by a body corporate is proved—

(a) to have been committed with the consent or connivance of, or

(b) to be attributable to any neglect on the part of,

an officer, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(6) In subsection (5), "officer" means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(7) If the affairs of a body corporate are managed by its members, "director" in subsection (6) means a member of that body.

(8) Where an offence under this section is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, he as well as the partnership shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Proceedings for an offence under this section may not be instituted—

(a) in England and Wales otherwise than by or with the consent of the Attorney General, or

(b) in Northern Ireland otherwise than by or with the consent of—

(i) before the relevant date, the Attorney General for Northern Ireland, or

(ii) on or after the relevant date, the Director of Public Prosecutions for Northern Ireland.

(11) In subsection (10) "the relevant date" means the date on which section 22(1) of the Justice (Northern Ireland) Act 2002 (c. 26) comes into force.

Retrial

84 Retrial

(1) Where a person—

(a) is tried pursuant to an order under section 77(1), or

(b) is tried on indictment pursuant to an order under section 77(3),

the trial must be on an indictment preferred by direction of the Court of Appeal.

(2) After the end of 2 months after the date of the order, the person may not be arraigned on an indictment preferred in pursuance of such a direction unless the Court of Appeal gives leave.

(3) The Court of Appeal must not give leave unless satisfied that—

(a) the prosecutor has acted with due expedition, and

(b) there is a good and sufficient cause for trial despite the lapse of time since the order under section 77.

(4) Where the person may not be arraigned without leave, he may apply to the Court of Appeal to set aside the order and—

(a) for any direction required for restoring an earlier judgment and verdict of acquittal of the qualifying offence, or

(b) in the case of a person acquitted elsewhere than in the United Kingdom, for a declaration to the effect that the acquittal is a bar to his being tried for the qualifying offence.

(5) An indictment under subsection (1) may relate to more than one offence, or more than one person, and may relate to an offence which, or a person who, is not the subject of an order or declaration under section 77.

(6) Evidence given at a trial pursuant to an order under section 77(1) or (3) must be given orally if it was given orally at the original trial, unless—

(a) all the parties to the trial agree otherwise,

(b) section 116 applies, or

(c) the witness is unavailable to give evidence, otherwise than as mentioned in subsection (2) of that section, and section 114(1)(d) applies.

(7) At a trial pursuant to an order under section 77(1), paragraph 5 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (use of depositions) does not apply to a deposition read as evidence at the original trial.

Investigations

85 Authorisation of investigations

(1) This section applies to the investigation of the commission of a qualifying offence by a person—

(a) acquitted in proceedings within section 75(1) of the qualifying offence, or

(b) acquitted elsewhere than in the United Kingdom of an offence the commission of which as alleged would have amounted to or included the commission (in the United Kingdom or elsewhere) of the qualifying offence.

(2) Subject to section 86, an officer may not do anything within subsection (3) for the purposes of such an investigation unless the Director of Public Prosecutions—

(a) has certified that in his opinion the acquittal would not be a bar to the trial of the acquitted person in England and Wales for the qualifying offence, or

(b) has given his written consent to the investigation (whether before or after the start of the investigation).

(3) The officer may not, either with or without the consent of the acquitted person—

(a) arrest or question him,

(b) search him or premises owned or occupied by him,

(c) search a vehicle owned by him or anything in or on such a vehicle,

(d) seize anything in his possession, or

(e) take his fingerprints or take a sample from him.

(4) The Director of Public Prosecutions may only give his consent on a written application, and such an application may be made only by an officer who—

(a) if he is an officer of the metropolitan police force or the City of London police force, is of the rank of commander or above, or

(b) in any other case, is of the rank of assistant chief constable or above.

(5) An officer may make an application under subsection (4) only if—

(a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or

(b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(6) The Director of Public Prosecutions may not give his consent unless satisfied that—

(a) there is, or there is likely as a result of the investigation to be, sufficient new evidence to warrant the conduct of the investigation, and

(b) it is in the public interest for the investigation to proceed.

(7) In giving his consent, the Director of Public Prosecutions may recommend that the investigation be conducted otherwise than by officers of a specified police force or specified team of customs and excise officers.

86 Urgent investigative steps

(1) Section 85 does not prevent an officer from taking any action for the purposes of an investigation if—

(a) the action is necessary as a matter of urgency to prevent the investigation being substantially and irrevocably prejudiced,

(b) the requirements of subsection (2) are met, and

(c) either—

(i) the action is authorised under subsection (3), or

(ii) the requirements of subsection (5) are met.

(2) The requirements of this subsection are met if—

(a) there has been no undue delay in applying for consent under section 85(2),

(b) that consent has not been refused, and

(c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that consent before taking the action.

(3) An officer of the rank of superintendent or above may authorise the action if—

(a) he is satisfied that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or

(b) he has reasonable grounds for believing that such new evidence is likely to be obtained as a result of the investigation.

(4) An authorisation under subsection (3) must—

(a) if reasonably practicable, be given in writing;

(b) otherwise, be recorded in writing by the officer giving it as soon as is reasonably practicable.

(5) The requirements of this subsection are met if—

(a) there has been no undue delay in applying for authorisation under subsection (3),

(b) that authorisation has not been refused, and

(c) taking into account the urgency of the situation, it is not reasonably practicable to obtain that authorisation before taking the action.

(6) Where the requirements of subsection (5) are met, the action is nevertheless to be treated as having been unlawful unless, as soon as reasonably practicable after the action is taken, an officer of the rank of superintendent or above certifies in writing that he is satisfied that, when the action was taken—

(a) new evidence had been obtained which would be relevant to an application under section 76(1) or (2) in respect of the qualifying offence to which the investigation relates, or

(b) the officer who took the action had reasonable grounds for believing that such new evidence was likely to be obtained as a result of the investigation.

Arrest, custody and bail

87 Arrest and charge

(1) Where section 85 applies to the investigation of the commission of an offence by any person and no certification has been given under subsection (2) of that section—

(a) a justice of the peace may issue a warrant to arrest that person for that offence only if satisfied by written information that new evidence has been obtained which would be relevant to an application under section 76(1) or (2) in respect of the commission by that person of that offence, and

(b) that person may not be arrested for that offence except under a warrant so issued.

(2) Subsection (1) does not affect section 89(3)(b) or 91(3), or any other power to arrest a person, or to issue a warrant for the arrest of a person, otherwise than for an offence.

(3) Part 4 of the 1984 Act (detention) applies as follows where a person—

(a) is arrested for an offence under a warrant issued in accordance with subsection (1)(a), or

(b) having been so arrested, is subsequently treated under section 34(7) of that Act as arrested for that offence.

(4) For the purposes of that Part there is sufficient evidence to charge the person with the offence for which he has been arrested if, and only if, an officer of the rank of superintendent or above (who has not been directly involved in the investigation) is of the opinion that the evidence available or known to him is sufficient for the case to be referred to a prosecutor to consider whether consent should be sought for an application in respect of that person under section 76.

(5) For the purposes of that Part it is the duty of the custody officer at each police station where the person is detained to make available or known to an officer at that police station of the rank of superintendent or above any evidence which it appears to him may be relevant to an application under section 76(1) or (2) in respect of the offence for which the person has been arrested, and to do so as soon as practicable—

(a) after the evidence becomes available or known to him, or

(b) if later, after he forms that view.

(6) Section 37 of that Act (including any provision of that section as applied by section 40(8) of that Act) has effect subject to the following modifications—

(a) in subsection (1)—

(i) for "determine whether he has before him" there is substituted "request an officer of the rank of superintendent or above (who has not been directly involved in the investigation) to determine, in accordance with section 87(4) of the Criminal Justice Act 2003, whether there is";

(ii) for "him to do so" there is substituted "that determination to be made";

(b) in subsection (2)—

(i) for the words from "custody officer determines" to "before him" there is substituted "officer determines that there is not such sufficient evidence";

(ii) the word "custody" is omitted from the second place where it occurs;

(c) in subsection (3)—

(i) the word "custody" is omitted;

(ii) after "may" there is inserted "direct the custody officer to";

(d) in subsection (7) for the words from "the custody officer" to the end of that subsection there is substituted "an officer of the rank of superintendent or above (who has not been directly involved in the investigation) determines, in accordance with section 87(4) of the Criminal Justice Act 2003, that there is sufficient evidence to charge the person arrested with the offence for which he was arrested, the person arrested shall be charged.";

(e) subsections (7A), (7B) and (8) do not apply;

(f) after subsection (10) there is inserted—

"(10A) The officer who is requested by the custody officer to make a determination under subsection (1) above shall make that determination as soon as practicable after the request is made.".

(7) Section 40 of that Act has effect as if in subsections (8) and (9) of that section after "(6)" there were inserted "and (10A)".

(8) Section 42 of that Act has effect as if in subsection (1) of that section for the words from "who" to "detained" there were substituted "(who has not been directly involved in the investigation)".

88 Bail and custody before application

(1) In relation to a person charged in accordance with section 87(4)—

(a) section 38 of the 1984 Act (including any provision of that section as applied by section 40(10) of that Act) has effect as if, in subsection (1), for "either on bail or without bail" there were substituted "on bail",

(b) section 47(3) of that Act does not apply and references in section 38 of that Act to bail are references to bail subject to a duty to appear before the Crown Court at such place as the custody officer may appoint and at such time, not later than 24 hours after the person is released, as that officer may appoint, and

(c) section 43B of the Magistrates' Courts Act 1980 (c. 43) does not apply.

(2) Where such a person is, after being charged—

(a) kept in police detention, or

(b) detained by a local authority in pursuance of arrangements made under section 38(6) of the 1984 Act,

he must be brought before the Crown Court as soon as practicable and, in any event, not more than 24 hours after he is charged, and section 46 of the 1984 Act does not apply.

(3) For the purpose of calculating the period referred to in subsection (1) or (2), the following are to be disregarded—

(a) Sunday,

(b) Christmas Day,

(c) Good Friday, and

(d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is to appear before the Crown Court as mentioned in subsection (1) or, where subsection (2) applies, is for the time being detained.

(4) Where a person appears or is brought before the Crown Court in accordance with subsection (1) or (2), the Crown Court may either—

(a) grant bail for the person to appear, if notice of an application is served on him under section 80(2), before the Court of Appeal at the hearing of that application, or

(b) remand the person in custody to be brought before the Crown Court under section 89(2).

(5) If the Crown Court grants bail under subsection (4), it may revoke bail and remand the person in custody as referred to in subsection (4)(b).

(6) In subsection (7) the "relevant period", in relation to a person granted bail or remanded in custody under subsection (4), means—

(a) the period of 42 days beginning with the day on which he is granted bail or remanded in custody under that subsection, or

(b) that period as extended or further extended under subsection (8).

(7) If at the end of the relevant period no notice of an application under section 76(1) or (2) in relation to the person has been given under section 80(1), the person—

(a) if on bail subject to a duty to appear as mentioned in subsection (4)(a), ceases to be subject to that duty and to any conditions of that bail, and

(b) if in custody on remand under subsection (4)(b) or (5), must be released immediately without bail.

(8) The Crown Court may, on the application of a prosecutor, extend or further extend the period mentioned in subsection (6)(a) until a specified date, but only if satisfied that—

(a) the need for the extension is due to some good and sufficient cause, and

(b) the prosecutor has acted with all due diligence and expedition.

89 Bail and custody before hearing

(1) This section applies where notice of an application is given under section 80(1).

(2) If the person to whom the application relates is in custody under section 88(4)(b) or (5), he must be brought before the Crown Court as soon as practicable and, in any event, within 48 hours after the notice is given.

(3) If that person is not in custody under section 88(4)(b) or (5), the Crown Court may, on application by the prosecutor—

(a) issue a summons requiring the person to appear before the Court of Appeal at the hearing of the application, or

(b) issue a warrant for the person's arrest,

and a warrant under paragraph (b) may be issued at any time even though a summons has previously been issued.

(4) Where a summons is issued under subsection (3)(a), the time and place at which the person must appear may be specified either—

(a) in the summons, or

(b) in a subsequent direction of the Crown Court.

(5) The time or place specified may be varied from time to time by a direction of the Crown Court.

(6) A person arrested under a warrant under subsection (3)(b) must be brought before the Crown Court as soon as practicable and in any event within 48 hours after his arrest, and section 81(5) of the Supreme Court Act 1981 (c. 54) does not apply.

(7) If a person is brought before the Crown Court under subsection (2) or (6) the court must either—

(a) remand him in custody to be brought before the Court of Appeal at the hearing of the application, or

(b) grant bail for him to appear before the Court of Appeal at the hearing.

(8) If bail is granted under subsection (7)(b), the Crown Court may revoke the bail and remand the person in custody as referred to in subsection (7)(a).

(9) For the purpose of calculating the period referred to in subsection (2) or (6), the following are to be disregarded—

(a) Sunday,

(b) Christmas Day,

(c) Good Friday, and

(d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is for the time being detained.

90 Bail and custody during and after hearing

(1) The Court of Appeal may, at any adjournment of the hearing of an application under section 76(1) or (2)—

(a) remand the person to whom the application relates on bail, or

(b) remand him in custody.

(2) At a hearing at which the Court of Appeal—

(a) makes an order under section 77,

(b) makes a declaration under subsection (4) of that section, or

(c) dismisses the application or makes a declaration under subsection (3) of that section, if it also gives the prosecutor leave to appeal against its decision or the prosecutor gives notice that he intends to apply for such leave,

the court may make such order as it sees fit for the custody or bail of the acquitted person pending trial pursuant to the order or declaration, or pending determination of the appeal.

(3) For the purpose of subsection (2), the determination of an appeal is pending—

(a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;

(b) if leave to appeal is granted, until the appeal is disposed of.

(4) Section 4 of the Bail Act 1976 (c. 63) applies in relation to the grant of bail under this section as if in subsection (2) the reference to the Crown Court included a reference to the Court of Appeal.

(5) The court may at any time, as it sees fit—

(a) revoke bail granted under this section and remand the person in custody, or

(b) vary an order under subsection (2).

91 Revocation of bail

(1) Where—

(a) a court revokes a person's bail under this Part, and

(b) that person is not before the court when his bail is revoked,

the court must order him to surrender himself forthwith to the custody of the court.

(2) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (1), the court must remand him in custody.

(3) A person who has been ordered to surrender to custody under subsection (1) may be arrested without a warrant by an officer if he fails without reasonable cause to surrender to custody in accordance with the order.

(4) A person arrested under subsection (3) must be brought as soon as practicable, and, in any event, not more than 24 hours after he is arrested, before the court and the court must remand him in custody.

(5) For the purpose of calculating the period referred to in subsection (4), the following are to be disregarded—

(a) Sunday,

(b) Christmas Day,

(c) Good Friday,

(d) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c. 80) in the part of the United Kingdom where the person is for the time being detained.

Part 10: supplementary

92 Functions of the DPP

(1) Section 1(7) of the Prosecution of Offences Act 1985 (c. 23) (DPP's functions exercisable by Crown Prosecutor) does not apply to the provisions of this Part other than section 85(2)(a).

(2) In the absence of the Director of Public Prosecutions, his functions under those provisions may be exercised by a person authorised by him.

(3) An authorisation under subsection (2)—

(a) may relate to a specified person or to persons of a specified description, and

(b) may be general or relate to a specified function or specified circumstances.

93 Rules of court

(1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this Part.

(2) Without limiting subsection (1), rules of court may in particular make provision as to procedures to be applied in connection with sections 76 to 82, 84 and 88 to 90.

(3) Nothing in this section is to be taken as affecting the generality of any enactment conferring power to make rules of court.

94 Armed Forces: Part 10

(1) Section 31 of the Armed Forces Act 2001 (c. 19) (provision in consequence of enactments relating to criminal justice) applies to an enactment contained in this Part so far as relating to matters not specified in subsection (2) of that section as it applies to a criminal justice enactment.

(2) The power under that section to make provision equivalent to that made in relation to qualifying offences by an enactment contained in this Part (with or without modifications) includes power to make such provision in relation to such service offences as the Secretary of State thinks fit.

(3) In subsection (2) "service offence" means an offence under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53).

95 Interpretation of Part 10

(1) In this Part—

"the 1984 Act" means the Police and Criminal Evidence Act 1984 (c. 60),

"acquittal" and related expressions are to be read in accordance with section 75(7),

"customs and excise officer" means an officer as defined by section 1(1) of the Customs and Excise Management Act 1979 (c. 2), or a person to whom section 8(2) of that Act applies,

"new evidence" is to be read in accordance with section 78(2),

"officer", except in section 83, means an officer of a police force or a customs and excise officer,

"police force" has the meaning given by section 3(3) of the Prosecution of Offences Act 1985 (c. 23),

"prosecutor" means an individual or body charged with duties to conduct criminal prosecutions,

"qualifying offence" has the meaning given by section 75(8).

(2) Subject to rules of court made under section 53(1) of the Supreme Court Act 1981 (c. 54) (power by rules to distribute business of Court of Appeal between its civil and criminal divisions)—

(a) the jurisdiction of the Court of Appeal under this Part is to be exercised by the criminal division of that court, and

(b) references in this Part to the Court of Appeal are to be construed as references to that division.

(3) References in this Part to an officer of a specified rank or above are, in the case of a customs and excise officer, references to an officer of such description as—

(a) appears to the Commissioners of Customs and Excise to comprise officers of equivalent rank or above, and

(b) is specified by the Commissioners for the purposes of the provision concerned.

96 Application of Part 10 to Northern Ireland

(1) In its application to Northern Ireland this Part is to have effect subject to the modifications in this section.

(2) In sections 75(1)(a) and (b), 76(2)(a), 79(3) and 85(2)(a) for "England and Wales" substitute "Northern Ireland".

(3) For section 75(2)(c) substitute—

"(c) in respect of which, in proceedings where he has been found to be unfit to be tried in accordance with Article 49 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)), a finding has been made that he did the act or made the omission charged against him."

(4) In section 75(8) for "Part 1" substitute "Part 2".

(5) In section 81(1) for "Criminal Appeal Act 1968 (c. 19)" substitute "Criminal Appeal (Northern Ireland) Act 1980 (c. 47)".

(6) In section 81(2)—

(a) for "33" substitute "31", and

(b) for "An" substitute "Subject to the provisions of this Part of this Act, an".

(7) In section 81(4)—

(a) for "34(2)" substitute "32(2)", and

(b) for "33(1B)" substitute "31(1B)".

(8) In section 82(10) after "enactment" in each place insert "(including any provision of Northern Ireland legislation)".

(9) In section 84(1) and (2) for "preferred" substitute "presented".

(10) Section 84(6) has effect—

(a) as if any reference to a provision of Part 11 were a reference to any corresponding provision contained in an Order in Council to which section 334(1) applies, at any time when such corresponding provision is in force;

(b) at any other time, with the omission of paragraphs (b) and (c).

(11) After section 84(6) insert—

"(6A) Article 29 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)) applies in the case of a person who is to be tried in accordance with subsection (1) as if—

(a) he had been returned for trial for the offence in question, and

(b) the reference in paragraph (2)(a) of that Article to a magistrates' court included a reference to the Court of Appeal."

(12) In section 87—

(a) in subsection (3), for "Part 4 of the 1984 Act" substitute "Part 5 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S. I. 1989/1341 (N. I. 12)) ("the 1989 Order")",

(b) in paragraph (b) of that subsection, for "section 34(7) of that Act" substitute "Article 35(8) of that Order",

(c) in subsection (6)—

(i) for the words from the beginning to "40(8) of that Act)" substitute "Article 38 of that Order (including any provision of that Article as applied by Article 41(8) of that Order)",

(ii) for "subsection" in each place substitute "paragraph",

(iii) in paragraph (e), for "subsections (7A), (7B) and (8)" substitute "paragraph (8)", and

(iv) in paragraph (f), in the inserted paragraph (10A) omit "above",

(d) for subsection (7) substitute—

"(7) Article 41 of that Order has effect as if in paragraphs (8) and (9) of that Article after "(6)" there were inserted "and (10A).",

(e) in subsection (8)—

(i) for "Section 42 of that Act" substitute "Article 43 of that Order", and

(ii) for "subsection (1) of that section" substitute "paragraph (1) of that Article".

(13) For section 88(1) substitute—

"(1) In relation to a person charged in accordance with section 87(4)—

(a) Article 39 of the 1989 Order (including any provision of that Article as applied by Article 41(10) of that Order) has effect as if, in paragraph (1), for "either on bail or without bail" there were substituted "on bail",

(b) Article 48 of that Order has effect as if for paragraphs (1) to (11) there were substituted—

"(1) A person who is released on bail shall be subject to a duty to appear before the Crown Court at such place as the custody officer may appoint and at such time, not later than 24 hours after the person is released, as that officer may appoint.

(2) The custody officer may require a person who is to be released on bail to enter into a recognisance conditioned upon his subsequent appearance before the Crown Court in accordance with paragraph (1).

(3) A recognisance under paragraph (2) may be taken before the custody officer.", and

(c) Article 132A of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)) does not apply."

(14) In section 88(2)—

(a) for paragraph (b) substitute—

"(b) detained in a place of safety in pursuance of arrangements made under Article 39(6) of the 1989 Order,", and

(b) for "section 46 of the 1984 Act" substitute "Article 47 of the 1989 Order".

(15) In section 89(6) for "section 81(5) of the Supreme Court Act 1981 (c. 54)" substitute "section 51(8) of the Judicature (Northern Ireland) Act 1978 (c. 23)".

(16) For section 90(4) substitute—

"(4) The court may at any time, as it sees fit, vary the conditions of bail granted under this section."

(17) In section 92(1) for the words from the beginning to "does" substitute "Sections 30(4) and 36 of the Justice (Northern Ireland) Act 2002 (c. 26) do".

(18) Until the coming into force of section 36 of that Act of 2002 the reference to that section in subsection (17) is to be read as a reference to Article 4(8) of the Prosecution of Offences (Northern Ireland) Order 1972 (S.I. 1972/538 (N.I. 1)).

(19) In section 93(2) for "the Criminal Appeal Rules and the Crown Court Rules" substitute "rules under section 55 of the Judicature (Northern Ireland) Act 1978 and Crown Court Rules".

(20) In section 93(3) after "enactment" insert "(including any provision of Northern Ireland legislation)".

(21) In section 95(1) for the definition of "police force" substitute—

""police force" means—

(a) the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,

(b) the Ministry of Defence Police,

(c) any body of constables appointed under Article 19 of the Airports (Northern Ireland) Order 1994 (S.I. 1994/426 (N.I. 1)), or

(d) any body of special constables appointed in Northern Ireland under section 79 of the Harbours, Docks and Piers Clauses Act 1847 (c. 27) or section 57 of the Civil Aviation Act 1982 (c. 16),".

(22) Omit section 95(2).

97 Application of Criminal Appeal Acts to proceedings under Part 10

Subject to the provisions of this Part, the Secretary of State may make an order containing provision, in relation to proceedings before the Court of Appeal under this Part, which corresponds to any provision, in relation to appeals or other proceedings before that court, which is contained in the Criminal Appeal Act 1968 (c. 19) or the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (subject to any specified modifications).

PART 11

EVIDENCE

CHAPTER 1

EVIDENCE OF BAD CHARACTER

Introductory

98 "Bad character"

References in this Chapter to evidence of a person's "bad character" are to evidence of, or of a disposition towards, misconduct on his part, other than evidence which—

(a) has to do with the alleged facts of the offence with which the defendant is charged, or

(b) is evidence of misconduct in connection with the investigation or prosecution of that offence.

99 Abolition of common law rules

(1) The common law rules governing the admissibility of evidence of bad character in criminal proceedings are abolished.

(2) Subsection (1) is subject to section 118(1) in so far as it preserves the rule under which in criminal proceedings a person's reputation is admissible for the purposes of proving his bad character.

Persons other than defendants

100 Non-defendant's bad character

(1) In criminal proceedings evidence of the bad character of a person other than the defendant is admissible if and only if—

(a) it is important explanatory evidence,

(b) it has substantial probative value in relation to a matter which—

(i) is a matter in issue in the proceedings, and

(ii) is of substantial importance in the context of the case as a whole,

or

(c) all parties to the proceedings agree to the evidence being admissible.

(2) For the purposes of subsection (1)(a) evidence is important explanatory evidence if—

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and

(b) its value for understanding the case as a whole is substantial.

(3) In assessing the probative value of evidence for the purposes of subsection (1)(b) the court must have regard to the following factors (and to any others it considers relevant)—

(a) the nature and number of the events, or other things, to which the evidence relates;

(b) when those events or things are alleged to have happened or existed;

(c) where—

(i) the evidence is evidence of a person's misconduct, and

(ii) it is suggested that the evidence has probative value by reason of similarity between that misconduct and other alleged misconduct,

the nature and extent of the similarities and the dissimilarities between each of the alleged instances of misconduct;

(d) where—

(i) the evidence is evidence of a person's misconduct,

(ii) it is suggested that that person is also responsible for the misconduct charged, and

(iii) the identity of the person responsible for the misconduct charged is disputed,

the extent to which the evidence shows or tends to show that the same person was responsible each time.

(4) Except where subsection (1)(c) applies, evidence of the bad character of a person other than the defendant must not be given without leave of the court.

Defendants

101 Defendant's bad character

(1) In criminal proceedings evidence of the defendant's bad character is admissible if, but only if—

(a) all parties to the proceedings agree to the evidence being admissible,

(b) the evidence is adduced by the defendant himself or is given in answer to a question asked by him in cross-examination and intended to elicit it,

(c) it is important explanatory evidence,

(d) it is relevant to an important matter in issue between the defendant and the prosecution,

(e) it has substantial probative value in relation to an important matter in issue between the defendant and a co-defendant,

(f) it is evidence to correct a false impression given by the defendant, or

(g) the defendant has made an attack on another person's character.

(2) Sections 102 to 106 contain provision supplementing subsection (1).

(3) The court must not admit evidence under subsection (1)(d) or (g) if, on an application by the defendant to exclude it, it appears to the court that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

(4) On an application to exclude evidence under subsection (3) the court must have regard, in particular, to the length of time between the matters to which that evidence relates and the matters which form the subject of the offence charged.

102 "Important explanatory evidence"

For the purposes of section 101(1)(c) evidence is important explanatory evidence if—

(a) without it, the court or jury would find it impossible or difficult properly to understand other evidence in the case, and

(b) its value for understanding the case as a whole is substantial.

103 "Matter in issue between the defendant and the prosecution"

(1) For the purposes of section 101(1)(d) the matters in issue between the defendant and the prosecution include—

(a) the question whether the defendant has a propensity to commit offences of the kind with which he is charged, except where his having such a propensity makes it no more likely that he is guilty of the offence;

(b) the question whether the defendant has a propensity to be untruthful, except where it is not suggested that the defendant's case is untruthful in any respect.

(2) Where subsection (1)(a) applies, a defendant's propensity to commit offences of the kind with which he is charged may (without prejudice to any other way of doing so) be established by evidence that he has been convicted of—

(a) an offence of the same description as the one with which he is charged, or

(b) an offence of the same category as the one with which he is charged.

(3) Subsection (2) does not apply in the case of a particular defendant if the court is satisfied, by reason of the length of time since the conviction or for any other reason, that it would be unjust for it to apply in his case.

(4) For the purposes of subsection (2)—

(a) two offences are of the same description as each other if the statement of the offence in a written charge or indictment would, in each case, be in the same terms;

(b) two offences are of the same category as each other if they belong to the same category of offences prescribed for the purposes of this section by an order made by the Secretary of State.

(5) A category prescribed by an order under subsection (4)(b) must consist of offences of the same type.

(6) Only prosecution evidence is admissible under section 101(1)(d).

104 "Matter in issue between the defendant and a co-defendant"

(1) Evidence which is relevant to the question whether the defendant has a propensity to be untruthful is admissible on that basis under section 101(1)(e) only if the nature or conduct of his defence is such as to undermine the co-defendant's defence.

(2) Only evidence—

(a) which is to be (or has been) adduced by the co-defendant, or

(b) which a witness is to be invited to give (or has given) in cross-examination by the co-defendant,

is admissible under section 101(1)(e).

105 "Evidence to correct a false impression"

(1) For the purposes of section 101(1)(f)—

(a) the defendant gives a false impression if he is responsible for the making of an express or implied assertion which is apt to give the court or jury a false or misleading impression about the defendant;

(b) evidence to correct such an impression is evidence which has probative value in correcting it.

(2) A defendant is treated as being responsible for the making of an assertion if—

(a) the assertion is made by the defendant in the proceedings (whether or not in evidence given by him),

(b) the assertion was made by the defendant—

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it,

and evidence of the assertion is given in the proceedings,

(c) the assertion is made by a witness called by the defendant,

(d) the assertion is made by any witness in cross-examination in response to a question asked by the defendant that is intended to elicit it, or is likely to do so, or

(e) the assertion was made by any person out of court, and the defendant adduces evidence of it in the proceedings.

(3) A defendant who would otherwise be treated as responsible for the making of an assertion shall not be so treated if, or to the extent that, he withdraws it or disassociates himself from it.

(4) Where it appears to the court that a defendant, by means of his conduct (other than the giving of evidence) in the proceedings, is seeking to give the court or jury an impression about himself that is false or misleading, the court may if it appears just to do so treat the defendant as being responsible for the making of an assertion which is apt to give that impression.

(5) In subsection (4) "conduct" includes appearance or dress.

(6) Evidence is admissible under section 101(1)(f) only if it goes no further than is necessary to correct the false impression.

(7) Only prosecution evidence is admissible under section 101(1)(f).

106 "Attack on another person's character"

(1) For the purposes of section 101(1)(g) a defendant makes an attack on another person's character if—

(a) he adduces evidence attacking the other person's character,

(b) he (or any legal representative appointed under section 38(4) of the Youth Justice and Criminal Evidence Act 1999 (c. 23) to cross-examine a witness in his interests) asks questions in cross-examination that are intended to elicit such evidence, or are likely to do so, or

(c) evidence is given of an imputation about the other person made by the defendant—

(i) on being questioned under caution, before charge, about the offence with which he is charged, or

(ii) on being charged with the offence or officially informed that he might be prosecuted for it.

(2) In subsection (1) "evidence attacking the other person's character" means evidence to the effect that the other person—

(a) has committed an offence (whether a different offence from the one with which the defendant is charged or the same one), or

(b) has behaved, or is disposed to behave, in a reprehensible way;

and "imputation about the other person" means an assertion to that effect.

(3) Only prosecution evidence is admissible under section 101(1)(g).

107 Stopping the case where evidence contaminated

(1) If on a defendant's trial before a judge and jury for an offence—

(a) evidence of his bad character has been admitted under any of paragraphs (c) to (g) of section 101(1), and

(b) the court is satisfied at any time after the close of the case for the prosecution that—

(i) the evidence is contaminated, and

(ii) the contamination is such that, considering the importance of the evidence to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

(a) a jury is directed under subsection (1) to acquit a defendant of an offence, and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1)(b) in respect of it.

(3) If—

(a) a jury is required to determine under section 4A(2) of the Criminal Procedure (Insanity) Act 1964 (c. 84) whether a person charged on an indictment with an offence did the act or made the omission charged,

(b) evidence of the person's bad character has been admitted under any of paragraphs (c) to (g) of section 101(1), and

(c) the court is satisfied at any time after the close of the case for the prosecution that—

(i) the evidence is contaminated, and

(ii) the contamination is such that, considering the importance of the evidence to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

(5) For the purposes of this section a person's evidence is contaminated where—

(a) as a result of an agreement or understanding between the person and one or more others, or

(b) as a result of the person being aware of anything alleged by one or more others whose evidence may be, or has been, given in the proceedings,

the evidence is false or misleading in any respect, or is different from what it would otherwise have been.

108 Offences committed by defendant when a child

(1) Section 16(2) and (3) of the Children and Young Persons Act 1963 (c. 37) (offences committed by person under 14 disregarded for purposes of evidence relating to previous convictions) shall cease to have effect.

(2) In proceedings for an offence committed or alleged to have been committed by the defendant when aged 21 or over, evidence of his conviction for an offence when under the age of 14 is not admissible unless—

(a) both of the offences are triable only on indictment, and

(b) the court is satisfied that the interests of justice require the evidence to be admissible.

(3) Subsection (2) applies in addition to section 101.

General

109 Assumption of truth in assessment of relevance or probative value

(1) Subject to subsection (2), a reference in this Chapter to the relevance or probative value of evidence is a reference to its relevance or probative value on the assumption that it is true.

(2) In assessing the relevance or probative value of an item of evidence for any purpose of this Chapter, a court need not assume that the evidence is true if it appears, on the basis of any material before the court (including any evidence it decides to hear on the matter), that no court or jury could reasonably find it to be true.

110 Court's duty to give reasons for rulings

(1) Where the court makes a relevant ruling—

(a) it must state in open court (but in the absence of the jury, if there is one) its reasons for the ruling;

(b) if it is a magistrates' court, it must cause the ruling and the reasons for it to be entered in the register of the court's proceedings.

(2) In this section "relevant ruling" means—

(a) a ruling on whether an item of evidence is evidence of a person's bad character;

(b) a ruling on whether an item of such evidence is admissible under section 100 or 101 (including a ruling on an application under section 101(3));

(c) a ruling under section 107.

111 Rules of court

(1) Rules of court may make such provision as appears to the appropriate authority to be necessary or expedient for the purposes of this Act; and the appropriate authority is the authority entitled to make the rules.

(2) The rules may, and, where the party in question is the prosecution, must, contain provision requiring a party who—

(a) proposes to adduce evidence of a defendant's bad character, or

(b) proposes to cross-examine a witness with a view to eliciting such evidence,

to serve on the defendant such notice, and such particulars of or relating to the evidence, as may be prescribed.

(3) The rules may provide that the court or the defendant may, in such circumstances as may be prescribed, dispense with a requirement imposed by virtue of subsection (2).

(4) In considering the exercise of its powers with respect to costs, the court may take into account any failure by a party to comply with a requirement imposed by virtue of subsection (2) and not dispensed with by virtue of subsection (3).

(5) The rules may—

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(6) Nothing in this section prejudices the generality of any enactment conferring power to make rules of court; and no particular provision of this section prejudices any general provision of it.

(7) In this section—

"prescribed" means prescribed by rules of court;

"rules of court" means—

(a) Crown Court Rules;

(b) Criminal Appeal Rules;

(c) rules under section 144 of the Magistrates' Courts Act 1980 (c. 43).

112 Interpretation of Chapter 1

(1) In this Chapter—

"bad character" is to be read in accordance with section 98;

"criminal proceedings" means criminal proceedings in relation to which the strict rules of evidence apply;

"defendant", in relation to criminal proceedings, means a person charged with an offence in those proceedings; and "co-defendant", in relation to a defendant, means a person charged with an offence in the same proceedings;

"important matter" means a matter of substantial importance in the context of the case as a whole;

"misconduct" means the commission of an offence or other reprehensible behaviour;

"offence" includes a service offence;

"probative value", and "relevant" (in relation to an item of evidence), are to be read in accordance with section 109;

"prosecution evidence" means evidence which is to be (or has been) adduced by the prosecution, or which a witness is to be invited to give (or has given) in cross-examination by the prosecution;

"service offence" means an offence under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53);

"written charge" has the same meaning as in section 29 and also includes an information.

(2) Where a defendant is charged with two or more offences in the same criminal proceedings, this Chapter (except section 101(3)) has effect as if each offence were charged in separate proceedings; and references to the offence with which the defendant is charged are to be read accordingly.

(3) Nothing in this Chapter affects the exclusion of evidence—

(a) under the rule in section 3 of the Criminal Procedure Act 1865 (c. 18) against a party impeaching the credit of his own witness by general evidence of bad character,

(b) under section 41 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (restriction on evidence or questions about complainant's sexual history), or

(c) on grounds other than the fact that it is evidence of a person's bad character.

113 Armed forces

Schedule 6 (armed forces) has effect.

CHAPTER 2

HEARSAY EVIDENCE

Hearsay: main provisions

114 Admissibility of hearsay evidence

(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if, but only if—

(a) any provision of this Chapter or any other statutory provision makes it admissible,

(b) any rule of law preserved by section 118 makes it admissible,

(c) all parties to the proceedings agree to it being admissible, or

(d) the court is satisfied that it is in the interests of justice for it to be admissible.

(2) In deciding whether a statement not made in oral evidence should be admitted under subsection (1)(d), the court must have regard to the following factors (and to any others it considers relevant)—

(a) how much probative value the statement has (assuming it to be true) in relation to a matter in issue in the proceedings, or how valuable it is for the understanding of other evidence in the case;
(b) what other evidence has been, or can be, given on the matter or evidence mentioned in paragraph (a);
(c) how important the matter or evidence mentioned in paragraph (a) is in the context of the case as a whole;
(d) the circumstances in which the statement was made;
(e) how reliable the maker of the statement appears to be;
(f) how reliable the evidence of the making of the statement appears to be;
(g) whether oral evidence of the matter stated can be given and, if not, why it cannot;
(h) the amount of difficulty involved in challenging the statement;
(i) the extent to which that difficulty would be likely to prejudice the party facing it.

(3) Nothing in this Chapter affects the exclusion of evidence of a statement on grounds other than the fact that it is a statement not made in oral evidence in the proceedings.

115 Statements and matters stated

(1) In this Chapter references to a statement or to a matter stated are to be read as follows.

(2) A statement is any representation of fact or opinion made by a person by whatever means; and it includes a representation made in a sketch, photofit or other pictorial form.

(3) A matter stated is one to which this Chapter applies if (and only if) the purpose, or one of the purposes, of the person making the statement appears to the court to have been—
(a) to cause another person to believe the matter, or
(b) to cause another person to act or a machine to operate on the basis that the matter is as stated.

Principal categories of admissibility

116 Cases where a witness is unavailable

(1) In criminal proceedings a statement not made in oral evidence in the proceedings is admissible as evidence of any matter stated if—
(a) oral evidence given in the proceedings by the person who made the statement would be admissible as evidence of that matter,
(b) the person who made the statement (the relevant person) is identified to the court's satisfaction, and
(c) any of the five conditions mentioned in subsection (2) is satisfied.

(2) The conditions are—
(a) that the relevant person is dead;
(b) that the relevant person is unfit to be a witness because of his bodily or mental condition;

(c) that the relevant person is outside the United Kingdom and it is not reasonably practicable to secure his attendance;

(d) that the relevant person cannot be found although such steps as it is reasonably practicable to take to find him have been taken;

(e) that through fear the relevant person does not give (or does not continue to give) oral evidence in the proceedings, either at all or in connection with the subject matter of the statement, and the court gives leave for the statement to be given in evidence.

(3) For the purposes of subsection (2)(e) "fear" is to be widely construed and (for example) includes fear of the death or injury of another person or of financial loss.

(4) Leave may be given under subsection (2)(e) only if the court considers that the statement ought to be admitted in the interests of justice, having regard—

(a) to the statement's contents,

(b) to any risk that its admission or exclusion will result in unfairness to any party to the proceedings (and in particular to how difficult it will be to challenge the statement if the relevant person does not give oral evidence),

(c) in appropriate cases, to the fact that a direction under section 19 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (special measures for the giving of evidence by fearful witnesses etc) could be made in relation to the relevant person, and

(d) to any other relevant circumstances.

(5) A condition set out in any paragraph of subsection (2) which is in fact satisfied is to be treated as not satisfied if it is shown that the circumstances described in that paragraph are caused—

(a) by the person in support of whose case it is sought to give the statement in evidence, or

(b) by a person acting on his behalf,

in order to prevent the relevant person giving oral evidence in the proceedings (whether at all or in connection with the subject matter of the statement).

117 Business and other documents

(1) In criminal proceedings a statement contained in a document is admissible as evidence of any matter stated if—

(a) oral evidence given in the proceedings would be admissible as evidence of that matter,

(b) the requirements of subsection (2) are satisfied, and

(c) the requirements of subsection (5) are satisfied, in a case where subsection (4) requires them to be.

(2) The requirements of this subsection are satisfied if—

(a) the document or the part containing the statement was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office,

(b) the person who supplied the information contained in the statement (the relevant person) had or may reasonably be supposed to have had personal knowledge of the matters dealt with, and

(c) each person (if any) through whom the information was supplied from the relevant person to the person mentioned in paragraph (a) received the information in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office.

(3) The persons mentioned in paragraphs (a) and (b) of subsection (2) may be the same person.

(4) The additional requirements of subsection (5) must be satisfied if the statement—

(a) was prepared for the purposes of pending or contemplated criminal proceedings, or for a criminal investigation, but

(b) was not obtained pursuant to a request under section 7 of the Crime (International Co-operation) Act 2003 (c. 32) or an order under paragraph 6 of Schedule 13 to the Criminal Justice Act 1988 (c. 33) (which relate to overseas evidence).

(5) The requirements of this subsection are satisfied if—

(a) any of the five conditions mentioned in section 116(2) is satisfied (absence of relevant person etc), or

(b) the relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the statement (having regard to the length of time since he supplied the information and all other circumstances).

(6) A statement is not admissible under this section if the court makes a direction to that effect under subsection (7).

(7) The court may make a direction under this subsection if satisfied that the statement's reliability as evidence for the purpose for which it is tendered is doubtful in view of—

(a) its contents,

(b) the source of the information contained in it,

(c) the way in which or the circumstances in which the information was supplied or received, or

(d) the way in which or the circumstances in which the document concerned was created or received.

118 Preservation of certain common law categories of admissibility

(1) The following rules of law are preserved.

1 *"**Public information etc***

Any rule of law under which in criminal proceedings—

(a) published works dealing with matters of a public nature (such as histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,

(b) public documents (such as public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them,

(c) records (such as the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them, or

(d) evidence relating to a person's age or date or place of birth may be given by a person without personal knowledge of the matter.

2 ***Reputation as to character***

Any rule of law under which in criminal proceedings evidence of a person's reputation is admissible for the purpose of proving his good or bad character.

Note

The rule is preserved only so far as it allows the court to treat such evidence as proving the matter concerned.

3 ***Reputation or family tradition***

Any rule of law under which in criminal proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving—

(a) pedigree or the existence of a marriage,

(b) the existence of any public or general right, or

(c) the identity of any person or thing.

Note

The rule is preserved only so far as it allows the court to treat such evidence as proving or disproving the matter concerned.

4 ***Res gestae***

Any rule of law under which in criminal proceedings a statement is admissible as evidence of any matter stated if—

(a) the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded,

(b) the statement accompanied an act which can be properly evaluated as evidence only if considered in conjunction with the statement, or

(c) the statement relates to a physical sensation or a mental state (such as intention or emotion).

5 ***Confessions etc***

Any rule of law relating to the admissibility of confessions or mixed statements in criminal proceedings.

6 ***Admissions by agents etc***

Any rule of law under which in criminal proceedings—

(a) an admission made by an agent of a defendant is admissible against the defendant as evidence of any matter stated, or

(b) a statement made by a person to whom a defendant refers a person for information is admissible against the defendant as evidence of any matter stated.

7 ***Common enterprise***

Any rule of law under which in criminal proceedings a statement made by a party to a common enterprise is admissible against another party to the enterprise as evidence of any matter stated.

8 ***Expert evidence***

Any rule of law under which in criminal proceedings an expert witness may draw on the body of expertise relevant to his field."

(2) With the exception of the rules preserved by this section, the common law rules governing the admissibility of hearsay evidence in criminal proceedings are abolished.

119 Inconsistent statements

(1) If in criminal proceedings a person gives oral evidence and—

(a) he admits making a previous inconsistent statement, or

(b) a previous inconsistent statement made by him is proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865 (c. 18),

the statement is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(2) If in criminal proceedings evidence of an inconsistent statement by any person is given under section 124(2)(c), the statement is admissible as evidence of any matter stated in it of which oral evidence by that person would be admissible.

120 Other previous statements of witnesses

(1) This section applies where a person (the witness) is called to give evidence in criminal proceedings.

(2) If a previous statement by the witness is admitted as evidence to rebut a suggestion that his oral evidence has been fabricated, that statement is admissible as evidence of any matter stated of which oral evidence by the witness would be admissible.

(3) A statement made by the witness in a document—

(a) which is used by him to refresh his memory while giving evidence,

(b) on which he is cross-examined, and

(c) which as a consequence is received in evidence in the proceedings,

is admissible as evidence of any matter stated of which oral evidence by him would be admissible.

(4) A previous statement by the witness is admissible as evidence of any matter stated of which oral evidence by him would be admissible, if—

(a) any of the following three conditions is satisfied, and

(b) while giving evidence the witness indicates that to the best of his belief he made the statement, and that to the best of his belief it states the truth.

(5) The first condition is that the statement identifies or describes a person, object or place.

(6) The second condition is that the statement was made by the witness when the matters stated were fresh in his memory but he does not remember them, and cannot reasonably be expected to remember them, well enough to give oral evidence of them in the proceedings.

(7) The third condition is that—

(a) the witness claims to be a person against whom an offence has been committed,

(b) the offence is one to which the proceedings relate,

(c) the statement consists of a complaint made by the witness (whether to a person in authority or not) about conduct which would, if proved, constitute the offence or part of the offence,

(d) the complaint was made as soon as could reasonably be expected after the alleged conduct,

(e) the complaint was not made as a result of a threat or a promise, and

(f) before the statement is adduced the witness gives oral evidence in connection with its subject matter.

(8) For the purposes of subsection (7) the fact that the complaint was elicited (for example, by a leading question) is irrelevant unless a threat or a promise was involved.

Supplementary

121 Additional requirement for admissibility of multiple hearsay

(1) A hearsay statement is not admissible to prove the fact that an earlier hearsay statement was made unless—

(a) either of the statements is admissible under section 117, 119 or 120,

(b) all parties to the proceedings so agree, or

(c) the court is satisfied that the value of the evidence in question, taking into account how reliable the statements appear to be, is so high that the interests of justice require the later statement to be admissible for that purpose.

(2) In this section "hearsay statement" means a statement, not made in oral evidence, that is relied on as evidence of a matter stated in it.

122 Documents produced as exhibits

(1) This section applies if on a trial before a judge and jury for an offence—

(a) a statement made in a document is admitted in evidence under section 119 or 120, and

(b) the document or a copy of it is produced as an exhibit.

(2) The exhibit must not accompany the jury when they retire to consider their verdict unless—

(a) the court considers it appropriate, or

(b) all the parties to the proceedings agree that it should accompany the jury.

123 Capability to make statement

(1) Nothing in section 116, 119 or 120 makes a statement admissible as evidence if it was made by a person who did not have the required capability at the time when he made the statement.

(2) Nothing in section 117 makes a statement admissible as evidence if any person who, in order for the requirements of section 117(2) to be satisfied, must at any time have supplied or received the information concerned or created or received the document or part concerned—

(a) did not have the required capability at that time, or

(b) cannot be identified but cannot reasonably be assumed to have had the required capability at that time.

(3) For the purposes of this section a person has the required capability if he is capable of—

(a) understanding questions put to him about the matters stated, and

(b) giving answers to such questions which can be understood.

(4) Where by reason of this section there is an issue as to whether a person had the required capability when he made a statement—

(a) proceedings held for the determination of the issue must take place in the absence of the jury (if there is one);

(b) in determining the issue the court may receive expert evidence and evidence from any person to whom the statement in question was made;

(c) the burden of proof on the issue lies on the party seeking to adduce the statement, and the standard of proof is the balance of probabilities.

124 Credibility

(1) This section applies if in criminal proceedings—

(a) a statement not made in oral evidence in the proceedings is admitted as evidence of a matter stated, and

(b) the maker of the statement does not give oral evidence in connection with the subject matter of the statement.

(2) In such a case—

(a) any evidence which (if he had given such evidence) would have been admissible as relevant to his credibility as a witness is so admissible in the proceedings;

(b) evidence may with the court's leave be given of any matter which (if he had given such evidence) could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party;

(c) evidence tending to prove that he made (at whatever time) any other statement inconsistent with the statement admitted as evidence is admissible for the purpose of showing that he contradicted himself.

(3) If as a result of evidence admitted under this section an allegation is made against the maker of a statement, the court may permit a party to lead additional evidence of such description as the court may specify for the purposes of denying or answering the allegation.

(4) In the case of a statement in a document which is admitted as evidence under section 117 each person who, in order for the statement to be admissible, must have supplied or received the information concerned or created or received the document or part concerned is to be treated as the maker of the statement for the purposes of subsections (1) to (3) above.

125 Stopping the case where evidence is unconvincing

(1) If on a defendant's trial before a judge and jury for an offence the court is satisfied at any time after the close of the case for the prosecution that—

(a) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and

(b) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the defendant, his conviction of the offence would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a retrial, discharge the jury.

(2) Where—

(a) a jury is directed under subsection (1) to acquit a defendant of an offence, and

(b) the circumstances are such that, apart from this subsection, the defendant could if acquitted of that offence be found guilty of another offence,

the defendant may not be found guilty of that other offence if the court is satisfied as mentioned in subsection (1) in respect of it.

(3) If—

(a) a jury is required to determine under section 4A(2) of the Criminal Procedure (Insanity) Act 1964 (c. 84) whether a person charged on an indictment with an offence did the act or made the omission charged, and

(b) the court is satisfied as mentioned in subsection (1) above at any time after the close of the case for the prosecution that—

(i) the case against the defendant is based wholly or partly on a statement not made in oral evidence in the proceedings, and

(ii) the evidence provided by the statement is so unconvincing that, considering its importance to the case against the person, a finding that he did the act or made the omission would be unsafe,

the court must either direct the jury to acquit the defendant of the offence or, if it considers that there ought to be a rehearing, discharge the jury.

(4) This section does not prejudice any other power a court may have to direct a jury to acquit a person of an offence or to discharge a jury.

126 Court's general discretion to exclude evidence

(1) In criminal proceedings the court may refuse to admit a statement as evidence of a matter stated if—

(a) the statement was made otherwise than in oral evidence in the proceedings, and

(b) the court is satisfied that the case for excluding the statement, taking account of the danger that to admit it would result in undue waste of time, substantially

outweighs the case for admitting it, taking account of the value of the evidence.

(2) Nothing in this Chapter prejudices—

(a) any power of a court to exclude evidence under section 78 of the Police and Criminal Evidence Act 1984 (c. 60) (exclusion of unfair evidence), or

(b) any other power of a court to exclude evidence at its discretion (whether by preventing questions from being put or otherwise).

Miscellaneous

127 Expert evidence: preparatory work

(1) This section applies if—

(a) a statement has been prepared for the purposes of criminal proceedings,

(b) the person who prepared the statement had or may reasonably be supposed to have had personal knowledge of the matters stated,

(c) notice is given under the appropriate rules that another person (the expert) will in evidence given in the proceedings orally or under section 9 of the Criminal Justice Act 1967 (c. 80) base an opinion or inference on the statement, and

(d) the notice gives the name of the person who prepared the statement and the nature of the matters stated.

(2) In evidence given in the proceedings the expert may base an opinion or inference on the statement.

(3) If evidence based on the statement is given under subsection (2) the statement is to be treated as evidence of what it states.

(4) This section does not apply if the court, on an application by a party to the proceedings, orders that it is not in the interests of justice that it should apply.

(5) The matters to be considered by the court in deciding whether to make an order under subsection (4) include—

(a) the expense of calling as a witness the person who prepared the statement;

(b) whether relevant evidence could be given by that person which could not be given by the expert;

(c) whether that person can reasonably be expected to remember the matters stated well enough to give oral evidence of them.

(6) Subsections (1) to (5) apply to a statement prepared for the purposes of a criminal investigation as they apply to a statement prepared for the purposes of criminal proceedings, and in such a case references to the proceedings are to criminal proceedings arising from the investigation.

(7) The appropriate rules are rules made—

(a) under section 81 of the Police and Criminal Evidence Act 1984 (advance notice of expert evidence in Crown Court), or

(b) under section 144 of the Magistrates' Courts Act 1980 (c. 43) by virtue of section 20(3) of the Criminal Procedure and Investigations Act 1996 (c. 25) (advance notice of expert evidence in magistrates' courts).

128 Confessions

(1) In the Police and Criminal Evidence Act 1984 (c. 60) the following section is inserted after section 76—

"**76A Confessions may be given in evidence for co-accused**

(1) In any proceedings a confession made by an accused person may be given in evidence for another person charged in the same proceedings (a co-accused) in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of this section.

(2) If, in any proceedings where a co-accused proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or may have been obtained—

(a) by oppression of the person who made it; or

(b) in consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence for the co-accused except in so far as it is proved to the court on the balance of probabilities that the confession (notwithstanding that it may be true) was not so obtained.

(3) Before allowing a confession made by an accused person to be given in evidence for a co-accused in any proceedings, the court may of its own motion require the fact that the confession was not obtained as mentioned in subsection (2) above to be proved in the proceedings on the balance of probabilities.

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence—

(a) of any facts discovered as a result of the confession; or

(b) where the confession is relevant as showing that the accused speaks, writes or expresses himself in a particular way, of so much of the confession as is necessary to show that he does so.

(5) Evidence that a fact to which this subsection applies was discovered as a result of a statement made by an accused person shall not be admissible unless evidence of how it was discovered is given by him or on his behalf.

(6) Subsection (5) above applies—

(a) to any fact discovered as a result of a confession which is wholly excluded in pursuance of this section; and

(b) to any fact discovered as a result of a confession which is partly so excluded, if the fact is discovered as a result of the excluded part of the confession.

(7) In this section "oppression" includes torture, inhuman or degrading treatment, and the use or threat of violence (whether or not amounting to torture)."

(2) Subject to subsection (1), nothing in this Chapter makes a confession by a defendant admissible if it would not be admissible under section 76 of the Police and Criminal Evidence Act 1984 (c. 60).

(3) In subsection (2) "confession" has the meaning given by section 82 of that Act.

129 Representations other than by a person

(1) Where a representation of any fact—

(a) is made otherwise than by a person, but

(b) depends for its accuracy on information supplied (directly or indirectly) by a person,

the representation is not admissible in criminal proceedings as evidence of the fact unless it is proved that the information was accurate.

(2) Subsection (1) does not affect the operation of the presumption that a mechanical device has been properly set or calibrated.

130 Depositions

In Schedule 3 to the Crime and Disorder Act 1998 (c. 37), sub-paragraph (4) of paragraph 5 is omitted (power of the court to overrule an objection to a deposition being read as evidence by virtue of that paragraph).

131 Evidence at retrial

For paragraphs 1 and 1A of Schedule 2 to the Criminal Appeal Act 1968 (c. 19) (oral evidence and use of transcripts etc at retrials under that Act) there is substituted—

"Evidence

1 (1) Evidence given at a retrial must be given orally if it was given orally at the original trial, unless—

(a) all the parties to the retrial agree otherwise;

(b) section 116 of the Criminal Justice Act 2003 applies (admissibility of hearsay evidence where a witness is unavailable); or

(c) the witness is unavailable to give evidence, otherwise than as mentioned in subsection (2) of that section, and section 114(1)(d) of that Act applies (admission of hearsay evidence under residual discretion).

(2) Paragraph 5 of Schedule 3 to the Crime and Disorder Act 1998 (use of depositions) does not apply at a retrial to a deposition read as evidence at the original trial."

General

132 Rules of court

(1) Rules of court may make such provision as appears to the appropriate authority to be necessary or expedient for the purposes of this Chapter; and the appropriate authority is the authority entitled to make the rules.

(2) The rules may make provision about the procedure to be followed and other conditions to be fulfilled by a party proposing to tender a statement in evidence under any provision of this Chapter.

(3) The rules may require a party proposing to tender the evidence to serve on each party to the proceedings such notice, and such particulars of or relating to the evidence, as may be prescribed.

(4) The rules may provide that the evidence is to be treated as admissible by agreement of the parties if—

(a) a notice has been served in accordance with provision made under subsection (3), and

(b) no counter-notice in the prescribed form objecting to the admission of the evidence has been served by a party.

(5) If a party proposing to tender evidence fails to comply with a prescribed requirement applicable to it—

(a) the evidence is not admissible except with the court's leave;

(b) where leave is given the court or jury may draw such inferences from the failure as appear proper;

(c) the failure may be taken into account by the court in considering the exercise of its powers with respect to costs.

(6) In considering whether or how to exercise any of its powers under subsection (5) the court shall have regard to whether there is any justification for the failure to comply with the requirement.

(7) A person shall not be convicted of an offence solely on an inference drawn under subsection (5)(b).

(8) Rules under this section may—

(a) limit the application of any provision of the rules to prescribed circumstances;

(b) subject any provision of the rules to prescribed exceptions;

(c) make different provision for different cases or circumstances.

(9) Nothing in this section prejudices the generality of any enactment conferring power to make rules of court; and no particular provision of this section prejudices any general provision of it.

(10) In this section—

"prescribed" means prescribed by rules of court;

"rules of court" means—

(a) Crown Court Rules;

(b) Criminal Appeal Rules;

(c) rules under section 144 of the Magistrates' Courts Act 1980 (c. 43).

133 Proof of statements in documents

Where a statement in a document is admissible as evidence in criminal proceedings, the statement may be proved by producing either—

(a) the document, or

(b) (whether or not the document exists) a copy of the document or of the material part of it,

authenticated in whatever way the court may approve.

134 Interpretation of Chapter 2

(1) In this Chapter—

"copy", in relation to a document, means anything on to which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

"criminal proceedings" means criminal proceedings in relation to which the strict rules of evidence apply;

"defendant", in relation to criminal proceedings, means a person charged with an offence in those proceedings;

"document" means anything in which information of any description is recorded;

"oral evidence" includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

"statutory provision" means any provision contained in, or in an instrument made under, this or any other Act, including any Act passed after this Act.

(2) Section 115 (statements and matters stated) contains other general interpretative provisions.

(3) Where a defendant is charged with two or more offences in the same criminal proceedings, this Chapter has effect as if each offence were charged in separate proceedings.

135 Armed forces

Schedule 7 (hearsay evidence: armed forces) has effect.

136 Repeals etc

In the Criminal Justice Act 1988 (c. 33), the following provisions (which are to some extent superseded by provisions of this Chapter) are repealed—

(a) Part 2 and Schedule 2 (which relate to documentary evidence);

(b) in Schedule 13, paragraphs 2 to 5 (which relate to documentary evidence in service courts etc).

CHAPTER 3

MISCELLANEOUS AND SUPPLEMENTAL

137 Evidence by video recording

(1) This section applies where—

(a) a person is called as a witness in proceedings for an offence triable only on indictment, or for a prescribed offence triable either way,

(b) the person claims to have witnessed (whether visually or in any other way)—

(i) events alleged by the prosecution to include conduct constituting the offence or part of the offence, or

(ii) events closely connected with such events,

(c) he has previously given an account of the events in question (whether in response to questions asked or otherwise),

(d) the account was given at a time when those events were fresh in the person's memory (or would have been, assuming the truth of the claim mentioned in paragraph (b)),

(e) a video recording was made of the account,

(f) the court has made a direction that the recording should be admitted as evidence in chief of the witness, and the direction has not been rescinded, and

(g) the recording is played in the proceedings in accordance with the direction.

(2) If, or to the extent that, the witness in his oral evidence in the proceedings asserts the truth of the statements made by him in the recorded account, they shall be treated as if made by him in that evidence.

(3) A direction under subsection (1)(f)—

(a) may not be made in relation to a recorded account given by the defendant;

(b) may be made only if it appears to the court that—

(i) the witness's recollection of the events in question is likely to have been significantly better when he gave the recorded account than it will be when he gives oral evidence in the proceedings, and

(ii) it is in the interests of justice for the recording to be admitted, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are—

(a) the interval between the time of the events in question and the time when the recorded account was made;

(b) any other factors that might affect the reliability of what the witness said in that account;

(c) the quality of the recording;

(d) any views of the witness as to whether his evidence in chief should be given orally or by means of the recording.

(5) For the purposes of subsection (2) it does not matter if the statements in the recorded account were not made on oath.

(6) In this section "prescribed" means of a description specified in an order made by the Secretary of State.

138 Video evidence: further provisions

(1) Where a video recording is admitted under section 137, the witness may not give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, has been dealt with adequately in the recorded account.

(2) The reference in subsection (1)(f) of section 137 to the admission of a recording includes a reference to the admission of part of the recording; and references in that section and this one to the video recording or to the witness's recorded account shall, where appropriate, be read accordingly.

(3) In considering whether any part of a recording should be not admitted under section 137, the court must consider—

(a) whether admitting that part would carry a risk of prejudice to the defendant, and

(b) if so, whether the interests of justice nevertheless require it to be admitted in view of the desirability of showing the whole, or substantially the whole, of the recorded interview.

(4) A court may not make a direction under section 137(1)(f) in relation to any proceedings unless—

(a) the Secretary of State has notified the court that arrangements can be made, in the area in which it appears to the court that the proceedings will take place, for implementing directions under that section, and

(b) the notice has not been withdrawn.

(5) Nothing in section 137 affects the admissibility of any video recording which would be admissible apart from that section.

139 Use of documents to refresh memory

(1) A person giving oral evidence in criminal proceedings about any matter may, at any stage in the course of doing so, refresh his memory of it from a document made or verified by him at an earlier time if—

(a) he states in his oral evidence that the document records his recollection of the matter at that earlier time, and

(b) his recollection of the matter is likely to have been significantly better at that time than it is at the time of his oral evidence.

(2) Where—

(a) a person giving oral evidence in criminal proceedings about any matter has previously given an oral account, of which a sound recording was made, and he states in that evidence that the account represented his recollection of the matter at that time,

(b) his recollection of the matter is likely to have been significantly better at the time of the previous account than it is at the time of his oral evidence, and

(c) a transcript has been made of the sound recording,

he may, at any stage in the course of giving his evidence, refresh his memory of the matter from that transcript.

140 Interpretation of Chapter 3

In this Chapter—

"criminal proceedings" means criminal proceedings in relation to which the strict rules of evidence apply;

"defendant", in relation to criminal proceedings, means a person charged with an offence in those proceedings;

"document" means anything in which information of any description is recorded, but not including any recording of sounds or moving images;

"oral evidence" includes evidence which, by reason of any disability, disorder or other impairment, a person called as a witness gives in writing or by signs or by way of any device;

"video recording" means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound-track.

141 Saving

No provision of this Part has effect in relation to criminal proceedings begun before the commencement of that provision.

PART 12

SENTENCING

CHAPTER 1

GENERAL PROVISIONS ABOUT SENTENCING

Matters to be taken into account in sentencing

142 Purposes of sentencing

(1) Any court dealing with an offender in respect of his offence 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.

(2) Subsection (1) does not apply—

(a) in relation to an offender who is aged under 18 at the time of conviction,

(b) to an offence the sentence for which is fixed by law,

(c) to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (minimum sentence for certain firearms offences), under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences) or under any of sections 225 to 228 of this Act (dangerous offenders), or

(d) in relation to the making under Part 3 of the Mental Health Act 1983 (c. 20) of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction.

(3) In this Chapter "sentence", in relation to an offence, includes any order made by a court when dealing with the offender in respect of his offence; and "sentencing" is to be construed accordingly.

143 Determining the seriousness of an offence

(1) In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might forseeably have caused.

(2) In considering the seriousness of an offence ("the current offence") committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, to—

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

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

(3) In considering the seriousness of any 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.

(4) Any reference in subsection (2) to a previous conviction is to be read as a reference to—

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

(b) a previous finding of guilt in service disciplinary proceedings.

(5) Subsections (2) and (4) do not prevent the court from treating a previous conviction by a court outside the United Kingdom as an aggravating factor in any case where the court considers it appropriate to do so.

144 Reduction in sentences for guilty pleas

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court, a court must take into account—

(a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and

(b) the circumstances in which this indication was given.

(2) In the case of an offence the sentence for which falls to be imposed under subsection (2) of section 110 or 111 of the Sentencing Act, nothing in that subsection prevents the court, after taking into account any matter referred to in subsection (1) of this section, from imposing any sentence which is not less than 80 per cent of that specified in that subsection.

145 Increase in sentences for racial or religious aggravation

(1) This section applies where a court is considering the seriousness of an offence other than one under sections 29 to 32 of the Crime and Disorder Act 1998 (c. 37) (racially or religiously aggravated assaults, criminal damage, public order offences and harassment etc).

(2) If the offence was racially or religiously aggravated, 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) Section 28 of the Crime and Disorder Act 1998 (meaning of "racially or religiously aggravated") applies for the purposes of this section as it applies for the purposes of sections 29 to 32 of that Act.

146 Increase in sentences for aggravation related to disability or sexual orientation

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—

(a) that, 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 sexual orientation (or presumed sexual orientation) of the victim, or

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

(b) that the offence is motivated (wholly or partly)—

(i) by hostility towards persons who are of a particular sexual orientation, or

(ii) by hostility towards persons who have a disability or a particular disability.

(3) The court—

(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and

(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section "disability" means any physical or mental impairment.

General restrictions on community sentences

147 Meaning of "community sentence" etc.

(1) In this Part "community sentence" means a sentence which consists of or includes—

(a) a community order (as defined by section 177), or

(b) one or more youth community orders.

(2) In this Chapter "youth community order" means—

(a) a curfew order as defined by section 163 of the Sentencing Act,

(b) an exclusion order under section 40A(1) of that Act,

(c) an attendance centre order as defined by section 163 of that Act,

(d) a supervision order under section 63(1) of that Act, or

(e) an action plan order under section 69(1) of that Act.

148 Restrictions on imposing community sentences

(1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

(2) Where a court passes a community sentence which consists of or includes a community order—

(a) the particular requirement or requirements forming part of the community order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and

(b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(3) Where a court passes a community sentence which consists of or includes one or more youth community orders—

(a) the particular order or orders forming part of the sentence must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and

(b) the restrictions on liberty imposed by the order or orders must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

(4) Subsections (1) and (2)(b) have effect subject to section 151(2).

149 Passing of community sentence on offender remanded in custody

(1) In determining the restrictions on liberty to be imposed by a community order or youth 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 the offence or any other offence the charge for which was founded on the same facts or evidence.

(2) In subsection (1) "remanded in custody" has the meaning given by section 242(2).

150 Community sentence not available where sentence fixed by law etc.

The power to make a community order or youth community order is not exercisable in respect of an offence for which the sentence—

(a) is fixed by law,

(b) falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (required custodial sentence for certain firearms offences),

(c) falls to be imposed under section 110(2) or 111(2) of the Sentencing Act (requirement to impose custodial sentences for certain repeated offences committed by offenders aged 18 or over), or

(d) falls to be imposed under any of sections 225 to 228 of this Act (requirement to impose custodial sentences for certain offences committed by offenders posing risk to public).

151 Community order for persistent offender previously fined

(1) Subsection (2) applies where—

(a) a person aged 16 or over is convicted of an offence ("the current offence"),

(b) on three or more previous occasions he has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine, and

(c) despite the effect of section 143(2), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a community sentence.

(2) The court may make a community order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to make such an order.

(3) The matters referred to in subsection (2) are—

(a) the nature of the offences to which the previous convictions mentioned in subsection (1)(b) relate and their relevance to the current offence, and

(b) the time that has elapsed since the offender's conviction of each of those offences.

(4) In subsection (1)(b), the reference to conviction by a court in the United Kingdom includes a reference to the finding of guilt in service disciplinary proceedings; and, in relation to any such finding of guilt, the reference to the sentence passed is a reference to the punishment awarded.

(5) For the purposes of subsection (1)(b), a compensation order does not form part of an offender's sentence.

(6) For the purposes of subsection (1)(b), it is immaterial whether on other previous occasions a court has passed on the offender a sentence not consisting only of a fine.

(7) This section does not limit the extent to which a court may, in accordance with section 143(2), treat any previous convictions of the offender as increasing the seriousness of an offence.

General restrictions on discretionary custodial sentences

152 General restrictions on imposing discretionary custodial sentences

(1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one—

(a) fixed by law, or

(b) falling to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27), under 110(2) or 111(2) of the Sentencing Act or under any of sections 225 to 228 of this Act.

(2) The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence.

(3) Nothing in subsection (2) prevents the court from passing a custodial sentence on the offender if—

(a) he fails to express his willingness to comply with a requirement which is proposed by the court to be included in a community order and which requires an expression of such willingness, or

(b) he fails to comply with an order under section 161(2) (pre-sentence drug testing).

153 Length of discretionary custodial sentences: general provision

(1) This section applies where a court passes a custodial sentence other than one fixed by law or falling to be imposed under section 225 or 226.

(2) Subject to section 51A(2) of the Firearms Act 1968 (c. 27), sections 110(2) and 111(2) of the Sentencing Act and sections 227(2) and 228(2) of this Act, 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 the offence, or the combination of the offence and one or more offences associated with it.

General limit on magistrates' court's power to impose imprisonment

154 General limit on magistrates' court's power to impose imprisonment

(1) A magistrates' court does not have power to impose imprisonment for more than 12 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 for more than 12 months.

(3) Subsection (1) is without prejudice to section 133 of the Magistrates' Courts Act 1980 (c. 43) (consecutive terms of imprisonment).

(4) Any power of a magistrates' court to impose a term of imprisonment for non-payment of a fine, or for want of sufficient distress to satisfy a fine, is not limited by virtue of subsection (1).

(5) In subsection (4) "fine" includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation.

(6) In this section "impose imprisonment" means pass a sentence of imprisonment or fix a term of imprisonment for failure to pay any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.

(7) Section 132 of the Magistrates' Courts Act 1980 contains provisions about the minimum term of imprisonment which may be imposed by a magistrates' court.

155 Consecutive terms of imprisonment

(1) Section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment) is amended as follows.

(2) In subsection (1), for "6 months" there is substituted "65 weeks".

(3) Subsection (2) is omitted.

(4) In subsection (3) for "the preceding subsections" there is substituted "subsection (1) above".

Procedural requirements for imposing community sentences and discretionary custodial sentences

156 Pre-sentence reports and other requirements

(1) In forming any such opinion as is mentioned in section 148(1), (2)(b) or (3)(b), section 152(2) or section 153(2), a court must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.

(2) In forming any such opinion as is mentioned in section 148(2)(a) or (3)(a), the court may take into account any information about the offender which is before it.

(3) Subject to subsection (4), a court must obtain and consider a pre-sentence report before—

(a) in the case of a custodial sentence, forming any such opinion as is mentioned in section 152(2), section 153(2), section 225(1)(b), section 226(1)(b), section 227(1)(b) or section 228(1)(b)(i), or

(b) in the case of a community sentence, forming any such opinion as is mentioned in section 148(1), (2)(b) or (3)(b) or any opinion as to the suitability for the offender of the particular requirement or requirements to be imposed by the community order.

(4) Subsection (3) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(5) In a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (4) unless—

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

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

(6) No custodial sentence or community sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion referred to in subsection (3), but any court on an appeal against such a sentence—

(a) must, subject to subsection (7), obtain a pre-sentence report if none was obtained by the court below, and

(b) must consider any such report obtained by it or by that court.

(7) Subsection (6)(a) does not apply if the court is of the opinion—

(a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or

(b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.

(8) In a case where the offender is aged under 18, the court must not form the opinion mentioned in subsection (7) unless—

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

(b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.

157 Additional requirements in case of mentally disordered offender

(1) Subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court must consider—

(a) any information before it which relates to his 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) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

(a) must obtain a medical report if none was obtained by the court below, and

(b) must consider any such report obtained by it or by that court.

(5) In this section "mentally disordered", in relation to any person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983 (c. 20).

(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 by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder.

(7) Nothing in this section is to be taken to limit the generality of section 156.

158 Meaning of "pre-sentence report"

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

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

(b) where the offender is aged under 18, an officer of a local probation board, a social worker of a local authority social services department or a member of a youth offending team.

Disclosure of pre-sentence reports etc

159 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.

(2) Subject to subsections (3) and (4), the court must give a copy of the report—

(a) to the offender or his counsel or solicitor,

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

(c) to the prosecutor, that is to say, the person having the conduct of the proceedings in respect of the offence.

(3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report 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.

(4) If the prosecutor is not of a description prescribed by order made by the Secretary of State, a copy of the report need not be given to the prosecutor if the court considers that it would be inappropriate for him to be given it.

(5) No information obtained by virtue of subsection (2)(c) 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.

(6) In relation to an offender aged under 18 for whom a local authority have parental responsibility and who—

(a) is in their care, or

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

references in this section to his parent or guardian are to be read as references to that authority.

(7) In this section and section 160—

"harm" has the same meaning as in section 31 of the Children Act 1989 (c. 41);

"local authority" and "parental responsibility" have the same meanings as in that Act;

"social services functions", in relation to a local authority, has the meaning given by section 1A of the Local Authority Social Services Act 1970 (c. 42).

160 Other reports of local probation boards and members of youth offending teams

(1) This section applies where—

(a) a report by an officer of a local probation board or 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) Subject to subsection (3), the court must give a copy of the report—

(a) to the offender or his counsel or solicitor, and

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

(3) If the offender is aged under 18 and it appears to the court that the disclosure to the offender or to any parent or guardian of his of any information contained in the report 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.

(4) In relation to an offender aged under 18 for whom a local authority have parental responsibility and who—

(a) is in their care, or

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

references in this section to his parent or guardian are to be read as references to that authority.

Pre-sentence drug testing

161 Pre-sentence drug testing

(1) Where a person aged 14 or over is convicted of an offence and the court is considering passing a community sentence or a suspended sentence, it may make an order under subsection (2) for the purpose of ascertaining whether the offender has any specified Class A drug in his body.

(2) The order requires the offender to provide, in accordance with the order, samples of any description specified in the order.

(3) Where the offender has not attained the age of 17, the order must provide for the samples to be provided in the presence of an appropriate adult.

(4) If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with the order it may impose on him a fine of an amount not exceeding level 4.

(5) In subsection (4) "level 4" means the amount which, in relation to a fine for a summary offence, is level 4 on the standard scale.

(6) The court may not make an order under subsection (2) unless it 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.

(7) The Secretary of State may by order amend subsection (1) by substituting for the age for the time being specified there a different age specified in the order.

(8) In this section—

"appropriate adult", in relation to a person under the age of 17, means—

(a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,

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

(c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

"specified Class A drug" has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000 (c. 43).

Fines

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

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

(2) Where a magistrates' court has been notified in accordance with section 12(4) of the Magistrates' Courts Act 1980 (c. 43) that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.

(3) In this section "a financial circumstances order" means, in relation to any individual, an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.

(4) An individual who without reasonable excuse fails to comply with a financial circumstances order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) If an individual, in furnishing any statement in pursuance of a financial circumstances order—

(a) makes a statement which he knows to be false in a material particular,

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

(c) knowingly fails to disclose any material fact,

he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) Proceedings in respect of an offence under subsection (5) may, notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.

163 General power of Crown Court to fine offender convicted on indictment

Where a person is convicted on indictment of any offence, other than an offence for which the sentence is fixed by law or falls to be imposed under section 110(2) or 111(2) of the Sentencing Act or under any of sections 225 to 228 of this Act, the court, if not precluded from sentencing an offender by its exercise of some other power, may impose a fine instead of or in addition to dealing with him in any other way in which the court has power to deal with him, subject however to any enactment requiring the offender to be dealt with in a particular way.

164 Fixing of fines

(1) Before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his financial circumstances.

(2) 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.

(3) 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.

(4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.

(5) Where—

(a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates' Courts Act 1980 (c. 43) (non-appearance of accused), or

(b) an offender—

(i) has failed to furnish a statement of his financial circumstances in response to a request which is an official request for the purposes of section 20A of the Criminal Justice Act 1991 (c. 53) (offence of making false statement as to financial circumstances),

(ii) has failed to comply with an order under section 162(1), or

(iii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

165 Remission of fines

(1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 164(5).

(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 would—

(a) have fixed a smaller amount, or

(b) not have fined him,

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 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.

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

Savings for power to mitigate etc

166 Savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders

(1) Nothing in—

(a) section 148 (imposing community sentences),

(b) section 152, 153 or 157 (imposing custodial sentences),

(c) section 156 (pre-sentence reports and other requirements),

(d) section 164 (fixing of fines),

prevents a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.

(2) Section 152(2) does not prevent a court, after taking into account such matters, from passing a community sentence even though it is of the opinion that the offence, or 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 the sections mentioned in subsection (1)(a) to (d) 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 his 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) Nothing in the sections mentioned in subsection (1)(a) to (d) is to be taken—

(a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender, or

(b) as restricting any power (whether under the Mental Health Act 1983 (c. 20) 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.

(6) In subsection (5) "mentally disordered", in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983.

Sentencing and allocation guidelines

167 The Sentencing Guidelines Council

(1) There shall be a Sentencing Guidelines Council (in this Chapter referred to as the Council) consisting of—

(a) the Lord Chief Justice, who is to be chairman of the Council,

(b) seven members (in this section and section 168 referred to as "judicial members") appointed by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice, and

(c) four members (in this section and section 168 referred to as "non-judicial members") appointed by the Secretary of State after consultation with the Lord Chancellor and the Lord Chief Justice.

(2) A person is eligible to be appointed as a judicial member if he is—

(a) a Lord Justice of Appeal,
(b) a judge of the High Court,
(c) a Circuit judge,
(d) a District Judge (Magistrates' Courts), or
(e) a lay justice.

(3) The judicial members must include a Circuit judge, a District Judge (Magistrates' Courts) and a lay justice.

(4) A person is eligible for appointment as a non-judicial member if he appears to the Secretary of State to have experience in one or more of the following areas—
(a) policing,
(b) criminal prosecution,
(c) criminal defence, and
(d) the promotion of the welfare of victims of crime.

(5) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.

(6) The non-judicial members must include at least one person appearing to the Secretary of State to have experience in each area.

(7) The Lord Chief Justice must appoint one of the judicial members or non-judicial members to be deputy chairman of the Council.

(8) In relation to any meeting of the Council from which the Lord Chief Justice is to be absent, he may nominate any person eligible for appointment as a judicial member to act as a member on his behalf at the meeting.

(9) The Secretary of State may appoint a person appearing to him to have experience of sentencing policy and the administration of sentences to attend and speak at any meeting of the Council.

(10) In this section and section 168 "lay justice" means a justice of the peace who is not a District Judge (Magistrates' Courts).

168 Sentencing Guidelines Council: supplementary provisions

(1) In relation to the Council, the Lord Chancellor may by order make provision—
(a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members,
(b) enabling the appropriate Minister to remove a judicial member or non-judicial member from office on grounds of incapacity or misbehaviour, and
(c) as to the proceedings of the Council.

(2) In subsection (1)(b) "the appropriate Minister" means—
(a) in relation to a judicial member, the Lord Chancellor, and
(b) in relation to a non-judicial member, the Secretary of State.

(3) The validity of anything done by the Council is not affected by any vacancy among its members, by any defect in the appointment of a member or by any failure to comply with section 167(3), (6) or (7).

(4) The Lord Chancellor may pay—

(a) to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as he may determine, and

(b) to any other judicial member or the Lord Chief Justice, such expenses as he may determine.

(5) The Secretary of State may pay to any non-judicial member such remuneration or expenses as he may determine.

169 The Sentencing Advisory Panel

(1) There shall continue to be a Sentencing Advisory Panel (in this Chapter referred to as "the Panel") constituted by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice.

(2) The Lord Chancellor must, after consultation with the Secretary of State and the Lord Chief Justice, appoint one of the members of the Panel to be its chairman.

(3) The Lord Chancellor may pay to any member of the Panel such remuneration or expenses as he may determine.

170 Guidelines relating to sentencing and allocation

(1) In this Chapter—

(a) "sentencing guidelines" means guidelines relating to the sentencing of offenders, which may be general in nature or limited to a particular category of offence or offender, and

(b) "allocation guidelines" means guidelines relating to decisions by a magistrates' court under section 19 of the Magistrates' Courts Act 1980 (c. 43) as to whether an offence is more suitable for summary trial or trial on indictment.

(2) The Secretary of State may at any time propose to the Council—

(a) that sentencing guidelines be framed or revised by the Council—

(i) in respect of offences or offenders of a particular category, or

(ii) in respect of a particular matter affecting sentencing, or

(b) that allocation guidelines be framed or revised by the Council.

(3) The Council may from time to time consider whether to frame sentencing guidelines or allocation guidelines and, if it receives—

(a) a proposal under section 171(2) from the Panel, or

(b) a proposal under subsection (2) from the Secretary of State,

must consider whether to do so.

(4) Where sentencing guidelines or allocation guidelines have been issued by the Council as definitive guidelines, the Council must from time to time (and, in particular, if it receives a proposal under section 171(2) from the Panel or under subsection (2) from the Secretary of State) consider whether to revise them.

(5) Where the Council decides to frame or revise sentencing guidelines, the matters to which the Council must have regard include—

(a) the need to promote consistency in sentencing,

(b) the sentences imposed by courts in England and Wales for offences to which the guidelines relate,

(c) the cost of different sentences and their relative effectiveness in preventing re-offending,

(d) the need to promote public confidence in the criminal justice system, and

(e) the views communicated to the Council, in accordance with section 171(3)(b), by the Panel.

(6) Where the Council decides to frame or revise allocation guidelines, the matters to which the Council must have regard include—

(a) the need to promote consistency in decisions under section 19 of the Magistrates' Courts Act 1980 (c. 43), and

(b) the views communicated to the Council, in accordance with section 171(3)(b), by the Panel.

(7) Sentencing guidelines in respect of an offence or category of offences must include criteria for determining the seriousness of the offence or offences, including (where appropriate) criteria for determining the weight to be given to any previous convictions of offenders.

(8) Where the Council has prepared or revised any sentencing guidelines or allocation guidelines, it must—

(a) publish them as draft guidelines, and

(b) consult about the draft guidelines—

(i) the Secretary of State,

(ii) such persons as the Lord Chancellor, after consultation with the Secretary of State, may direct, and

(iii) such other persons as the Council considers appropriate.

(9) The Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines.

171 Functions of Sentencing Advisory Panel in relation to guidelines

(1) Where the Council decides to frame or revise any sentencing guidelines or allocation guidelines, otherwise than in response to a proposal from the Panel under subsection (2), the Council must notify the Panel.

(2) The Panel may at any time propose to the Council—

(a) that sentencing guidelines be framed or revised by the Council—

(i) in respect of offences or offenders of a particular category, or

(ii) in respect of a particular matter affecting sentencing, or

(b) that allocation guidelines be framed or revised by the Council.

(3) Where the Panel receives a notification under subsection (1) or makes a proposal under subsection (2), the Panel must—

(a) obtain and consider the views on the matters in issue of such persons or bodies as may be determined, after consultation with the Secretary of State and the Lord Chancellor, by the Council, and

(b) formulate its own views on those matters and communicate them to the Council.

(4) Paragraph (a) of subsection (3) does not apply where the Council notifies the Panel of the Council's view that the urgency of the case makes it impracticable for the Panel to comply with that paragraph.

172 Duty of court to have regard to sentencing guidelines

(1) Every court must—

(a) in sentencing an offender, have regard to any guidelines which are relevant to the offender's case, and

(b) in exercising any other function relating to the sentencing of offenders, have regard to any guidelines which are relevant to the exercise of the function.

(2) In subsection (1) "guidelines" means sentencing guidelines issued by the Council under section 170(9) as definitive guidelines, as revised by subsequent guidelines so issued.

173 Annual report by Council

(1) The Council must as soon as practicable after the end of each financial year make to the Ministers a report on the exercise of the Council's functions during the year.

(2) If section 167 comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which that section comes into force and ending with the end of the next financial year.

(3) The Ministers must lay a copy of the report before each House of Parliament.

(4) The Council must publish the report once the copy has been so laid.

(5) In this section—

"financial year" means a period of 12 months ending with 31st March;

"the Ministers" means the Secretary of State and the Lord Chancellor.

Duty of court to explain sentence

174 Duty to give reasons for, and explain effect of, sentence

(1) Subject to subsections (3) and (4), any court passing sentence on an offender—

(a) must state in open court, in ordinary language and in general terms, its reasons for deciding on the sentence passed, and

(b) must explain to the offender in ordinary language—

(i) the effect of the sentence,

(ii) where the offender is required to comply with any order of the court forming part of the sentence, the effects of non-compliance with the order,

(iii) any power of the court, on the application of the offender or any other person, to vary or review any order of the court forming part of the sentence, and

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

(2) In complying with subsection (1)(a), the court must—

(a) where guidelines indicate that a sentence of a particular kind, or within a particular range, would normally be appropriate for the offence and the sentence is of a different kind, or is outside that range, state the court's reasons for deciding on a sentence of a different kind or outside that range,

(b) where the sentence is a custodial sentence and the duty in subsection (2) of section 152 is not excluded by subsection (1)(a) or (b) or (3) of that section, state that it is of the opinion referred to in section 152(2) and why it is of that opinion,

(c) where the sentence is a community sentence and the case does not fall within section 151(2), state that it is of the opinion that section 148(1) applies and why it is of that opinion,

(d) where as a result of taking into account any matter referred to in section 144(1), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, state that fact, and

(e) in any case, mention any aggravating or mitigating factors which the court has regarded as being of particular importance.

(3) Subsection (1)(a) does not apply—

(a) to an offence the sentence for which is fixed by law (provision relating to sentencing for such an offence being made by section 270), or

(b) to an offence the sentence for which falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) or under subsection (2) of section 110 or 111 of the Sentencing Act (required custodial sentences).

(4) The Secretary of State may by order—

(a) prescribe cases in which subsection (1)(a) or (b) does not apply, and

(b) prescribe cases in which the statement referred to in subsection (1)(a) or the explanation referred to in subsection (1)(b) may be made in the absence of the offender, or may be provided in written form.

(5) Where a magistrates' court passes a custodial sentence, it must cause any reason stated by virtue of subsection (2)(b) to be specified in the warrant of commitment and entered on the register.

(6) In this section—

"guidelines" has the same meaning as in section 172;

"the register" has the meaning given by section 163 of the Sentencing Act.

Publication of information by Secretary of State

175 Duty to publish information about sentencing

In section 95 of the Criminal Justice Act 1991 (c. 53) (information for financial and other purposes) in subsection (1) before the "or" at the end of paragraph (a) there is inserted—

"(aa) enabling such persons to become aware of the relative effectiveness of different sentences—

(i) in preventing re-offending, and

(ii) in promoting public confidence in the criminal justice system;".

Interpretation of Chapter

176 Interpretation of Chapter 1

In this Chapter—

"allocation guidelines" has the meaning given by section 170(1)(b);

"the Council" means the Sentencing Guidelines Council;

"the Panel" means the Sentencing Advisory Panel;

"sentence" and "sentencing" are to be read in accordance with section 142(3);

"sentencing guidelines" has the meaning given by section 170(1)(a);

"youth community order" has the meaning given by section 147(2).

CHAPTER 2

COMMUNITY ORDERS: OFFENDERS AGED 16 OR OVER

177 Community orders

(1) Where a person aged 16 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a "community order") imposing on him any one or more of the following requirements—

(a) an unpaid work requirement (as defined by section 199),

(b) an activity requirement (as defined by section 201),

(c) a programme requirement (as defined by section 202),

(d) a prohibited activity requirement (as defined by section 203),

(e) a curfew requirement (as defined by section 204),

(f) an exclusion requirement (as defined by section 205),

(g) a residence requirement (as defined by section 206),

(h) a mental health treatment requirement (as defined by section 207),

(i) a drug rehabilitation requirement (as defined by section 209),

(j) an alcohol treatment requirement (as defined by section 212),

(k) a supervision requirement (as defined by section 213), and

(l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

(2) Subsection (1) has effect subject to sections 150 and 218 and to the following provisions of Chapter 4 relating to particular requirements—

(a) section 199(3) (unpaid work requirement),

(b) section 201(3) and (4) (activity requirement),

(c) section 202(4) and (5) (programme requirement),

(d) section 203(2) (prohibited activity requirement),

(e) section 207(3) (mental health treatment requirement),

(f) section 209(2) (drug rehabilitation requirement), and

(g) section 212(2) and (3) (alcohol treatment requirement).

(3) Where the court makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement (as defined by section 215) unless—

(a) it is prevented from doing so by section 215(2) or 218(4), or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

(4) Where the court makes a community order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented from doing so by section 215(2) or 218(4).

(5) A community order must specify a date, not more than three years after the date of the order, by which all the requirements in it must have been complied with; and a community order which imposes two or more different requirements falling within subsection (1) may also specify an earlier date or dates in relation to compliance with any one or more of them.

(6) Before making a community order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

178 Power to provide for court review of community orders

(1) The Secretary of State may by order—

(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) An order under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 191 and 192 in relation to suspended sentence orders.

(3) An order under this section may repeal or amend any provision of this Part.

179 Breach, revocation or amendment of community order

Schedule 8 (which relates to failures to comply with the requirements of community orders and to the revocation or amendment of such orders) shall have effect.

180 Transfer of community orders to Scotland or Northern Ireland

Schedule 9 (transfer of community orders to Scotland or Northern Ireland) shall have effect.

CHAPTER 3

PRISON SENTENCES OF LESS THAN 12 MONTHS

Prison sentences of less than twelve months

181 Prison sentences of less than 12 months

(1) Any power of a court to impose a sentence of imprisonment for a term of less than 12 months on an offender may be exercised only in accordance with the following provisions of this section unless the court makes an intermittent custody order (as defined by section 183).

(2) The term of the sentence—

(a) must be expressed in weeks,

(b) must be at least 28 weeks,

(c) must not be more than 51 weeks in respect of any one offence, and

(d) must not exceed the maximum term permitted for the offence.

(3) The court, when passing sentence, must—

(a) specify a period (in this Chapter referred to as "the custodial period") at the end of which the offender is to be released on a licence, and

(b) by order require the licence to be granted subject to conditions requiring the offender's compliance during the remainder of the term (in this Chapter referred to as "the licence period") or any part of it with one or more requirements falling within section 182(1) and specified in the order.

(4) In this Part "custody plus order" means an order under subsection (3)(b).

(5) The custodial period—

(a) must be at least 2 weeks, and

(b) in respect of any one offence, must not be more than 13 weeks.

(6) In determining the term of the sentence and the length of the custodial period, the court must ensure that the licence period is at least 26 weeks in length.

(7) Where a court imposes two or more terms of imprisonment in accordance with this section to be served consecutively—

(a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and

(b) the aggregate length of the custodial periods must not be more than 26 weeks.

(8) A custody plus order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such part of the licence period as is specified in the order.

(9) Subsection (3)(b) does not apply where the sentence is a suspended sentence.

182 Licence conditions

(1) The requirements falling within this subsection are—

(a) an unpaid work requirement (as defined by section 199),

(b) an activity requirement (as defined by section 201),

(c) a programme requirement (as defined by section 202),
(d) a prohibited activity requirement (as defined by section 203),
(e) a curfew requirement (as defined by section 204),
(f) an exclusion requirement (as defined by section 205),
(g) a supervision requirement (as defined by section 213), and
(h) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

(2) The power under section 181(3)(b) to determine the conditions of the licence has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—
(a) section 199(3) (unpaid work requirement),
(b) section 201(3) and (4) (activity requirement),
(c) section 202(4) and (5) (programme requirement), and
(d) section 203(2) (prohibited activity requirement).

(3) Where the court makes a custody plus order requiring a licence to contain a curfew requirement or an exclusion requirement, the court must also require the licence to contain an electronic monitoring requirement (as defined by section 215) unless—
(a) the court is prevented from doing so by section 215(2) or 218(4), or
(b) in the particular circumstances of the case, it considers it inappropriate to do so.

(4) Where the court makes a custody plus order requiring a licence to contain an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a supervision requirement or an attendance centre requirement, the court may also require the licence to contain an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).

(5) Before making a custody plus order requiring a licence to contain two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

Intermittent custody

183 Intermittent custody

(1) A court may, when passing a sentence of imprisonment for a term complying with subsection (4)—
(a) specify the number of days that the offender must serve in prison under the sentence before being released on licence for the remainder of the term, and
(b) by order—
(i) specify periods during which the offender is to be released temporarily on licence before he has served that number of days in prison, and
(ii) require any licence to be granted subject to conditions requiring the offender's compliance during the licence periods with one or more requirements falling within section 182(1) and specified in the order.

(2) In this Part "intermittent custody order" means an order under subsection (1)(b).

(3) In this Chapter—

"licence period", in relation to a term of imprisonment to which an intermittent custody order relates, means any period during which the offender is released on licence by virtue of subsection (1)(a) or (b)(i);

"the number of custodial days", in relation to a term of imprisonment to which an intermittent custody order relates, means the number of days specified under subsection (1)(a).

(4) The term of the sentence—

(a) must be expressed in weeks,

(b) must be at least 28 weeks,

(c) must not be more than 51 weeks in respect of any one offence, and

(d) must not exceed the maximum term permitted for the offence.

(5) The number of custodial days—

(a) must be at least 14, and

(b) in respect of any one offence, must not be more than 90.

(6) A court may not exercise its powers under subsection (1) unless the offender has expressed his willingness to serve the custodial part of the proposed sentence intermittently, during the parts of the sentence that are not to be licence periods.

(7) Where a court exercises its powers under subsection (1) in respect of two or more terms of imprisonment that are to be served consecutively—

(a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and

(b) the aggregate of the numbers of custodial days must not be more than 180.

(8) The Secretary of State may by order require a court, in specifying licence periods under subsection (1)(b)(i), to specify only—

(a) periods of a prescribed duration,

(b) periods beginning or ending at prescribed times, or

(c) periods including, or not including, specified parts of the week.

(9) An intermittent custody order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such licence period or periods, or part of a licence period, as is specified in the order.

184 Restrictions on power to make intermittent custody order

(1) A court may not make an intermittent custody order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the intermittent custody order and the notice has not been withdrawn.

(2) The court may not make an intermittent custody order in respect of any offender unless—

(a) it has consulted an officer of a local probation board,

(b) it has received from the Secretary of State notification that suitable prison accommodation is available for the offender during the custodial periods, and

(c) it appears to the court that the offender will have suitable accommodation available to him during the licence periods.

(3) In this section "custodial period", in relation to a sentence to which an intermittent custody order relates, means any part of the sentence that is not a licence period.

185 Intermittent custody: licence conditions

(1) Section 183(1)(b) has effect subject to section 218 and to the following provisions of Chapter 4 limiting the power to require the licence to contain particular requirements—

(a) section 199(3) (unpaid work requirement),

(b) section 201(3) and (4) (activity requirement),

(c) section 202(4) and (5) (programme requirement), and

(d) section 203(2) (prohibited activity requirement).

(2) Subsections (3) to (5) of section 182 have effect in relation to an intermittent custody order as they have effect in relation to a custody plus order.

186 Further provisions relating to intermittent custody

(1) Section 21 of the 1952 Act (expenses of conveyance to prison) does not apply in relation to the conveyance to prison at the end of any licence period of an offender to whom an intermittent custody order relates.

(2) The Secretary of State may pay to any offender to whom an intermittent custody order relates the whole or part of any expenses incurred by the offender in travelling to and from prison during licence periods.

(3) In section 49 of the 1952 Act (persons unlawfully at large) after subsection (4) there is inserted—

"(4A) For the purposes of this section a person shall also be deemed to be unlawfully at large if, having been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003, he remains at large at a time when, by reason of the expiry of the period for which he was temporarily released, he is liable to be detained in pursuance of his sentence."

(4) In section 23 of the Criminal Justice Act 1961 (c. 39) (prison rules), in subsection (3) for "The days" there is substituted "Subject to subsection (3A), the days" and after subsection (3) there is inserted—

"(3A) In relation to a prisoner to whom an intermittent custody order under section 183 of the Criminal Justice Act 2003 relates, the only days to which subsection (3) applies are Christmas Day, Good Friday and any day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales."

(5) In section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16) (remaining at large after temporary release) after subsection (1) there is inserted—

"(1A) A person who has been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003 is guilty of an offence if, without reasonable excuse, he remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released."

(6) In this section "the 1952 Act" means the Prison Act 1952 (c. 52).

Further provision about custody plus orders and intermittent custody orders

187 Revocation or amendment of order

Schedule 10 (which contains provisions relating to the revocation or amendment of custody plus orders and the amendment of intermittent custody orders) shall have effect.

188 Transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland

Schedule 11 (transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland) shall have effect.

Suspended sentences

189 Suspended sentences of imprisonment

(1) A court which passes a sentence of imprisonment for a term of at least 28 weeks but not more than 51 weeks in accordance with section 181 may—

(a) order the offender to comply during a period specified for the purposes of this paragraph in the order (in this Chapter referred to as "the supervision period") with one or more requirements falling within section 190(1) and specified in the order, and

(b) order that the sentence of imprisonment is not to take effect unless either—

(i) during the supervision period the offender fails to comply with a requirement imposed under paragraph (a), or

(ii) during a period specified in the order for the purposes of this sub-paragraph (in this Chapter referred to as "the operational period") the offender commits in the United Kingdom another offence (whether or not punishable with imprisonment),

and (in either case) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.

(2) Where two or more sentences imposed on the same occasion are to be served consecutively, the power conferred by subsection (1) is not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 65 weeks.

(3) The supervision period and the operational period must each be a period of not less than six months and not more than two years beginning with the date of the order.

(4) The supervision period must not end later than the operational period.

(5) A court which passes a suspended sentence on any person for an offence may not impose a community sentence in his case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court.

(6) Subject to any provision to the contrary contained in the Criminal Justice Act 1967 (c. 80), the Sentencing Act or any other enactment passed or instrument made under any enactment after 31st December 1967, a suspended sentence which has not taken effect under paragraph 8 of Schedule 12 is to be treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments.

(7) In this Part—

(a) "suspended sentence order" means an order under subsection (1),

(b) "suspended sentence" means a sentence to which a suspended sentence order relates, and

(c) "community requirement", in relation to a suspended sentence order, means a requirement imposed under subsection (1)(a).

190 Imposition of requirements by suspended sentence order

(1) The requirements falling within this subsection are—

(a) an unpaid work requirement (as defined by section 199),

(b) an activity requirement (as defined by section 201),

(c) a programme requirement (as defined by section 202),

(d) a prohibited activity requirement (as defined by section 203),

(e) a curfew requirement (as defined by section 204),

(f) an exclusion requirement (as defined by section 205),

(g) a residence requirement (as defined by section 206),

(h) a mental health treatment requirement (as defined by section 207),

(i) a drug rehabilitation requirement (as defined by section 209),

(j) an alcohol treatment requirement (as defined by section 212),

(k) a supervision requirement (as defined by section 213), and

(l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

(2) Section 189(1)(a) has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements—

(a) section 199(3) (unpaid work requirement),

(b) section 201(3) and (4) (activity requirement),

(c) section 202(4) and (5) (programme requirement),

(d) section 203(2) (prohibited activity requirement),

(e) section 207(3) (mental health treatment requirement),

(f) section 209(2) (drug rehabilitation requirement), and

(g) section 212(2) and (3) (alcohol treatment requirement).

(3) Where the court makes a suspended sentence order imposing a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined by section 215) unless—

(a) the court is prevented from doing so by section 215(2) or 218(4), or

(b) in the particular circumstances of the case, it considers it inappropriate to do so.

(4) Where the court makes a suspended sentence order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity

requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).

(5) Before making a suspended sentence order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

191 Power to provide for review of suspended sentence order

(1) A suspended sentence order may—

(a) provide for the order to be reviewed periodically at specified intervals,

(b) provide for each review to be made, subject to section 192(4), at a hearing held for the purpose by the court responsible for the order (a "review hearing"),

(c) require the offender to attend each review hearing, and

(d) provide for the responsible officer to make to the court responsible for the order, before each review, a report on the offender's progress in complying with the community requirements of the order.

(2) Subsection (1) does not apply in the case of an order imposing a drug rehabilitation requirement (provision for such a requirement to be subject to review being made by section 210).

(3) In this section references to the court responsible for a suspended sentence order are references—

(a) where a court is specified in the order in accordance with subsection (4), to that court;

(b) in any other case, to the court by which the order is made.

(4) Where the area specified in a suspended sentence order made by a magistrates' court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purpose of subsection (3) a magistrates' court which acts for the area specified in the order.

(5) Where a suspended sentence order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken for the purposes of subsection (3)(b) to have been made by the Crown Court.

192 Periodic reviews of suspended sentence order

(1) At a review hearing (within the meaning of subsection (1) of section 191) the court may, after considering the responsible officer's report referred to in that subsection, amend the community requirements of the suspended sentence order, or any provision of the order which relates to those requirements.

(2) 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 his willingness to comply with that requirement,

(b) may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended,

(c) may amend the supervision period only if the period as amended complies with section 189(3) and (4),

(d) may not amend the operational period of the suspended sentence, and

(e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.

(3) For the purposes of subsection (2)(a)—

(a) a community requirement falling within any paragraph of section 190(1) is of the same kind as any other community requirement falling within that paragraph, and

(b) an electronic monitoring requirement is a community requirement of the same kind as any requirement falling within section 190(1) to which it relates.

(4) If before a review hearing is held at any review the court, after considering the responsible officer's report, is of the opinion that the offender's progress in complying with the community requirements of the order is satisfactory, it may order that no review hearing is to be held at that review; and if before a review hearing is held at any review, or at a review hearing, the court, after considering that report, is of that opinion, it may amend the suspended sentence order so as to provide for each subsequent review to be held without a hearing.

(5) If at a review held without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

(6) If at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the community requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 8 of Schedule 12.

(7) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 191(1).

(8) In this section any reference to the court, in relation to a review without a hearing, is to be read—

(a) in the case of the Crown Court, as a reference to a judge of the court, and

(b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

193 Breach, revocation or amendment of suspended sentence order, and effect of further conviction

Schedule 12 (which relates to the breach, revocation or amendment of the community requirements of suspended sentence orders, and to the effect of any further conviction) shall have effect.

194 Transfer of suspended sentence orders to Scotland or Northern Ireland

Schedule 13 (transfer of suspended sentence orders to Scotland or Northern Ireland) shall have effect.

Interpretation of Chapter

195 Interpretation of Chapter 3

In this Chapter—

"custodial period", in relation to a term of imprisonment imposed in accordance with section 181, has the meaning given by subsection (3)(a) of that section;

"licence period"—

(a) in relation to a term of imprisonment imposed in accordance with section 181, has the meaning given by subsection (3)(b) of that section, and

(b) in relation to a term of imprisonment to which an intermittent custody order relates, has the meaning given by section 183(3);

"the number of custodial days", in relation to a term of imprisonment to which an intermittent custody order relates, has the meaning given by section 183(3);

"operational period" and "supervision period", in relation to a suspended sentence, are to be read in accordance with section 189(1);

"sentence of imprisonment" does not include a committal for contempt of court or any kindred offence.

CHAPTER 4

FURTHER PROVISIONS ABOUT ORDERS UNDER CHAPTERS 2 AND 3

Introductory

196 Meaning of "relevant order"

(1) In this Chapter "relevant order" means—

(a) a community order,

(b) a custody plus order,

(c) a suspended sentence order, or

(d) an intermittent custody order.

(2) In this Chapter any reference to a requirement being imposed by, or included in, a relevant order is, in relation to a custody plus order or an intermittent custody order, a reference to compliance with the requirement being required by the order to be a condition of a licence.

197 Meaning of "the responsible officer"

(1) For the purposes of this Part, "the responsible officer", in relation to an offender to whom a relevant order relates, means—

(a) in a case where the order—

(i) imposes a curfew requirement or an exclusion requirement but no other requirement mentioned in section 177(1) or, as the case requires, section 182(1) or 190(1), and

(ii) imposes an electronic monitoring requirement,

the person who under section 215(3) is responsible for the electronic monitoring required by the order;

(b) in a case where the offender is aged 18 or over and the only requirement imposed by the order is an attendance centre requirement, the officer in charge of the attendance centre in question;

(c) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Part on the responsible officer.

(2) The following are qualifying officers for the purposes of subsection (1)(c) —

(a) in a case where the offender is aged under 18 at the time when the relevant order is made, an officer of a local probation board appointed for or assigned to the petty sessions area for the time being specified in the order or a member of a youth offending team established by a local authority for the time being specified in the order;

(b) in any other case, an officer of a local probation board appointed for or assigned to the petty sessions area for the time being specified in the order.

(3) The Secretary of State may by order—

(a) amend subsections (1) and (2), and

(b) make any other amendments of this Part that appear to him to be necessary or expedient in consequence of any amendment made by virtue of paragraph (a).

(4) An order under subsection (3) may, in particular, provide for the court to determine which of two or more descriptions of "responsible officer" is to apply in relation to any relevant order.

198 Duties of responsible officer

(1) Where a relevant order has effect, it is the duty of the responsible officer—

(a) to make any arrangements that are necessary in connection with the requirements imposed by the order,

(b) to promote the offender's compliance with those requirements, and

(c) where appropriate, to take steps to enforce those requirements.

(2) In this section "responsible officer" does not include a person falling within section 197(1)(a).

Requirements available in case of all offenders

199 Unpaid work requirement

(1) In this Part "unpaid work requirement", in relation to a relevant order, means a requirement that the offender must perform unpaid work in accordance with section 200.

(2) The number of hours which a person may be required to work under an unpaid work requirement must be specified in the relevant order and must be in the aggregate—

(a) not less than 40, and

(b) not more than 300.

(3) A court may not impose an unpaid work requirement in respect of an offender unless after hearing (if the courts thinks necessary) an appropriate officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement.

(4) In subsection (3) "an appropriate officer" means—

(a) in the case of an offender aged 18 or over, an officer of a local probation board, and

(b) in the case of an offender aged under 18, an officer of a local probation board, a social worker of a local authority social services department or a member of a youth offending team.

(5) Where the court makes relevant orders in respect of two or more offences of which the offender has been convicted on the same occasion and includes unpaid work requirements in each of them, the court may direct that the hours of work specified in any of those requirements is to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent does not exceed the maximum specified in subsection (2)(b).

200 Obligations of person subject to unpaid work requirement

(1) An offender in respect of whom an unpaid work requirement of a relevant order is in force must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer.

(2) Subject to paragraph 20 of Schedule 8 and paragraph 18 of Schedule 12 (power to extend order), the work required to be performed under an unpaid work requirement of a community order or a suspended sentence order must be performed during a period of twelve months.

(3) Unless revoked, a community order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.

(4) Where an unpaid work requirement is imposed by a suspended sentence order, the supervision period as defined by section 189(1)(a) continues until the offender has worked under the order for the number of hours specified in the order, but does not continue beyond the end of the operational period as defined by section 189(1)(b)(ii).

201 Activity requirement

(1) In this Part "activity requirement", in relation to a relevant order, means a requirement that the offender must do either or both of the following—

(a) present himself to a person or persons specified in the relevant order at a place or places so specified on such number of days as may be so specified;

(b) participate in activities specified in the order on such number of days as may be so specified.

(2) The specified activities may consist of or include activities whose purpose is that of reparation, such as activities involving contact between offenders and persons affected by their offences.

(3) A court may not include an activity requirement in a relevant order unless—

(a) it has consulted—

(i) in the case of an offender aged 18 or over, an officer of a local probation board,

(ii) in the case of an offender aged under 18, either an officer of a local probation board or a member of a youth offending team, and

(b) it is satisfied that it is feasible to secure compliance with the requirement.

(4) A court may not include an activity requirement in a relevant 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.

(5) The aggregate of the number of days specified under subsection (1)(a) and (b) must not exceed 60.

(6) A requirement such as is mentioned in subsection (1)(a) operates to require the offender—

(a) in accordance with instructions given by his responsible officer, to present himself at a place or places on the number of days specified in the order, and

(b) while at any place, to comply with instructions given by, or under the authority of, the person in charge of that place.

(7) A place specified under subsection (1)(a) must be—

(a) a community rehabilitation centre, or

(b) a place that has been approved by the local probation board for the area in which the premises are situated as providing facilities suitable for persons subject to activity requirements.

(8) Where the place specified under subsection (1)(a) is a community rehabilitation centre, the reference in subsection (6)(a) to the offender presenting himself at the specified place includes a reference to him presenting himself elsewhere than at the centre for the purpose of participating in activities in accordance with instructions given by, or under the authority of, the person in charge of the centre.

(9) A requirement to participate in activities operates to require the offender—

(a) in accordance with instructions given by his responsible officer, to participate in activities on the number of days specified in the order, and

(b) while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities.

(10) In this section "community rehabilitation centre" means premises—

(a) at which non-residential facilities are provided for use in connection with the rehabilitation of offenders, and

(b) which are for the time being approved by the Secretary of State as providing facilities suitable for persons subject to relevant orders.

202 Programme requirement

(1) In this Part "programme requirement", in relation to a relevant order, means a requirement that the offender must participate in an accredited programme specified in the order at a place so specified on such number of days as may be so specified.

(2) In this Part "accredited programme" means a programme that is for the time being accredited by the accreditation body.

(3) In this section—

(a) "programme" means a systematic set of activities, and

(b) "the accreditation body" means such body as the Secretary of State may designate for the purposes of this section by order.

(4) A court may not include a programme requirement in a relevant order unless—

(a) the accredited programme which the court proposes to specify in the order has been recommended to the court as being suitable for the offender—

(i) in the case of an offender aged 18 or over, by an officer of a local probation board, or

(ii) in the case of an offender aged under 18, either by an officer of a local probation board or by a member of a youth offending team, and

(b) the court is satisfied that the programme is (or, where the relevant order is a custody plus order or an intermittent custody order, will be) available at the place proposed to be specified.

(5) A court may not include a programme requirement in a relevant 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.

(6) A requirement to attend an accredited programme operates to require the offender—

(a) in accordance with instructions given by the responsible officer, to participate in the accredited programme at the place specified in the order on the number of days specified in the order, and

(b) while at that place, to comply with instructions given by, or under the authority of, the person in charge of the programme.

(7) A place specified in an order must be a place that has been approved by the local probation board for the area in which the premises are situated as providing facilities suitable for persons subject to programme requirements.

203 Prohibited activity requirement

(1) In this Part "prohibited activity requirement", in relation to a relevant order, means a requirement that the offender must refrain from participating in activities specified in the order—

(a) on a day or days so specified, or

(b) during a period so specified.

(2) A court may not include a prohibited activity requirement in a relevant order unless it has consulted—

(a) in the case of an offender aged 18 or over, an officer of a local probation board;

(b) in the case of an offender aged under 18, either an officer of a local probation board or a member of a youth offending team.

(3) The requirements that may by virtue of this section be included in a relevant order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27).

204 Curfew requirement

(1) In this Part "curfew requirement", in relation to a relevant order, means a requirement that the offender must remain, for periods specified in the relevant order, at a place so specified.

(2) A relevant order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than twelve hours in any day.

(3) A community order or suspended sentence order which imposes a curfew requirement may not specify periods which fall outside the period of six months beginning with the day on which it is made.

(4) A custody plus order which imposes a curfew requirement may not specify a period which falls outside the period of six months beginning with the first day of the licence period as defined by section 181(3)(b).

(5) An intermittent custody order which imposes a curfew requirement must not specify a period if to do so would cause the aggregate number of days on which the offender is subject to the requirement for any part of the day to exceed 182.

(6) 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 (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

205 Exclusion requirement

(1) In this Part "exclusion requirement", in relation to a relevant order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified.

(2) Where the relevant order is a community order, the period specified must not be more than two years.

(3) An exclusion requirement—

(a) may provide for the prohibition to operate only during the periods specified in the order, and

(b) may specify different places for different periods or days.

(4) In this section "place" includes an area.

206 Residence requirement

(1) In this Part, "residence requirement", in relation to a community order or a suspended sentence order, means a requirement that, during a period specified in the relevant order, the offender must reside at a place specified in the order.

(2) If the order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.

(3) Before making a community order or suspended sentence order containing a residence requirement, the court must consider the home surroundings of the offender.

(4) A court may not specify a hostel or other institution as the place where an offender must reside, except on the recommendation of an officer of a local probation board.

207 Mental health treatment requirement

(1) In this Part, "mental health treatment requirement", in relation to a community order or suspended sentence order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both, for different periods) with a view to the improvement of the offender's mental condition.

(2) The treatment required must be such one of the following kinds of treatment as may be specified in the relevant order—

(a) treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 (c. 14) or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;

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

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

but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a), (b) or (c).

(3) A court may not by virtue of this section include a mental health treatment requirement in a relevant order unless—

(a) the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983, that the mental condition of the offender—

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

(ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of that Act;

(b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient); and

(c) the offender has expressed his willingness to comply with such a requirement.

(4) While the offender is under treatment as a resident patient in pursuance of a mental health requirement of a relevant order, his responsible officer shall carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

(5) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 (c. 20) have effect with respect to proof for the purposes of subsection (3)(a) of an offender's mental condition as they have effect with respect to proof of an offender's mental condition for the purposes of section 37(2)(a) of that Act.

(6) In this section and section 208, "chartered psychologist" means a person for the time being listed in the British Psychological Society's Register of Chartered Psychologists.

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

(1) Where the medical practitioner or chartered psychologist by whom or under whose direction an offender is being treated for his mental condition in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

(a) is not specified in the relevant order, and

(b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or chartered psychologist,

he may, with the consent of the offender, make arrangements for him to be treated accordingly.

(2) Such arrangements as are mentioned in subsection (1) may provide for the offender to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the relevant order.

(3) Where any such arrangements as are mentioned in subsection (1) are made for the treatment of an offender—

(a) the medical practitioner or chartered psychologist by whom the arrangements are made shall give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out; and

(b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the relevant order.

209 Drug rehabilitation requirement

(1) In this Part "drug rehabilitation requirement", in relation to a community order or suspended sentence order, means a requirement that during a period specified in the order ("the treatment and testing period") the offender—

(a) must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs, and

(b) for the purpose of ascertaining whether he has any drug in his body during that period, must provide samples of such description as may be so determined, at such times or in such circumstances as may (subject to the provisions of the

order) be determined by the responsible officer or by the person specified as the person by or under whose direction the treatment is to be provided.

(2) A court may not impose a drug rehabilitation requirement unless—

(a) it is satisfied—

(i) that the offender is dependent on, or has a propensity to misuse, drugs, and

(ii) that his dependency or propensity is such as requires and may be susceptible to treatment,

(b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident),

(c) the requirement has been recommended to the court as being suitable for the offender—

(i) in the case of an offender aged 18 or over, by an officer of a local probation board, or

(ii) in the case of an offender aged under 18, either by an officer of a local probation board or by a member of a youth offending team, and

(d) the offender expresses his willingness to comply with the requirement.

(3) The treatment and testing period must be at least six months.

(4) The required treatment for any particular period must be—

(a) treatment as a resident in such institution or place as may be specified in the order, or

(b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;

but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a) or (b) above.

(5) The function of making a determination as to the provision of samples under provision included in the community order or suspended sentence order by virtue of subsection (1)(b) is to be exercised in accordance with guidance given from time to time by the Secretary of State.

(6) A community order or suspended sentence order imposing a drug rehabilitation requirement must provide that the results of tests carried out on any samples provided by the offender in pursuance of the requirement to a person other than the responsible officer are to be communicated to the responsible officer.

(7) In this section "drug" means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

210 Drug rehabilitation requirement: provision for review by court

(1) A community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months) —

(a) provide for the requirement to be reviewed periodically at intervals of not less than one month,

(b) provide for each review of the requirement to be made, subject to section 211(6), at a hearing held for the purpose by the court responsible for the order (a "review hearing"),

(c) require the offender to attend each review hearing,

(d) provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the requirement, and

(e) provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender.

(2) In this section references to the court responsible for a community order or suspended sentence order imposing a drug rehabilitation requirement are references—

(a) where a court is specified in the order in accordance with subsection (3), to that court;

(b) in any other case, to the court by which the order is made.

(3) Where the area specified in a community order or suspended sentence order which is made by a magistrates' court and imposes a drug rehabilitation requirement is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purposes of subsection (2) a magistrates' court which acts for the area specified in the order.

(4) Where a community order or suspended sentence order imposing a drug rehabilitation requirement has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, for the purposes of subsection (2)(b) it shall be taken to have been made by the Crown Court.

211 Periodic review of drug rehabilitation requirement

(1) At a review hearing (within the meaning given by subsection (1) of section 210) the court may, after considering the responsible officer's report referred to in that subsection, amend the community order or suspended sentence order, so far as it relates to the drug rehabilitation requirement.

(2) The court—

(a) may not amend the drug rehabilitation requirement unless the offender expresses his willingness to comply with the requirement as amended,

(b) may not amend any provision of the order so as to reduce the period for which the drug rehabilitation requirement has effect below the minimum specified in section 209(3), and

(c) 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.

(3) If the offender fails to express his 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 him, 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.

(4) In dealing with the offender under subsection (3)(b), the court—

(a) shall take into account the extent to which the offender has complied with the requirements of the order, and

(b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

(5) Where the order is a community order made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under subsection (3)(b) in respect of the offender after he attains the age of 18 are powers to do either or both of the following—

(a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;

(b) to deal with the offender for that offence in any way in which the court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding twelve months.

(6) If at a review hearing (as defined by section 210(1)(b)) the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.

(7) If at a review without a hearing the court, after considering the responsible officer's report, 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.

(8) At that hearing the court, after considering that report, may—

(a) exercise the powers conferred by this section as if the hearing were a review hearing, and

(b) so amend the order as to provide for each subsequent review to be made at a review hearing.

(9) In this section any reference to the court, in relation to a review without a hearing, 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 acting for the commission area for which the court acts.

212 Alcohol treatment requirement

(1) In this Part "alcohol treatment requirement", in relation to a community order or suspended sentence order, means a requirement that the offender must submit during a period specified in the order to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol.

(2) A court may not impose an alcohol treatment requirement in respect of an offender unless it is satisfied—

(a) that he is dependent on alcohol,

(b) that his dependency is such as requires and may be susceptible to treatment, and

(c) that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).

(3) A court may not impose an alcohol treatment requirement unless the offender expresses his willingness to comply with its requirements.

(4) The period for which the alcohol treatment requirement has effect must be not less than six months.

(5) The treatment required by an alcohol treatment requirement for any particular period must be—

(a) treatment as a resident in such institution or place as may be specified in the order,

(b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified, or

(c) treatment by or under the direction of such person having the necessary qualification or experience as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c) above.

213 Supervision requirement

(1) In this Part "supervision requirement", in relation to a relevant order, means a requirement that, during the relevant period, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such time and place as may be determined by the officer.

(2) The purpose for which a supervision requirement may be imposed is that of promoting the offender's rehabilitation.

(3) In subsection (1) "the relevant period" means—

(a) in relation to a community order, the period for which the community order remains in force,

(b) in relation to a custody plus order, the licence period as defined by section 181(3)(b),

(c) in relation to an intermittent custody order, the licence periods as defined by section 183(3), and

(d) in relation to a suspended sentence order, the supervision period as defined by section 189(1)(a).

Requirements available only in case of offenders aged under 25

214 Attendance centre requirement

(1) In this Part "attendance centre requirement", in relation to a relevant order, means a requirement that the offender must attend at an attendance centre specified in the relevant order for such number of hours as may be so specified.

(2) The aggregate number of hours for which the offender may be required to attend at an attendance centre must not be less than 12 or more than 36.

(3) The court may not impose an attendance centre requirement unless the court is satisfied that the attendance centre to be specified in it is reasonably accessible to the offender concerned, having regard to the means of access available to him and any other circumstances.

(4) The first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.

(5) The subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances.

(6) An offender may not be required under this section to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.

Electronic monitoring

215 Electronic monitoring requirement

(1) In this Part "electronic 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 specified in the order, or determined by the responsible officer in accordance with the relevant order.

(2) Where—

(a) it is proposed to include in a relevant order a requirement for securing electronic monitoring in accordance with this section, 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.

(3) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State.

(4) Where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify—

(a) the offender,

(b) the person responsible for the monitoring, and

(c) any person falling within subsection (2)(b),

of the time when the period is to begin.

Provisions applying to relevant orders generally

216 Petty sessions area to be specified in relevant order

(1) A community order or suspended sentence order must specify the petty sessions area in which the offender resides or will reside.

(2) A custody plus order or an intermittent custody order must specify the petty sessions area in which the offender will reside—

(a) in the case of a custody plus order, during the licence period as defined by section 181(3)(b), or

(b) in the case of an intermittent custody order, during the licence periods as defined by section 183(3).

217 Requirement to avoid conflict with religious beliefs, etc

(1) The court must ensure, as far as practicable, that any requirement imposed by a relevant order is such as to avoid—

(a) any conflict with the offender's religious beliefs or with the requirements of any other relevant order to which he may be subject; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(2) The responsible officer in relation to an offender to whom a relevant order relates must ensure, as far as practicable, that any instruction given or requirement imposed by him in pursuance of the order is such as to avoid the conflict or interference mentioned in subsection (1).

(3) The Secretary of State may by order provide that subsection (1) or (2) is to have effect with such additional restrictions as may be specified in the order.

218 Availability of arrangements in local area

(1) A court may not include an unpaid work requirement in a relevant order unless the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the petty sessions area in which he resides or will reside.

(2) A court may not include an activity requirement in a relevant order unless the court is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the petty sessions area in which he resides or will reside.

(3) A court may not include an attendance centre requirement in a relevant order in respect of an offender unless the court has been notified by the Secretary of State that an attendance centre is available for persons of his description.

(4) A court may not include an electronic 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 areas mentioned in subsections (5) to (7), and

(b) is satisfied that the necessary provision can be made under those arrangements.

(5) In the case of a relevant order containing a curfew requirement or an exclusion requirement, the relevant area for the purposes of subsection (4) is the area in which the place proposed to be specified in the order is situated.

(6) In the case of a relevant order containing an attendance centre requirement, the relevant area for the purposes of subsection (4) is the area in which the attendance centre proposed to be specified in the order is situated.

(7) In the case of any other relevant order, the relevant area for the purposes of subsection (4) is the petty sessions area proposed to be specified in the order.

(8) In subsection (5) "place", in relation to an exclusion requirement, has the same meaning as in section 205.

219 Provision of copies of relevant orders

(1) The court by which any relevant order is made must forthwith provide copies of the order—

(a) to the offender,

(b) if the offender is aged 18 or over, to an officer of a local probation board assigned to the court,

(c) if the offender is aged 16 or 17, to an officer of a local probation board assigned to the court or to a member of a youth offending team assigned to the court, and

(d) where the order specifies a petty sessions area for which the court making the order does not act, to the local probation board acting for that area.

(2) Where a relevant order imposes any requirement specified in the first column of Schedule 14, 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 Schedule with a copy of so much of the order as relates to that requirement.

(3) Where a relevant order specifies a petty sessions area for which the court making the order does not act, the court making the order must provide to the magistrates's court acting for that area—

(a) a copy of the order, and

(b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.

220 Duty of offender to keep in touch with responsible officer

(1) An offender in respect of whom a community order or a suspended sentence order is in force—

(a) must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer, and

(b) must notify him of any change of address.

(2) The obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the order.

Powers of Secretary of State

221 Provision of attendance centres

(1) The Secretary of State may continue to provide attendance centres.

(2) In this Part "attendance centre" means a place at which offenders aged under 25 may be required to attend and be given under supervision appropriate occupation or instruction in pursuance of—

(a) attendance centre requirements of relevant orders, or
(b) attendance centre orders under section 60 of the Sentencing Act.

(3) For the purpose of providing attendance centres, the Secretary of State may make arrangements with any local authority or police authority for the use of premises of that authority.

222 Rules

(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 in relation to offenders subject to relevant orders,
(c) the arrangements to be made by local probation boards for persons subject to unpaid work requirements to perform work and the performance of such work,
(d) the provision and carrying on of attendance centres and community rehabilitation centres,
(e) the attendance of persons subject to activity requirements or attendance centre requirements 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.

223 Power to amend limits

(1) The Secretary of State may by order amend—
(a) subsection (2) of section 199 (unpaid work requirement), or
(b) subsection (2) of section 204 (curfew requirement),
by substituting, for the maximum number of hours for the time being specified in that subsection, such other number of hours as may be specified in the order.

(2) The Secretary of State may by order amend any of the provisions mentioned in subsection (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.

(3) Those provisions are—
(a) section 204(3) (curfew requirement);
(b) section 205(2) (exclusion requirement);
(c) section 209(3) (drug rehabilitation requirement);
(d) section 212(4) (alcohol treatment requirement).

CHAPTER 5

DANGEROUS OFFENDERS

224 Meaning of "specified offence" etc.

(1) An offence is a "specified offence" for the purposes of this Chapter if it is a specified violent offence or a specified sexual offence.

(2) An offence is a "serious offence" for the purposes of this Chapter if and only if—

(a) it is a specified offence, and

(b) it is, apart from section 225, punishable in the case of a person aged 18 or over by—

(i) imprisonment for life, or

(ii) imprisonment for a determinate period of ten years or more.

(3) In this Chapter—

"relevant offence" has the meaning given by section 229(4);

"serious harm" means death or serious personal injury, whether physical or psychological;

"specified violent offence" means an offence specified in Part 1 of Schedule 15;

"specified sexual offence" means an offence specified in Part 2 of that Schedule.

225 Life sentence or imprisonment for public protection for serious offences

(1) This section applies where—

(a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and

(b) 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 him of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and

(b) the court considers that the seriousness of the offence, or of 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.

(3) In a case not falling within subsection (2), the court must impose a sentence of imprisonment for public protection.

(4) A sentence of imprisonment for public protection is a sentence of imprisonment for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.

(5) 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.

226 Detention for life or detention for public protection for serious offences committed by those under 18

(1) This section applies where—

(a) a person aged under 18 is convicted of a serious offence committed after the commencement of this section, and

(b) 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 him of further specified offences.

(2) If—

(a) the offence is one in respect of which the offender would apart from this section be liable to a sentence of detention for life under section 91 of the Sentencing Act, and

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of detention for life,

the court must impose a sentence of detention for life under that section.

(3) If, in a case not falling within subsection (2), the court considers that an extended sentence under section 228 would not be adequate for the purpose of protecting the public from serious harm occasioned by the commission by the offender of further specified offences, the court must impose a sentence of detention for public protection.

(4) A sentence of detention for public protection is a sentence of detention for an indeterminate period, subject to the provisions of Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) as to the release of prisoners and duration of licences.

(5) 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.

227 Extended sentence for certain violent or sexual offences: persons 18 or over

(1) This section applies where—

(a) a person aged 18 or over is convicted of a specified offence, other than a serious offence, committed after the commencement of this section, and

(b) the court considers 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.

(2) The court must impose on the offender an extended sentence of imprisonment, that is to say, a sentence of imprisonment the term of which is equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is 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 him of further specified offences.

(3) In subsection (2) "the appropriate custodial term" means a term of imprisonment (not exceeding the maximum term permitted for the offence) which—

(a) is the term that would (apart from this section) be imposed in compliance with section 153(2), or

(b) where the term that would be so imposed is a term of less than 12 months, is a term of 12 months.

(4) The extension period must not exceed—

(a) five years in the case of a specified violent offence, and

(b) eight years in the case of a specified sexual offence.

(5) The term of an extended sentence of imprisonment passed under this section in respect of an offence must not exceed the maximum term permitted for the offence.

228 Extended sentence for certain violent or sexual offences: persons under 18

(1) This section applies where—

(a) a person aged under 18 is convicted of a specified offence committed after the commencement of this section, and

(b) the court considers—

(i) 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, and

(ii) where the specified offence is a serious offence, that the case is not one in which the court is required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act or by section 226(3) to impose a sentence of detention for public protection.

(2) The court must impose on the offender an extended sentence of detention, that is to say, a sentence of detention the term of which is equal to the aggregate of—

(a) the appropriate custodial term, and

(b) a further period ("the extension period") for which the offender is to be subject to a licence and which is 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 him of further specified offences.

(3) In subsection (2) "the appropriate custodial term" means such term as the court considers appropriate, which—

(a) must be at least 12 months, and

(b) must not exceed the maximum term of imprisonment permitted for the offence.

(4) The extension period must not exceed—

(a) five years in the case of a specified violent offence, and

(b) eight years in the case of a specified sexual offence.

(5) The term of an extended sentence of detention passed under this section in respect of an offence must not exceed the maximum term of imprisonment permitted for the offence.

(6) Any reference in this section to the maximum term of imprisonment permitted for an offence is a reference to the maximum term of imprisonment that is, apart from section 225, permitted for the offence in the case of a person aged 18 or over.

229 The assessment of dangerousness

(1) This section applies where—

(a) a person has been convicted of a specified offence, and

(b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences.

(2) If at the time when that offence was committed the offender had not been convicted in any part of the United Kingdom of any relevant offence or was aged under 18, the court in making the assessment referred to in subsection (1)(b)—

(a) must take into account all such information as is available to it about the nature and circumstances of the offence,

(b) may take into account any information which is before it about any pattern of behaviour of which the offence forms part, and

(c) may take into account any information about the offender which is before it.

(3) If at the time when that offence was committed the offender was aged 18 or over and had been convicted in any part of the United Kingdom of one or more relevant offences, the court must assume that there is such a risk as is mentioned in subsection (1)(b) unless, after taking into account—

(a) all such information as is available to it about the nature and circumstances of each of the offences,

(b) where appropriate, any information which is before it about any pattern of behaviour of which any of the offences forms part, and

(c) any information about the offender which is before it,

the court considers that it would be unreasonable to conclude that there is such a risk.

(4) In this Chapter "relevant offence" means—

(a) a specified offence,

(b) an offence specified in Schedule 16 (offences under the law of Scotland), or

(c) an offence specified in Schedule 17 (offences under the law of Northern Ireland).

230 Imprisonment or detention for public protection: release on licence

Schedule 18 (release of prisoners serving sentences of imprisonment or detention for public protection) shall have effect.

231 Appeals where previous convictions set aside

(1) This section applies where—

(a) a sentence has been imposed on any person under section 225 or 227, and

(b) any previous conviction of his without which the court would not have been required to make the assumption mentioned in section 229(3) has been subsequently set aside on appeal.

(2) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968 (c. 19), 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.

232 Certificates of convictions for purposes of section 229

Where—

(a) on any date after the commencement of this section a person is convicted in England and Wales of a relevant offence, and

(b) the court by or before which he is so convicted states in open court that he has been convicted of such an offence on that date, and

(c) that court subsequently certifies that fact,

that certificate shall be evidence, for the purposes of section 229, that he was convicted of such an offence on that date.

233 Offences under service law

Where—

(a) a person has at any time been convicted of an offence under section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 42 of the Naval Discipline Act 1957 (c. 53), and

(b) the corresponding civil offence (within the meaning of that Act) was a relevant offence,

section 229 shall have effect as if he had at that time been convicted in England and Wales of the corresponding civil offence.

234 Determination of day when offence committed

Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of section 229 to have been committed on the last of those days.

235 Detention under sections 226 and 228

A person sentenced to be detained under section 226 or 228 is liable to be detained in such place, and under such conditions, as may be determined by the Secretary of State or by such other person as may be authorised by him for the purpose.

236 Conversion of sentences of detention into sentences of imprisonment

For section 99 of the Sentencing Act (conversion of sentence of detention and custody into sentence of imprisonment) there is substituted—

"Conversion of sentence of detention to sentence of imprisonment

99 Conversion of sentence of detention to sentence of imprisonment

(1) Subject to the following provisions of this section, where an offender has been sentenced by a relevant sentence of detention to a term of detention and either—

(a) he has attained the age of 21, or

(b) he has attained the age of 18 and has been reported to the Secretary of State by the board of visitors of the institution in which he is detained as exercising a bad influence on the other inmates of the institution or as behaving in a disruptive manner to the detriment of those inmates,

the Secretary of State may direct that he shall be treated as if he had been sentenced to imprisonment for the same term.

(2) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender, the portion of the term of detention imposed under the relevant sentence of detention which he has already served shall be deemed to have been a portion of a term of imprisonment.

(3) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender serving a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 the offender shall be treated as if he had been sentenced under section 225 of that Act; and where the Secretary of State gives such a direction in relation to an offender serving an extended sentence of detention under section 228 of that Act the offender shall be treated as if he had been sentenced under section 227 of that Act.

(4) 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 shall continue to have effect after a direction under subsection (1) has been given in relation to him.

(5) In this section "relevant sentence of detention" means—

(a) a sentence of detention under section 90 or 91 above,

(b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003, or

(c) an extended sentence of detention under section 228 of that Act."

CHAPTER 6

RELEASE ON LICENCE

Preliminary

237 Meaning of "fixed-term prisoner"

(1) In this Chapter "fixed-term prisoner" means—

(a) a person serving a sentence of imprisonment for a determinate term, or

(b) a person serving a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act.

(2) In this Chapter, unless the context otherwise requires, "prisoner" includes a person serving a sentence falling within subsection (1)(b); and "prison" includes any place where a person serving such a sentence is liable to be detained.

Power of court to recommend licence conditions

238 Power of court to recommend licence conditions for certain prisoners

(1) A court which sentences an offender to a term of imprisonment of twelve months or more in respect of any offence 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 this Chapter on his release from prison.

(2) In exercising his powers under section 250(4)(b) in respect of an offender, the Secretary of State must have regard to any recommendation under subsection (1).

(3) A recommendation under subsection (1) is not to be treated for any purpose as part of the sentence passed on the offender.

(4) This section does not apply in relation to a sentence of detention under section 91 of the Sentencing Act or section 228 of this Act.

239 The Parole Board

(1) The Parole Board is to continue to be, by that name, a body corporate and as such is—

(a) to be constituted in accordance with this Chapter, and

(b) to have the functions conferred on it by this Chapter in respect of fixed-term prisoners and by Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43) (in this Chapter referred to as "the 1997 Act") in respect of life prisoners within the meaning of that Chapter.

(2) It is the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is to do with the early release or recall of prisoners.

(3) The Board must, in dealing with cases as respects which it makes recommendations under this Chapter or under Chapter 2 of Part 2 of the 1997 Act, consider—

(a) any documents given to it by the Secretary of State, and

(b) any other oral or written information obtained by it;

and if in any particular case the Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may authorise one of its members to interview him and must consider the report of the interview made by that member.

(4) The Board must deal with cases as respects which it gives directions under this Chapter or under Chapter 2 of Part 2 of the 1997 Act on consideration of all such evidence as may be adduced before it.

(5) Without prejudice to subsections (3) and (4), the Secretary of State may make rules with respect to the proceedings of the Board, including proceedings authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times.

(6) The Secretary of State may also give to the Board directions as to the matters to be taken into account by it in discharging any functions under this Chapter or under Chapter 2 of Part 2 of the 1997 Act; and in giving any such directions the Secretary of State must have regard to—

(a) the need to protect the public from serious harm from offenders, and

(b) the desirability of preventing the commission by them of further offences and of securing their rehabilitation.

(7) Schedule 19 shall have effect with respect to the Board.

Effect of remand in custody

240 Crediting of periods of remand in custody: terms of imprisonment and detention

(1) This section applies where—

(a) a court sentences an offender to imprisonment for a term in respect of an offence committed after the commencement of this section, and

(b) the offender has been remanded in custody (within the meaning given by section 242) in connection with the offence or a related offence, that is to say, any other offence the charge for which was founded on the same facts or evidence.

(2) It is immaterial for that purpose whether the offender—

(a) has also been remanded in custody in connection with other offences; or

(b) has also been detained in connection with other matters.

(3) Subject to subsection (4), the court must direct that the number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by him as part of the sentence.

(4) Subsection (3) does not apply if and to the extent that—

(a) rules made by the Secretary of State so provide in the case of—

(i) a remand in custody which is wholly or partly concurrent with a sentence of imprisonment, or

(ii) sentences of imprisonment for consecutive terms or for terms which are wholly or partly concurrent, or

(b) it is in the opinion of the court just in all the circumstances not to give a direction under that subsection.

(5) Where the court gives a direction under subsection (3), it shall state in open court—

(a) the number of days for which the offender was remanded in custody, and

(b) the number of days in relation to which the direction is given.

(6) Where the court does not give a direction under subsection (3), or gives such a direction in relation to a number of days less than that for which the offender was remanded in custody, it shall state in open court—

(a) that its decision is in accordance with rules made under paragraph (a) of subsection (4), or

(b) that it is of the opinion mentioned in paragraph (b) of that subsection and what the circumstances are.

(7) For the purposes of this section a suspended sentence—

(a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 8(2)(a) or (b) of Schedule 12, and

(b) is to be treated as being imposed by the order under which it takes effect.

(8) For the purposes of the reference in subsection (3) to the term of imprisonment to which a person has been sentenced (that is to say, the reference to his "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 under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

(9) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of subsection (1) to have been committed on the last of those days.

(10) This section applies to a determinate sentence of detention under section 91 of the Sentencing Act or section 228 of this Act as it applies to an equivalent sentence of imprisonment.

241 Effect of direction under section 240 on release on licence

(1) In determining for the purposes of this Chapter or Chapter 3 (prison sentences of less than twelve months) whether a person to whom a direction under section 240 relates—

(a) has served, or would (but for his release) have served, a particular proportion of his sentence, or

(b) has served a particular period,

the number of days specified in the direction are to be treated as having been served by him as part of that sentence or period.

(2) In determining for the purposes of section 183 (intermittent custody) whether any part of a sentence to which an intermittent custody order relates is a licence period, the number of custodial days, as defined by subsection (3) of that section, is to be taken to be reduced by the number of days specified in a direction under section 240.

242 Interpretation of sections 240 and 241

(1) For the purposes of sections 240 and 241, the definition of "sentence of imprisonment" in section 305 applies as if for the words from the beginning of the definition to the end of paragraph (a) there were substituted—

> ""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,";

and references in those sections to sentencing an offender to imprisonment, and to an offender's sentence, are to be read accordingly.

(2) References in sections 240 and 241 to an offender's being remanded in custody are references to his being—

(a) remanded in or committed to custody by order of a court,

(b) remanded or committed to local authority accommodation under section 23 of the Children and Young Persons Act 1969 (c. 54) and kept in secure accommodation or detained in a secure training centre pursuant to arrangements under subsection (7A) of that section, or

(c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983 (c. 20).

(3) In subsection (2), "secure accommodation" has the same meaning as in section 23 of the Children and Young Persons Act 1969.

243 Persons extradited to the United Kingdom

(1) A fixed-term prisoner is an extradited prisoner for the purposes of this section if—

(a) he was tried for the offence in respect of which his sentence was imposed—

(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) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in paragraph (a).

(2) In the case of an extradited prisoner, section 240 has effect as if the days for which he was kept in custody while awaiting extradition were days for which he was remanded in custody in connection with the offence, or any other offence the charge for which was founded on the same facts or evidence.

(3) In this section—

"extradited to the United Kingdom" means returned to the United Kingdom—

(a) in pursuance of extradition arrangements,

(b) under any law of a designated Commonwealth country corresponding to the Extradition Act 1989 (c. 33),

(c) under that Act as extended to a British overseas territory or under any corresponding law of a British overseas territory,

(d) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45), or

(e) in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 (c. 52) is in force;

"extradition arrangements" has the meaning given by section 3 of the Extradition Act 1989;

"designated Commonwealth country" has the meaning given by section 5(1) of that Act.

Release on licence

244 Duty to release prisoners

(1) As soon as a fixed-term prisoner, other than a prisoner to whom section 247 applies, has served the requisite custodial period, it is the duty of the Secretary of State to release him on licence under this section.

(2) Subsection (1) is subject to section 245.

(3) In this section "the requisite custodial period" means—

(a) in relation to a person serving a sentence of imprisonment for a term of twelve months or more or any determinate sentence of detention under section 91 of the Sentencing Act, one-half of his sentence,

(b) in relation to a person serving a sentence of imprisonment for a term of less than twelve months (other than one to which an intermittent custody order relates), the custodial period within the meaning of section 181,

(c) in relation to a person serving a sentence of imprisonment to which an intermittent custody order relates, any part of the term which is not a licence period as defined by section 183(3), and

(d) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).

245 Restrictions on operation of section 244(1) in relation to intermittent custody prisoners

(1) Where an intermittent custody prisoner returns to custody after being unlawfully at large within the meaning of section 49 of the Prison Act 1952 (c. 52) at any time during the currency of his sentence, section 244(1) does not apply until—

(a) the relevant time (as defined in subsection (2)), or

(b) if earlier, the date on which he has served in prison the number of custodial days required by the intermittent custody order.

(2) In subsection (1)(a) "the relevant time" means—

(a) in a case where, within the period of 72 hours beginning with the return to custody of the intermittent custody prisoner, the Secretary of State or the responsible officer has applied to the court for the amendment of the intermittent custody order under paragraph 6(1)(b) of Schedule 10, the date on which the application is withdrawn or determined, and

(b) in any other case, the end of that 72-hour period.

(3) Section 244(1) does not apply in relation to an intermittent custody prisoner at any time after he has been recalled under section 254, unless after his recall the Board has directed his further release on licence.

246 Power to release prisoners on licence before required to do so

(1) Subject to subsections (2) to (4), the Secretary of State may—

(a) release on licence under this section a fixed-term prisoner, other than an intermittent custody prisoner, at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period, and

(b) release on licence under this section an intermittent custody prisoner when 135 or less of the required custodial days remain to be served.

(2) Subsection (1)(a) does not apply in relation to a prisoner unless—

(a) the length of the requisite custodial period is at least 6 weeks,

(b) he has served—

(i) at least 4 weeks of his sentence, and

(ii) at least one-half of the requisite custodial period.

(3) Subsection (1)(b) does not apply in relation to a prisoner unless—

(a) the number of required custodial days is at least 42, and

(b) the prisoner has served—

(i) at least 28 of those days, and

(ii) at least one-half of the total number of those days.

(4) Subsection (1) does not apply where—

(a) the sentence is imposed under section 227 or 228,

(b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16),

(c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983 (c. 20),

(d) the sentence was imposed by virtue of paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 in a case where the prisoner has failed to comply with a curfew requirement of a community order,

(e) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42),

(f) the prisoner is liable to removal from the United Kingdom,

(g) the prisoner has been released on licence under this section during the currency of the sentence, and has been recalled to prison under section 255(1)(a),

(h) the prisoner has been released on licence under section 248 during the currency of the sentence, and has been recalled to prison under section 254, or

(i) in the case of a prisoner to whom a direction under section 240 relates, the interval between the date on which the sentence was passed and the date on which the prisoner will have served the requisite custodial period is less than 14 days or, where the sentence is one of intermittent custody, the number of the required custodial days remaining to be served is less than 14.

(5) The Secretary of State may by order—

(a) amend the number of days for the time being specified in subsection (1)(a) or (b), (3) or (4)(i),

(b) amend the number of weeks for the time being specified in subsection (2)(a) or (b)(i), and

(c) amend the fraction for the time being specified in subsection (2)(b)(ii) or (3)(b)(ii).

(6) In this section—

"the required custodial days", in relation to an intermittent custody prisoner, means—

(a) the number of custodial days specified under section 183, or

(b) in the case of two or more sentences of intermittent custody, the aggregate of the numbers so specified;

"the requisite custodial period" in relation to a person serving any sentence other than a sentence of intermittent custody, has the meaning given by paragraph (a), (b) or (d) of section 244(3);

"sentence of intermittent custody" means a sentence to which an intermittent custody order relates.

247 Release on licence of prisoner serving extended sentence under section 227 or 228

(1) This section applies to a prisoner who is serving an extended sentence imposed under section 227 or 228.

(2) As soon as—

(a) a prisoner to whom this section applies has served one-half of the appropriate custodial term, and

(b) the Parole Board has directed his release under this section,

it is the duty of the Secretary of State to release him on licence.

(3) The Parole Board may not give a direction under subsection (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.

(4) As soon as a prisoner to whom this section applies has served the appropriate custodial term, it is the duty of the Secretary of State to release him on licence unless the prisoner has previously been recalled under section 254.

(5) Where a prisoner to whom this section applies is released on a licence, the Secretary of State may not by virtue of section 250(4)(b) include, or subsequently insert, a condition in the licence, or vary or cancel a condition in the licence, except after consultation with the Board.

(6) For the purposes of subsection (5), the Secretary of State is to be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.

(7) In this section "the appropriate custodial term" means the period determined by the court as the appropriate custodial term under section 227 or 228.

248 Power to release prisoners on compassionate grounds

(1) The Secretary of State may at any time release a fixed-term prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.

(2) Before releasing under this section a prisoner to whom section 247 applies, the Secretary of State must consult the Board, unless the circumstances are such as to render such consultation impracticable.

249 Duration of licence

(1) Subject to subsections (2) and (3), where a fixed-term prisoner is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force for the remainder of his sentence.

(2) Where an intermittent custody prisoner is released on licence under section 244, the licence shall, subject to any revocation under section 254, remain in force—

(a) until the time when he is required to return to prison at the beginning of the next custodial period of the sentence, or

(b) where it is granted at the end of the last custodial period, for the remainder of his sentence.

(3) Subsection (1) has effect subject to sections 263(2) (concurrent terms) and 264(3) and (4) (consecutive terms).

(4) In subsection (2) "custodial period", in relation to a sentence to which an intermittent custody order relates, means any period which is not a licence period as defined by 183(3).

250 Licence conditions

(1) In this section—

(a) "the standard conditions" means such conditions as may be prescribed for the purposes of this section as standard conditions, and

(b) "prescribed" means prescribed by the Secretary of State by order.

(2) Subject to subsection (6) and section 251, any licence under this Chapter in respect of a prisoner serving one or more sentences of imprisonment of less than twelve months and no sentence of twelve months or more—

(a) must include—

(i) the conditions required by the relevant court order, and

(ii) so far as not inconsistent with them, the standard conditions, and

(b) may also include—

(i) any condition which is authorised by section 62 of the Criminal Justice and Court Services Act 2000 (c. 43) (electronic monitoring) or section 64 of that Act (drug testing requirements) and which is compatible with the conditions required by the relevant court order, and

(ii) such other conditions of a kind prescribed for the purposes of this paragraph as the Secretary of State may for the time being consider to be necessary for the protection of the public and specify in the licence.

(3) For the purposes of subsection (2)(a)(i), any reference in the relevant court order to the licence period specified in the order is, in relation to a prohibited activity requirement, exclusion requirement, residence requirement or supervision requirement, to be taken to include a reference to any other period during which the prisoner is released on licence under section 246 or 248.

(4) Any licence under this Chapter in respect of a prisoner serving a sentence of imprisonment for a term of twelve months or more (including such a sentence imposed under section 227) or any sentence of detention under section 91 of the Sentencing Act or section 228 of this Act—

(a) must include the standard conditions, and

(b) may include—

(i) any condition authorised by section 62 or 64 of the Criminal Justice and Court Services Act 2000, and

(ii) such other conditions of a kind prescribed by the Secretary of State for the purposes of this paragraph as the Secretary of State may for the time being specify in the licence.

(5) A licence under section 246 must also include a curfew condition complying with section 253.

(6) Where—

(a) a licence under section 246 is granted to a prisoner serving one or more sentences of imprisonment of less than 12 months and no sentence of 12 months or more, and

(b) the relevant court order requires the licence to be granted subject to a condition requiring his compliance with a curfew requirement (as defined by section 204),

that condition is not to be included in the licence at any time while a curfew condition required by section 253 is in force.

(7) The preceding provisions of this section have effect subject to section 263(3) (concurrent terms) and section 264(3) and (4) (consecutive terms).

(8) In exercising his powers to prescribe standard conditions or the other conditions referred to in subsection (4)(b)(ii), the Secretary of State must have regard to the following purposes of the supervision of offenders while on licence under this Chapter—

(a) the protection of the public,

(b) the prevention of re-offending, and

(c) securing the successful re-integration of the prisoner into the community.

251 Licence conditions on re-release of prisoner serving sentence of less than 12 months

(1) In relation to any licence under this Chapter which is granted to a prisoner serving one or more sentences of imprisonment of less than twelve months and no sentence of twelve months or more on his release in pursuance of a decision of the Board under section 254 or 256, subsections (2) and (3) apply instead of section 250(2).

(2) The licence—

(a) must include the standard conditions, and

(b) may include—

(i) any condition authorised by section 62 or 64 of the Criminal Justice and Court Services Act 2000 (c. 43), and

(ii) such other conditions of a kind prescribed by the Secretary of State for the purposes of section 250(4)(b)(ii) as the Secretary of State may for the time being specify in the licence.

(3) In exercising his powers under subsection (2)(b)(ii), the Secretary of State must have regard to the terms of the relevant court order.

(4) In this section "the standard conditions" has the same meaning as in section 250.

252 Duty to comply with licence conditions

A person subject to a licence under this Chapter must comply with such conditions as may for the time being be specified in the licence.

253 Curfew condition to be included in licence under section 246

(1) For the purposes of this Chapter, a curfew condition is a condition which—

(a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified (which may be premises approved by the Secretary of State under section 9 of the Criminal Justice and Court Services Act 2000 (c. 43)), and

(b) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified.

(2) The curfew condition may specify different places or different periods for different days, but may not specify periods which amount to less than 9 hours in any one day

(excluding for this purpose the first and last days of the period for which the condition is in force).

(3) The curfew condition is to remain in force until the date when the released person would (but for his release) fall to be released on licence under section 244.

(4) Subsection (3) does not apply in relation to a released person to whom an intermittent custody order relates; and in relation to such a person the curfew condition is to remain in force until the number of days during which it has been in force is equal to the number of the required custodial days, as defined in section 246(6), that remained to be served at the time when he was released under section 246.

(5) The curfew condition must include provision for making a person responsible for monitoring the released person's whereabouts during the periods for the time being specified in the condition; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.

(6) Nothing in this section is to be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of released persons' whereabouts in any particular part of England and Wales.

Recall after release

254 Recall of prisoners while on licence

(1) The Secretary of State may, in the case of any prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison.

(2) A person recalled to prison under subsection (1)—

(a) may make representations in writing with respect to his recall, and

(b) on his return to prison, must be informed of the reasons for his recall and of his right to make representations.

(3) The Secretary of State must refer to the Board the case of a person recalled under subsection (1).

(4) Where on a reference under subsection (3) relating to any person the Board recommends his immediate release on licence under this Chapter, the Secretary of State must give effect to the recommendation.

(5) In the case of an intermittent custody prisoner who has not yet served in prison the number of custodial days specified in the intermittent custody order, any recommendation by the Board as to immediate release on licence is to be a recommendation as to his release on licence until the end of one of the licence periods specified by virtue of section 183(1)(b) in the intermittent custody order.

(6) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.

(7) Nothing in subsections (2) to (6) applies in relation to a person recalled under section 255.

255 Recall of prisoners released early under section 246

(1) If it appears to the Secretary of State, as regards a person released on licence under section 246—

(a) that he has failed to comply with any condition included in his licence, or

(b) that his whereabouts can no longer be electronically monitored at the place for the time being specified in the curfew condition included in his licence,

the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison under this section.

(2) A person whose licence under section 246 is revoked under this section—

(a) may make representations in writing with respect to the revocation, and

(b) on his return to prison, must be informed of the reasons for the revocation and of his right to make representations.

(3) The Secretary of State, after considering any representations under subsection (2)(b) or any other matters, may cancel a revocation under this section.

(4) Where the revocation of a person's licence is cancelled under subsection (3), the person is to be treated for the purposes of section 246 as if he had not been recalled to prison under this section.

(5) On the revocation of a person's licence under section 246, he is liable to be detained in pursuance of his sentence and, if at large, is to be treated as being unlawfully at large.

256 Further release after recall

(1) Where on a reference under section 254(3) in relation to any person, the Board does not recommend his immediate release on licence under this Chapter, the Board must either—

(a) fix a date for the person's release on licence, or

(b) fix a date as the date for the next review of the person's case by the Board.

(2) Any date fixed under subsection (1)(a) or (b) must not be later than the first anniversary of the date on which the decision is taken.

(3) The Board need not fix a date under subsection (1)(a) or (b) if the prisoner will fall to be released unconditionally at any time within the next 12 months.

(4) Where the Board has fixed a date under subsection (1)(a), it is the duty of the Secretary of State to release him on licence on that date.

(5) On a review required by subsection (1)(b) in relation to any person, the Board may—

(a) recommend his immediate release on licence, or

(b) fix a date under subsection (1)(a) or (b).

Additional days

257 Additional days for disciplinary offences

(1) Prison rules, that is to say, rules made under section 47 of the Prison Act 1952 (c. 52), may include provision for the award of additional days—

(a) to fixed-term prisoners, or

(b) conditionally on their subsequently becoming such prisoners, to persons on remand,

who (in either case) are guilty of disciplinary offences.

(2) Where additional days are awarded to a fixed-term prisoner, or to a person on remand who subsequently becomes such a prisoner, and are not remitted in accordance with prison rules—

(a) any period which he must serve before becoming entitled to or eligible for release under this Chapter,

(b) any period which he must serve before he can be removed from prison under section 260, and

(c) any period for which a licence granted to him under this Chapter remains in force,

is extended by the aggregate of those additional days.

Fine defaulters and contemnors

258 Early release of fine defaulters and contemnors

(1) This section applies in relation to a person committed to prison—

(a) in default of payment of a sum adjudged to be paid by a conviction, or

(b) for contempt of court or any kindred offence.

(2) As soon as a person to whom this section applies has served one-half of the term for which he was committed, it is the duty of the Secretary of State to release him unconditionally.

(3) Where a person to whom this section applies is also serving one or more sentences of imprisonment, nothing in this section requires the Secretary of State to release him until he is also required to release him in respect of that sentence or each of those sentences.

(4) The Secretary of State may at any time release unconditionally a person to whom this section applies if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds.

Persons liable to removal from the United Kingdom

259 Persons liable to removal from the United Kingdom

For the purposes of this Chapter a person is liable to removal from the United Kingdom if—

(a) he is liable to deportation under section 3(5) of the Immigration Act 1971 (c. 77) and has been notified of a decision to make a deportation order against him,

(b) he is liable to deportation under section 3(6) of that Act,

(c) he has been notified of a decision to refuse him leave to enter the United Kingdom,

(d) he is an illegal entrant within the meaning of section 33(1) of that Act, or

(e) he is liable to removal under section 10 of the Immigration and Asylum Act 1999 (c. 33).

260 Early removal of prisoners liable to removal from United Kingdom

(1) Subject to subsections (2) and (3), where a fixed-term prisoner is liable to removal from the United Kingdom, the Secretary of State may remove him from prison under this section at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period.

(2) Subsection (1) does not apply in relation to a prisoner unless—

(a) the length of the requisite custodial period is at least 6 weeks, and

(b) he has served—

(i) at least 4 weeks of his sentence, and

(ii) at least one-half of the requisite custodial period.

(3) Subsection (1) does not apply where—

(a) the sentence is imposed under section 227 or 228,

(b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995 (c. 16),

(c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983 (c. 20),

(d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42), or

(e) in the case of a prisoner to whom a direction under section 240 relates, the interval between the date on which the sentence was passed and the date on which the prisoner will have served the requisite custodial period is less than 14 days.

(4) A prisoner removed from prison under this section—

(a) is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by—

(i) Schedule 2 or 3 to the Immigration Act 1971, or

(ii) section 10 of the Immigration and Asylum Act 1999 (c. 33), and

(b) so long as remaining in the United Kingdom, remains liable to be detained in pursuance of his sentence until he has served the requisite custodial period.

(5) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State under section 244 or 248 is exercisable in relation to him as if he were in prison.

(6) The Secretary of State may by order—

(a) amend the number of days for the time being specified in subsection (1) or (3)(e),

(b) amend the number of weeks for the time being specified in subsection (2)(a) or (b)(i), and

(c) amend the fraction for the time being specified in subsection (2)(b)(ii).

(7) In this section "the requisite custodial period" has the meaning given by paragraph (a), (b) or (d) of section 244(3).

261 Re-entry into United Kingdom of offender removed from prison early

(1) This section applies in relation to a person who, after being removed from prison under section 260, has been removed from the United Kingdom before he has served the requisite custodial period.

(2) If a person to whom this section applies enters the United Kingdom at any time before his sentence expiry date, he is liable to be detained in pursuance of his sentence from the time of his entry into the United Kingdom until whichever is the earlier of the following—

(a) the end of a period ("the further custodial period") beginning with that time and equal in length to the outstanding custodial period, and

(b) his sentence expiry date.

(3) A person who is liable to be detained by virtue of subsection (2) is, if at large, to be taken for the purposes of section 49 of the Prison Act 1952 (c. 52) (persons unlawfully at large) to be unlawfully at large.

(4) Subsection (2) does not prevent the further removal from the United Kingdom of a person falling within that subsection.

(5) Where, in the case of a person returned to prison by virtue of subsection (2), the further custodial period ends before the sentence expiry date, section 244 has effect in relation to him as if the reference to the requisite custodial period were a reference to the further custodial period.

(6) In this section—

"further custodial period" has the meaning given by subsection (2)(a);

"outstanding custodial period", in relation to a person to whom this section applies, means the period beginning with the date of his removal from the United Kingdom and ending with the date on which he would, but for his removal, have served the requisite custodial period;

"requisite custodial period" has the meaning given by paragraph (a), (b) or (d) of section 244(3);

"sentence expiry date", in relation to a person to whom this section applies, means the date on which, but for his removal from the United Kingdom, he would have ceased to be subject to a licence.

262 Prisoners liable to removal from United Kingdom: modifications of Criminal Justice Act 1991

Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners) shall (until the coming into force of its repeal by this Act) have effect subject to the modifications set out in Schedule 20 (which relate to persons liable to removal from the United Kingdom).

Consecutive or concurrent terms

263 Concurrent terms

(1) This section applies where—

(a) a person ("the offender") has been sentenced by any court to two or more terms of imprisonment which are wholly or partly concurrent, and

(b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

(2) Where this section applies—

(a) nothing in this Chapter requires the Secretary of State to release the offender in respect of any of the terms unless and until he is required to release him in respect of each of the others,

(b) section 244 does not authorise the Secretary of State to release him on licence under that section in respect of any of the terms unless and until that section authorises the Secretary of State to do so in respect of each of the others,

(c) on and after his release under this Chapter the offender is to be on licence for so long, and subject to such conditions, as is required by this Chapter in respect of any of the sentences.

(3) Where the sentences include one or more sentences of twelve months or more and one or more sentences of less than twelve months, the terms of the licence may be determined by the Secretary of State in accordance with section 250(4)(b), without regard to the requirements of any custody plus order or intermittent custody order.

(4) In this section "term of imprisonment" includes a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act.

264 Consecutive terms

(1) This section applies where—

(a) a person ("the offender") has been sentenced to two or more terms of imprisonment which are to be served consecutively on each other, and

(b) the sentences were passed on the same occasion or, where they were passed on different occasions, the person has not been released under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.

(2) Nothing in this Chapter requires the Secretary of State to release the offender on licence until he has served a period equal in length to the aggregate of the length of the custodial periods in relation to each of the terms of imprisonment.

(3) Where any of the terms of imprisonment is a term of twelve months or more, the offender is, on and after his release under this Chapter, to be on licence—

(a) until he would, but for his release, have served a term equal in length to the aggregate length of the terms of imprisonment, and

(b) subject to such conditions as are required by this Chapter in respect of each of those terms of imprisonment.

(4) Where each of the terms of imprisonment is a term of less than twelve months, the offender is, on and after his release under this Chapter, to be on licence until the relevant time, and subject to such conditions as are required by this Chapter in respect of any of the terms of imprisonment, and none of the terms is to be regarded for any purpose as continuing after the relevant time.

(5) In subsection (4) "the relevant time" means the time when the offender would, but for his release, have served a term equal in length to the aggregate of—

(a) all the custodial periods in relation to the terms of imprisonment, and

(b) the longest of the licence periods in relation to those terms.

(6) In this section—

(a) "custodial period"—

(i) in relation to an extended sentence imposed under section 227 or 228, means the appropriate custodial term determined under that section,

(ii) in relation to a term of twelve months or more, means one-half of the term, and

(iii) in relation to a term of less than twelve months complying with section 181, means the custodial period as defined by subsection (3)(a) of that section;

(b) "licence period", in relation to a term of less than twelve months complying with section 181, has the meaning given by subsection (3)(b) of that section.

(7) This section applies to a determinate sentence of detention under section 91 of the Sentencing Act or under section 228 of this Act as it applies to a term of imprisonment of 12 months or more.

Restriction on consecutive sentences for released prisoners

265 Restriction on consecutive sentences for released prisoners

(1) A court sentencing a person to a term of imprisonment may not order or direct that the term is to commence on the expiry of any other sentence of imprisonment from which he has been released early under this Chapter.

(2) In this section "sentence of imprisonment" includes a sentence of detention under section 91 of the Sentencing Act or section 228 of this Act, and "term of imprisonment" is to be read accordingly.

Drug testing requirements

266 Release on licence etc: drug testing requirements

(1) Section 64 of the Criminal Justice and Court Services Act 2000 (c. 43) (release on licence etc: drug testing requirements) is amended as follows.

(2) In subsection (1) for paragraph (a) there is substituted—

"(a) the Secretary of State releases from prison a person aged 14 or over on whom a sentence of imprisonment has been imposed,

(aa) a responsible officer is of the opinion—

(i) that the offender has a propensity to misuse specified Class A drugs, and

(ii) that the misuse by the offender of any specified Class A drug caused or contributed to any offence of which he has been convicted, or is likely to cause or contribute to the commission of further offences, and".

(3) After subsection (4) there is inserted—

"(4A) A person under the age of 17 years may not be required by virtue of this section to provide a sample otherwise than in the presence of an appropriate adult."

(4) In subsection (5), after paragraph (e) there is inserted "and

(f) a sentence of detention under section 226 or 228 of the Criminal Justice Act 2003,".

(5) After subsection (5) there is inserted—

"(6) In this section—

"appropriate adult", in relation to a person aged under 17, means—

(a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,

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

(c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

"responsible officer" means—

(a) in relation to an offender aged under 18, an officer of a local probation board or a member of a youth offending team;

(b) in relation to an offender aged 18 or over, an officer of a local probation board."

Supplemental

267 Alteration by order of relevant proportion of sentence

The Secretary of State may by order provide that any reference in section 244(3)(a), section 247(2) or section 264(6)(a)(ii) to a particular proportion of a prisoner's sentence is to be read as a reference to such other proportion of a prisoner's sentence as may be specified in the order.

268 Interpretation of Chapter 6

In this Chapter—

"the 1997 Act" means the Crime (Sentences) Act 1997 (c. 43);

"the Board" means the Parole Board;

"fixed-term prisoner" has the meaning given by section 237(1);

"intermittent custody prisoner" means a prisoner serving a sentence of imprisonment to which an intermittent custody order relates;

"prison" and "prisoner" are to be read in accordance with section 237(2);

"release", in relation to a prisoner serving a sentence of imprisonment to which an intermittent custody order relates, includes temporary release;

"relevant court order", in relation to a person serving a sentence of imprisonment to which a custody plus order or intermittent custody order relates, means that order.

CHAPTER 7

EFFECT OF LIFE SENTENCE

269 Determination of minimum term in relation to mandatory life sentence

(1) This section applies where after the commencement of this section a court passes a life sentence in circumstances where the sentence is fixed by law.

(2) The court must, unless it makes an order under subsection (4), order that the provisions of section 28(5) to (8) of the Crime (Sentences) Act 1997 (referred to in this Chapter as "the early release provisions") are to apply to the offender as soon as he has served the part of his sentence which is specified in the order.

(3) The part of his sentence is to be such as the court considers appropriate taking into account—

(a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and

(b) the effect of any direction which it would have given under section 240 (crediting periods of remand in custody) if it had sentenced him to a term of imprisonment.

(4) If the offender was 21 or over when he committed the offence and the court is of the opinion that, because of the seriousness of the offence, or of the combination of the offence and one or more offences associated with it, no order should be made under subsection (2), the court must order that the early release provisions are not to apply to the offender.

(5) In considering under subsection (3) or (4) the seriousness of an offence (or of the combination of an offence and one or more offences associated with it), 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.

(6) The Secretary of State may by order amend Schedule 21.

(7) Before making an order under subsection (6), the Secretary of State shall consult the Sentencing Guidelines Council.

270 Duty to give reasons

(1) Any court making an order under subsection (2) or (4) of section 269 must state in open court, in ordinary language, its reasons for deciding on the order made.

(2) In stating its reasons 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.

271 Appeals

(1) In section 9 of the Criminal Appeal Act 1968 (c. 19) (appeal against sentence following conviction on indictment), after subsection (1) there is inserted—

"(1A) In subsection (1) of this section, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.".

(2) In section 8 of the Courts-Martial (Appeals) Act 1968 (c. 20) (right of appeal from court-martial to Courts-Martial Appeal Court) after subsection (1) there is inserted—

"(1ZA) In subsection (1) above, the reference to a sentence fixed by law does not include a reference to an order made under subsection (2) or (4) of section 269 of the Criminal Justice Act 2003 in relation to a life sentence (as defined in section 277 of that Act) that is fixed by law.".

272 Review of minimum term on a reference by Attorney General

(1) In section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) after subsection (3) there is inserted—

"(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Court of Appeal shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.".

(2) Each of the following sections (which relate to the review by the Courts-Martial Appeal Court of sentences passed by courts-martial)—

(a) section 113C of the Army Act 1955 (3 & 4 Eliz. 2 c. 18),

(b) section 113C of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), and

(c) section 71AC of the Naval Discipline Act 1957 (c. 53),

is amended as follows.

(3) After subsection (3) there is inserted—

"(3A) Where a reference under this section relates to an order under subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), the Courts-Martial Appeal Court shall not, in deciding what order under that section is appropriate for the case, make any allowance for the fact that the person to whom it relates is being sentenced for a second time.".

273 Life prisoners transferred to England and Wales

(1) The Secretary of State must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.

(2) In subsection (1) "transferred life prisoner" means a person—

(a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and

(b) who has been transferred to England and Wales after the commencement of this section in pursuance of—

(i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or

(ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),

there to serve his sentence or sentences or the remainder of his sentence or sentences.

(3) In subsection (1) "a relevant order" means—

(a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and

(b) in any other case, an order under subsection (2) or (4) of section 82A of the Sentencing Act.

(4) In section 34(1) of the Crime (Sentences) Act 1997 (c. 43) (meaning of "life prisoner" in Chapter 2 of Part 2 of that Act) at the end there is inserted "and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003".

274 Further provisions about references relating to transferred life prisoners

(1) A reference to the High Court under section 273 is to be determined by a single judge of that court without an oral hearing.

(2) In relation to a reference under that section, any reference to "the court" in subsections (2) to (5) of section 269, in Schedule 21 or in section 82A(2) to (4) of the Sentencing Act is to be read as a reference to the High Court.

(3) A person in respect of whom a reference has been made under section 273 may with the leave of the Court of Appeal appeal to the Court of Appeal against the decision of the High Court on the reference.

(4) Section 1(1) of the Administration of Justice Act 1960 (c. 65) (appeal to House of Lords from decision of High Court in a criminal cause or matter) and section 18(1)(a) of the Supreme Court Act 1981 (c. 54) (exclusion of appeal from High Court to Court of Appeal in a criminal cause or matter) do not apply in relation to a decision to which subsection (3) applies.

(5) The jurisdiction conferred on the Court of Appeal by subsection (3) is to be exercised by the criminal division of that court.

(6) Section 33(3) of the Criminal Appeal Act 1968 (c. 19) (limitation on appeal from criminal division of Court of Appeal) does not prevent an appeal to the House of Lords under this section.

(7) In relation to appeals to the Court of Appeal or the House of Lords under this section, the Secretary of State may make an order containing provision corresponding to any provision in the Criminal Appeal Act 1968 (subject to any specified modifications).

275 Duty to release certain life prisoners

(1) Section 28 of the Crime (Sentences) Act 1997 (c. 43) (duty to release certain life prisoners) is amended as follows.

(2) For subsection (1A) there is substituted—

"(1A) This section applies to a life prisoner in respect of whom a minimum term order has been made; and any reference in this section to the relevant part of such a prisoner's sentence is a reference to the part of the sentence specified in the order."

(3) In subsection (1B)(a)—

(a) for the words from the beginning to "applies" there is substituted "this section does not apply to him", and

(b) for the words from "such an order" to "appropriate stage" there is substituted "a minimum term order has been made in respect of each of those sentences".

(4) After subsection (8) there is inserted—

"(8A) In this section "minimum term order" means an order under—

(a) subsection (2) of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in respect of life sentence that is not fixed by law), or

(b) subsection (2) of section 269 of the Criminal Justice Act 2003 (determination of minimum term in respect of mandatory life sentence).".

276 Mandatory life sentences: transitional cases

Schedule 22 (which relates to the effect in transitional cases of mandatory life sentences) shall have effect.

277 Interpretation of Chapter 7

In this Chapter—

"court" includes a court-martial;

"guidelines" has the same meaning as in section 172(1);

"life sentence" means—

(a) a sentence of imprisonment for life,

(b) a sentence of detention during Her Majesty's pleasure, or

(c) a sentence of custody for life passed before the commencement of section 61(1) of the Criminal Justice and Court Services Act 2000 (c. 43) (which abolishes that sentence).

CHAPTER 8

OTHER PROVISIONS ABOUT SENTENCING

Deferment of sentence

278 Deferment of sentence

Schedule 23 (deferment of sentence) shall have effect.

Power to include drug treatment and testing requirement in certain orders in respect of young offenders

279 Drug treatment and testing requirement in action plan order or supervision order

Schedule 24 (which enables a requirement as to drug treatment and testing to be included in an action plan order or a supervision order) shall have effect.

Alteration of penalties for offences

280 Alteration of penalties for specified summary offences

(1) The summary offences listed in Schedule 25 are no longer punishable with imprisonment.

(2) Schedule 26 (which contains amendments increasing the maximum term of imprisonment for certain summary offences from 4 months or less to 51 weeks) shall have effect.

(3) This section does not affect the penalty for any offence committed before the commencement of this section.

281 Alteration of penalties for other summary offences

(1) Subsection (2) applies to any summary offence which—

(a) is an offence under a relevant enactment,

(b) is punishable with a maximum term of imprisonment of five months or less, and

(c) is not listed in Schedule 25 or Schedule 26.

(2) The Secretary of State may by order amend any relevant enactment so as to—

(a) provide that any summary offence to which this subsection applies is no longer punishable with imprisonment, or

(b) increase to 51 weeks the maximum term of imprisonment to which a person is liable on conviction of the offence.

(3) An order under subsection (2) may make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient, including provision amending any relevant enactment.

(4) Subsection (5) applies to any summary offence which—

(a) is an offence under a relevant enactment, and

(b) is punishable with a maximum term of imprisonment of six months.

(5) The maximum term of imprisonment to which a person is liable on conviction of an offence to which this subsection applies is, by virtue of this subsection, 51 weeks (and the relevant enactment in question is to be read as if it had been amended accordingly).

(6) Neither of the following—

(a) an order under subsection (2), or

(b) subsection (5),

affects the penalty for any offence committed before the commencement of that order or subsection (as the case may be).

(7) In this section and section 282 "relevant enactment" means any enactment contained in—

(a) an Act passed before or in the same Session as this Act, or

(b) any subordinate legislation made before the passing of this Act.

(8) In subsection (7) "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30).

282 Increase in maximum term that may be imposed on summary conviction of offence triable either way

(1) In section 32 of the Magistrates' Courts Act 1980 (c. 43) (penalties on summary conviction for offences triable either way) in subsection (1) (offences listed in Schedule 1 to that Act) for "not exceeding 6 months" there is substituted "not exceeding 12 months".

(2) Subsection (3) applies to any offence triable either way which—

(a) is an offence under a relevant enactment,

(b) is punishable with imprisonment on summary conviction, and

(c) is not listed in Schedule 1 to the Magistrates' Courts Act 1980.

(3) The maximum term of imprisonment to which a person is liable on summary conviction of an offence to which this subsection applies is by virtue of this subsection 12 months (and the relevant enactment in question is to be read as if it had been amended accordingly).

(4) Nothing in this section affects the penalty for any offence committed before the commencement of this section.

283 Enabling powers: power to alter maximum penalties

(1) The Secretary of State may by order, in accordance with subsection (2) or (3), amend any relevant enactment which confers a power (however framed or worded) by subordinate legislation to make a person—

(a) as regards a summary offence, liable on conviction to a term of imprisonment;

(b) as regards an offence triable either way, liable on summary conviction to a term of imprisonment.

(2) An order made by virtue of paragraph (a) of subsection (1) may amend the relevant enactment in question so as to—

(a) restrict the power so that a person may no longer be made liable on conviction of a summary offence to a term of imprisonment, or

(b) increase to 51 weeks the maximum term of imprisonment to which a person may be made liable on conviction of a summary offence under the power.

(3) An order made by virtue of paragraph (b) of that subsection may amend the relevant enactment in question so as to increase the maximum term of imprisonment to which a person may be made liable on summary conviction of an offence under the power to 12 months.

(4) Schedule 27 (which amends the maximum penalties which may be imposed by virtue of certain enabling powers) shall have effect.

(5) The power conferred by subsection (1) shall not apply to the enactments amended under Schedule 27.

(6) An order under subsection (1) may make such supplementary, incidental or consequential provision as the Secretary of State considers necessary or expedient, including provision amending any relevant enactment.

(7) None of the following—

(a) an order under subsection (1), or

(b) Schedule 27,

affects the penalty for any offence committed before the commencement of that order or Schedule (as the case may be).

(8) In subsection (1) "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30).

(9) In this section "relevant enactment" means any enactment contained in an Act passed before or in the same Session as this Act.

284 Increase in penalties for drug-related offences

(1) Schedule 28 (increase in penalties for certain drug-related offences) shall have effect.

(2) That Schedule does not affect the penalty for any offence committed before the commencement of that Schedule.

285 Increase in penalties for certain driving-related offences

(1) In section 12A of the Theft Act 1968 (c. 60) (aggravated vehicle-taking), in subsection (4), for "five years" there is substituted "fourteen years".

(2) Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) (prosecution and punishment of offences) is amended in accordance with subsections (3) and (4).

(3) In the entry relating to section 1 of the Road Traffic Act 1988 (c. 52) (causing death by dangerous driving), in column 4, for "10 years" there is substituted "14 years".

(4) In the entry relating to section 3A of that Act (causing death by careless driving when under influence of drink or drugs), in column 4, for "10 years" there is substituted "14 years".

(5) Part I of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I. 10)) (prosecution and punishment of offences) is amended in accordance with subsections (6) and (7).

(6) In the entry relating to Article 9 of the Road Traffic (Northern Ireland) Order 1995 (S.I. 1995/2994 (N.I. 18)) (causing death or grievous bodily injury by dangerous driving), in column 4, for "10 years" there is substituted "14 years".

(7) In the entry relating to Article 14 of that Order (causing death or grievous bodily injury by careless driving when under the influence of drink or drugs), in column 4, for "10 years" there is substituted "14 years".

(8) This section does not affect the penalty for any offence committed before the commencement of this section.

286 Increase in penalties for offences under section 174 of Road Traffic Act 1988

(1) In Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (c. 53) (prosecution and punishment of offences), in the entry relating to section 174 of the Road Traffic Act 1988 (c. 52) (false statements and withholding material information), for columns (3) and (4) there is substituted—

"(a) Summarily	(a) 6 months or the statutory maximum or both
(b) On indictment	(b) 2 years or a fine or both."

(2) Section 282(3) (increase in maximum term that may be imposed on summary conviction of offence triable either way) has effect in relation to the entry amended by subsection (1) as it has effect in relation to any other enactment contained in an Act passed before this Act.

(3) This section does not apply in relation to any offence committed before the commencement of this section.

Firearms offences

287 Minimum sentence for certain firearms offences

After section 51 of the Firearms Act 1968 (c. 27) there is inserted the following section—

"**51A Minimum sentence for certain offences under s. 5**

(1) This section applies where—

(a) an individual is convicted of—

(i) an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) of this Act, or

(ii) an offence under section 5(1A)(a) of this Act, and

(b) the offence was committed after the commencement of this section and at a time when he was aged 16 or over.

(2) The court shall impose an appropriate custodial sentence (or order for detention) for a term of at least the required minimum term (with or without a fine) unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

(3) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

(4) In this section "appropriate custodial sentence (or order for detention)" means—

(a) in relation to England and Wales—

(i) in the case of an offender who is aged 18 or over when convicted, a sentence of imprisonment, and

(ii) in the case of an offender who is aged under 18 at that time, a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000;

(b) in relation to Scotland—

(i) in the case of an offender who is aged 21 or over when convicted, a sentence of imprisonment,

(ii) in the case of an offender who is aged under 21 at that time (not being an offender mentioned in sub-paragraph (iii)), a sentence of detention under section 207 of the Criminal Procedure (Scotland) Act 1995, and

(iii) in the case of an offender who is aged under 18 at that time and is subject to a supervision requirement, an order for detention under section 44, or sentence of detention under section 208, of that Act.

(5) In this section "the required minimum term" means—

(a) in relation to England and Wales—

(i) in the case of an offender who was aged 18 or over when he committed the offence, five years, and

(ii) in the case of an offender who was under 18 at that time, three years, and

(b) in relation to Scotland—

(i) in the case of an offender who was aged 21 or over when he committed the offence, five years, and

(ii) in the case of an offender who was aged under 21 at that time, three years."

288 Certain firearms offences to be triable only on indictment

In Part 1 of Schedule 6 to the Firearms Act 1968 (c. 27) (prosecution and punishment of offences) for the entries relating to offences under section 5(1) (possessing or distributing prohibited weapons or ammunition) and section 5(1A) (possessing or distributing other prohibited weapons) there is substituted—

"Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c)	Possessing or distributing prohibited weapons or ammunition.	On indictment	10 years or a fine, or both.
Section 5(1)(b)	Possessing or distributing prohibited weapon designed for discharge of noxious liquid etc.	(a) Summary	6 months or a fine of the statutory maximum, or both.
		(b) On indictment	10 years or a fine or both.
Section 5(1A)(a)	Possessing or distributing firearm	On indictment	10 years or a fine, or both.

	disguised as other object.		
Section 5(1A)(b), (c), (d), (e), (f) or (g)	Possessing or distributing other prohibited weapons.	(a) Summary	6 months or a fine of the statutory maximum, or both.
		(b) On indictment	10 years or a fine, or both.”

289 Power to sentence young offender to detention in respect of certain firearms offences: England and Wales

(1) Section 91 of the Sentencing Act (offenders under 18 convicted of certain serious offences: power to detain for specified period) is amended as follows.

(2) After subsection (1) there is inserted—

“(1A) Subsection (3) below also applies where—

(a) a person aged under 18 is convicted on indictment of an offence—

(i) under subsection (1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) of section 5 of the Firearms Act 1968 (prohibited weapons), or

(ii) under subsection (1A)(a) of that section,

(b) the offence was committed after the commencement of section 51A of that Act and at a time when he was aged 16 or over, and

(c) the court is of the opinion mentioned in section 51A(2) of that Act (exceptional circumstances which justify its not imposing required custodial sentence).”

(3) After subsection (4) there is inserted—

“(5) Where subsection (2) of section 51A of the Firearms Act 1968 requires the imposition of a sentence of detention under this section for a term of at least the required minimum term (within the meaning of that section), the court shall sentence the offender to be detained for such period, of at least that term but not exceeding the maximum term of imprisonment with which the offence is punishable in the case of a person aged 18 or over, as may be specified in the sentence.”.

290 Power to sentence young offender to detention in respect of certain firearms offences: Scotland

(1) The Criminal Procedure (Scotland) Act 1995 (c. 46) is amended as follows.

(2) In section 49(3) (children’s hearing for purpose of obtaining advice as to treatment of child), at the end there is added “except that where the circumstances are such as are mentioned in paragraphs (a) and (b) of section 51A(1) of the Firearms Act 1968 it shall itself dispose of the case”.

(3) In section 208 (detention of children convicted on indictment), the existing provisions become subsection (1); and after that subsection there is added—

"(2) Subsection (1) does not apply where the circumstances are such as are mentioned in paragraphs (a) and (b) of section 51A(1) of the Firearms Act 1968.".

291 Power by order to exclude application of minimum sentence to those under 18

(1) The Secretary of State may by order—

(a) amend section 51A(1)(b) of the Firearms Act 1968 (c. 27) by substituting for the word "16" the word "18",

(b) repeal section 91(1A)(c) and (5) of the Sentencing Act,

(c) amend subsection (3) of section 49 of the Criminal Procedure (Scotland) Act 1995 by repealing the exception to that subsection,

(d) repeal section 208(2) of that Act, and

(e) make such other provision as he considers necessary or expedient in consequence of, or in connection with, the provision made by virtue of paragraphs (a) to (d).

(2) The provision that may be made by virtue of subsection (1)(e) includes, in particular, provision amending or repealing any provision of an Act (whenever passed), including any provision of this Act.

292 Sentencing for firearms offences in Northern Ireland

Schedule 29 (which contains amendments of the Firearms (Northern Ireland) Order 1981 (S.I. 1981/155 (N.I. 2)) relating to sentencing) shall have effect.

293 Increase in penalty for offences relating to importation or exportation of certain firearms

(1) The Customs and Excise Management Act 1979 (c. 2) is amended as follows.

(2) In section 50 (penalty for improper importation of goods), for subsection (5A) there is substituted—

"(5A) In the case of—

(a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the importation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,

(b) any such offence committed in Northern Ireland in connection with a prohibition or restriction on the importation of any weapon or ammunition that is of a kind mentioned in Article 6(1)(a), (ab), (ac), (ad), (ae) or (c) or (1A)(a) of the Firearms (Northern Ireland) Order 1981, or

(c) any such offence committed in connection with the prohibition contained in section 20 of the Forgery and Counterfeiting Act 1981,

subsection (4)(b) above shall have effect as if for the words "7 years" there were substituted the words "10 years"."

(3) In section 68 (offences in relation to exportation of prohibited or restricted goods) for subsection (4A) there is substituted—

"(4A) In the case of—

(a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,

(b) any such offence committed in Northern Ireland in connection with a prohibition or restriction on the exportation of any weapon or ammunition that is of a kind mentioned in Article 6(1)(a), (ab), (ac), (ad), (ae) or (c) or (1A)(a) of the Firearms (Northern Ireland) Order 1981, or

(c) any such offence committed in connection with the prohibition contained in section 21 of the Forgery and Counterfeiting Act 1981,

subsection (3)(b) above shall have effect as if for the words "7 years" there were substituted the words "10 years"."

(4) In section 170 (penalty for fraudulent evasion of duty, etc), for subsection (4A) there is substituted—

"(4A) In the case of—

(a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,

(b) any such offence committed in Northern Ireland in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in Article 6(1)(a), (ab), (ac), (ad), (ae) or (c) or (1A)(a) of the Firearms (Northern Ireland) Order 1981, or

(c) any such offence committed in connection with the prohibitions contained in sections 20 and 21 of the Forgery and Counterfeiting Act 1981,

subsection (3)(b) above shall have effect as if for the words "7 years" there were substituted the words "10 years"."

(5) This section does not affect the penalty for any offence committed before the commencement of this section.

Offenders transferred to mental hospital

294 Duration of directions under Mental Health Act 1983 in relation to offenders

(1) Section 50 of the Mental Health Act 1983 (c. 20) (further provisions as to prisoners under sentence) is amended as follows.

(2) In subsection (1), for "the expiration of that person's sentence" there is substituted "his release date".

(3) For subsections (2) and (3) there is substituted—

"(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this section, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if the transfer direction had not been given; and in determining that day there shall be disregarded—

(a) any powers that would be exercisable by the Parole Board if he were detained in such a prison or other institution, and

(b) any practice of the Secretary of State in relation to the early release under discretionary powers of persons detained in such a prison or other institution.".

295 Access to Parole Board for certain patients serving prison sentences

In section 74 of the Mental Health Act 1983 (restricted patients subject to restriction directions) after subsection (5) there is inserted—

"(5A) Where the tribunal have made a recommendation under subsection (1)(b) above in the case of a patient who is subject to a restriction direction or a limitation direction—

(a) the fact that the restriction direction or limitation direction remains in force does not prevent the making of any application or reference to the Parole Board by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to the Parole Board, and

(b) if the Parole Board make a direction or recommendation by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been removed to hospital, the restriction direction or limitation direction shall cease to have effect at the time when he would become entitled to be so released."

296 Duration of directions under Mental Health (Northern Ireland) Order 1986 in relation to offenders

(1) Article 56 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/ 595 (N.I. 4)) (further provisions as to prisoners under sentence) is amended as follows.

(2) In paragraph (1), for "the expiration of that person's sentence" there is substituted "his release date".

(3) For paragraphs (2) and (3) there is substituted—

"(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this Article, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice centre in which he might have been detained if the transfer direction had not been given; and in determining that day any powers that would be exercisable by the Sentence Review Commissioners or the Life Sentence Review Commissioners if he were detained in such a prison or juvenile justice centre shall be disregarded."

297 Access to Sentence Review Commissioners and Life Sentence Review Commissioners for certain Northern Ireland patients

In Article 79 of the Mental Health (Northern Ireland) Order 1986 (restricted patients subject to restriction directions) after paragraph (5) there is inserted—

"(5A) Where the tribunal have made a recommendation under paragraph (1)(b) in the case of a patient who is subject to a restriction direction—

(a) the fact that the restriction direction remains in force does not prevent—

(i) the making of any application or reference to the Life Sentence Review Commissioners by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to those Commissioners, or

(ii) the making of any application by him to the Sentence Review Commissioners, and

(b) if—

(i) the Life Sentence Review Commissioners give a direction by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice centre in which he might have been detained if the transfer direction had not been given, or

(ii) the Sentence Review Commissioners grant a declaration by virtue of which he would become so entitled,

the restriction direction shall cease to have effect at the time at which he would become so entitled.".

Term of detention and training order

298 Term of detention and training order

(1) Section 101 of the Sentencing Act (which relates to detention and training orders) is amended as follows.

(2) In subsection (1), for "subsection (2)" there is substituted "subsections (2) and (2A)".

(3) After subsection (2) there is inserted—

"(2A) Where—

(a) the offence is a summary offence,

(b) the maximum term of imprisonment that a court could (in the case of an offender aged 18 or over) impose for the offence is 51 weeks,

the term of a detention and training order may not exceed 6 months."

Disqualification from working with children

299 Disqualification from working with children

Schedule 30 (which contains amendments of Part 2 of the Criminal Justice and Court Services Act 2000 (c. 43) relating to disqualification orders under that Part) shall have effect.

Fine defaulters

300 Power to impose unpaid work requirement or curfew requirement on fine defaulter

(1) Subsection (2) applies in any case where, in respect of a person aged 16 or over, a magistrates' court—

(a) has power under Part 3 of the Magistrates' Courts Act 1980 (c. 43) to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction (other than a sum ordered to be paid under section 6 of the Proceeds of Crime Act 2002 (c. 29)), or

(b) would, but for section 89 of the Sentencing Act (restrictions on custodial sentences for persons under 18), have power to issue such a warrant for such default.

(2) The magistrates' court may, instead of issuing a warrant of commitment or, as the case may be, proceeding under section 81 of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offender), order the person in default to comply with—

(a) an unpaid work requirement (as defined by section 199), or

(b) a curfew requirement (as defined by section 204).

(3) In this Part "default order" means an order under subsection (2).

(4) Subsections (3) and (4) of section 177 (which relate to electronic monitoring) have effect in relation to a default order as they have effect in relation to a community order.

(5) Where a magistrates' court has power to make a default order, it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions (if any) as it thinks just.

(6) Schedule 8 (breach, revocation or amendment of community order), Schedule 9 (transfer of community orders to Scotland or Northern Ireland) and Chapter 4 (further provisions about orders under Chapters 2 and 3) have effect in relation to default orders as they have effect in relation to community orders, but subject to the modifications contained in Schedule 31.

(7) Where a default order has been made for default in paying any sum—

(a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect, and

(b) on payment of a part of the sum to any such person, the total number of hours or days to which the order relates is to be taken to be reduced by a proportion corresponding to that which the part paid bears to the whole sum.

(8) In calculating any reduction required by subsection (7)(b), any fraction of a day or hour is to be disregarded.

301 Fine defaulters: driving disqualification

(1) Subsection (2) applies in any case where a magistrates' court—

(a) has power under Part 3 of the Magistrates' Courts Act 1980 (c. 43) to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction (other than a sum ordered to be paid under section 6 of the Proceeds of Crime Act 2002 (c. 29)), or

(b) would, but for section 89 of the Sentencing Act (restrictions on custodial sentences for persons under 18), have power to issue such a warrant for such default.

(2) The magistrates' court may, instead of issuing a warrant of commitment or, as the case may be, proceeding under section 81 of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offenders), order the person in default to be disqualified, for such period not exceeding twelve months as it thinks fit, for holding or obtaining a driving licence.

(3) Where an order has been made under subsection (2) for default in paying any sum—

(a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect, and

(b) on payment of part of the sum to any such person, the total number of weeks or months to which the order relates is to be taken to be reduced by a proportion corresponding to that which the part paid bears to the whole sum.

(4) In calculating any reduction required by subsection (3)(b) any fraction of a week or month is to be disregarded.

(5) The Secretary of State may by order amend subsection (2) by substituting, for the period there specified, such other period as may be specified in the order.

(6) A court which makes an order under this section disqualifying a person for holding or obtaining a driving licence shall require him to produce—

(a) any such licence held by him together with its counterpart; or

(b) in the case where he holds a Community licence (within the meaning of Part 3 of the Road Traffic Act 1988 (c. 52)), his Community licence and its counterpart (if any).

(7) In this section—

"driving licence" means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;

"counterpart"—

(a) in relation to a driving licence, has the meaning given in relation to such a licence by section 108(1) of that Act; and

(b) in relation to a Community licence, has the meaning given by section 99B of that Act.

CHAPTER 9

SUPPLEMENTARY

302 Execution of process between England and Wales and Scotland

Section 4 of the Summary Jurisdiction (Process) Act 1881 (c. 24) (execution of process of English and Welsh courts in Scotland) applies to any process issued by a magistrates' court under—

paragraph 7(2) or (4), 13(6) or 25(1) of Schedule 8,

paragraph 12 of Schedule 9,

paragraph 8(1) of Schedule 10, or

paragraph 6(2) or (4), 12(1) or 20(1) of Schedule 12,

as it applies to process issued under the Magistrates' Courts Act 1980 by a magistrates' court.

303 Sentencing: repeals

The following enactments (which are superseded by the provisions of this Part) shall cease to have effect—

(a) Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners),

(b) in the Crime (Sentences) Act 1997 (c. 43)—

(i) section 29 (power of Secretary of State to release life prisoners to whom section 28 of that Act does not apply),

(ii) section 33 (transferred prisoners), and

(iii) sections 35 and 40 (fine defaulters),

(c) sections 80 and 81 of the Crime and Disorder Act 1998 (c. 37) (sentencing guidelines), and

(d) in the Sentencing Act—

(i) Chapter 3 of Part 4 (community orders available only where offender 16 or over),

(ii) section 85 (sexual or violent offences: extension of custodial term for licence purposes),

(iii) sections 87 and 88 (remand in custody),

(iv) section 109 (life sentence for second serious offence), and

(v) Chapter 5 of Part 5 (suspended sentences).

304 Amendments relating to sentencing

Schedule 32 (which contains amendments related to the provisions of this Part) shall have effect.

305 Interpretation of Part 12

(1) In this Part, except where the contrary intention appears—

"accredited programme" has the meaning given by section 202(2);

"activity requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 201;

"alcohol treatment requirement", in relation to a community order or suspended sentence order, has the meaning given by section 212;

"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 161(1) of the Sentencing Act;

"attendance centre" has the meaning given by section 221(2);

"attendance centre requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 214;

"community order" has the meaning given by section 177(1);

"community requirement", in relation to a suspended sentence order, has the meaning given by section 189(7);

"community sentence" has the meaning given by section 147(1);

"court" (without more), except in Chapter 7, does not include a service court;

"curfew requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 204;

"custodial sentence" has the meaning given by section 76 of the Sentencing Act;

"custody plus order" has the meaning given by section 181(4);

"default order" has the meaning given by section 300(3);

"drug rehabilitation requirement", in relation to a community order or suspended sentence order, has the meaning given by section 209;

"electronic monitoring requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 215;

"exclusion requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 205;

"guardian" has the same meaning as in the Children and Young Persons Act 1933 (c. 12);

"intermittent custody order" has the meaning given by section 183(2);

"licence" means a licence under Chapter 6;

"local probation board" means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

"mental health treatment requirement", in relation to a community order or suspended sentence order, has the meaning given by section 207;

"pre-sentence report" has the meaning given by section 158(1);

"programme requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 202;

"prohibited activity requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 203;

"residence requirement", in relation to a community order or suspended sentence order, has the meaning given by section 206;

"responsible officer", in relation to an offender to whom a community order, a custody plus order, an intermittent custody order or a suspended sentence order relates, has the meaning given by section 197;

"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;

"the Sentencing Act" means the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

"service court" means—

(a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53);

(b) a summary appeal court constituted under section 83ZA of the Army Act 1955, section 83ZA of the Air Force Act 1955 or section 52FF of the Naval Discipline Act 1957;

(c) the Courts-Martial Appeal Court; or

(d) a Standing Civilian Court;

"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;

"supervision requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 213;

"suspended sentence" and "suspended sentence order" have the meaning given by section 189(7);

"unpaid work requirement", in relation to a community order, custody plus order, intermittent custody order or suspended sentence order, has the meaning given by section 199;

"youth offending team" means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37).

(2) For the purposes of any provision of this Part which requires the determination of the age of a person by the court or the Secretary of State, his age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State to be after considering any available evidence.

(3) Any reference in this Part to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders.

(4) For the purposes of this Part—

(a) a sentence falls to be imposed under subsection (2) of section 51A of the Firearms Act 1968 (c. 27) if it is required by that subsection and the court is not of the opinion there mentioned,

(b) a sentence falls to be imposed under section 110(2) or 111(2) of the Sentencing Act if it is required by that provision and the court is not of the opinion there mentioned,

(c) a sentence falls to be imposed under section 225 or 227 if, because the court is of the opinion mentioned in subsection (1)(b) of that section, the court is obliged to pass a sentence complying with that section,

(d) a sentence falls to be imposed under section 226 if, because the court is of the opinion mentioned in subsection (1)(b) of that section and considers that the case falls within subsection (2) or (3) of that section, the court is obliged to pass a sentence complying with that section, and

(e) a sentence falls to be imposed under section 228 if, because the court is of the opinion mentioned in subsection (1)(b)(i) and (ii) of that section, the court is obliged to pass a sentence complying with that section.

PART 13

MISCELLANEOUS

Detention of suspected terrorists

306 Limit on period of detention without charge of suspected terrorists

(1) Schedule 8 to the Terrorism Act 2000 (c. 11) (detention) is amended as follows.

(2) At the beginning of paragraph 29(3) (duration of warrants of further detention) there is inserted "Subject to paragraph 36(3A),".

(3) In sub-paragraph (3) of paragraph 36 (extension of warrants)—

(a) at the beginning there is inserted "Subject to sub-paragraph (3A),", and

(b) for the words from "beginning" onwards there is substituted "beginning with the relevant time".

(4) After that sub-paragraph there is inserted—

"(3A) Where the period specified in a warrant of further detention—

(a) ends at the end of the period of seven days beginning with the relevant time, or

(b) by virtue of a previous extension (or further extension) under this sub-paragraph, ends after the end of that period,

the specified period may, on an application under this paragraph, be extended or further extended to a period ending not later than the end of the period of fourteen days beginning with the relevant time.

(3B) In this paragraph "the relevant time", in relation to a person, means—

(a) the time of his arrest under section 41, or

(b) if he was being detained under Schedule 7 when he was arrested under section 41, the time when his examination under that Schedule began."

Enforcement of legislation on endangered species

307 Enforcement of regulations implementing Community legislation on endangered species

(1) In this section—

"the 1972 Act" means the European Communities Act 1972 (c. 68);

"relevant Community instrument" means—

(a) Council Regulation 338/97/EC on the protection of species of wild fauna and flora by regulating the trade therein, and

(b) Commission Regulation 1808/01/EC on the implementation of the Council Regulation mentioned in paragraph (a).

(2) Regulations made under section 2(2) of the 1972 Act for the purpose of implementing any relevant Community instrument may, notwithstanding paragraph 1(1)(d) of Schedule 2 to the 1972 Act, create offences punishable on conviction on indictment with imprisonment for a term not exceeding five years.

(3) In relation to Scotland and Northern Ireland, regulations made under section 2(2) of the 1972 Act for the purpose of implementing any relevant Community instrument may, notwithstanding paragraph 1(1)(d) of Schedule 2 to the 1972 Act, create offences punishable on summary conviction with imprisonment for a term not exceeding six months.

(4) In Scotland, a constable may arrest without a warrant a person—

(a) who has committed or attempted to commit an offence under regulations made under section 2(2) of the 1972 Act for the purpose of implementing any relevant Community instrument, or

(b) whom he has reasonable grounds for suspecting to have committed or to have attempted to commit such an offence.

(5) Until the coming into force of paragraph 3 of Schedule 27 (which amends paragraph 1 of Schedule 2 to the 1972 Act), subsection (3) has effect—

(a) with the omission of the words "in relation to Scotland and Northern Ireland", and

(b) as if, in relation to England and Wales, the definition of "relevant Community instrument" also included Council Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora as amended by the Act of Accession to the European Union of Austria, Finland and Sweden and by Council Directive 97/62/EC.

(6) Any reference in this section to a Community instrument is to be read—

(a) as a reference to that instrument as amended from time to time, and

(b) where any provision of that instrument has been repealed, as including a reference to any instrument that re-enacts the repealed provision (with or without amendment).

Miscellaneous provisions about criminal proceedings

308 Non-appearance of defendant: plea of guilty

In section 12 of the Magistrates' Courts Act 1980 (c. 43) (non-appearance of accused: plea of guilty) subsection (1)(a)(i) (which excludes offences punishable with imprisonment for term exceeding 3 months) is omitted.

309 Preparatory hearings for serious offences not involving fraud

In section 29 of the Criminal Procedure and Investigations Act 1996 (c. 25) (power to order preparatory hearings) in subsection (1) (preparatory hearing may be held in complex or lengthy trial) after "complexity" there is inserted "a case of such seriousness".

310 Preparatory hearings to deal with severance and joinder of charges

(1) In section 7(1) of the Criminal Justice Act 1987 (c. 38) (which sets out the purposes of preparatory hearings in fraud cases) after paragraph (d) there is inserted "or

(e) considering questions as to the severance or joinder of charges."

(2) In section 9(3) of that Act (determinations as to the admissibility of evidence etc) after paragraph (c) there is inserted "and

(d) any question as to the severance or joinder of charges."

(3) In section 9(11) of that Act (appeals against orders or rulings under section 9(3)(b) or (c)) for "or (c)" there is substituted "(c) or (d)".

(4) In section 29(2) of the Criminal Procedure and Investigations Act 1996 (purposes of preparatory hearings in non-fraud cases) after paragraph (d) there is inserted—

"(e) considering questions as to the severance or joinder of charges,".

(5) In section 31(3) of that Act (rulings as to the admissibility of evidence etc) after paragraph (b) there is inserted—

"(c) any question as to the severance or joinder of charges."

311 Reporting restrictions for preparatory hearings

(1) The Criminal Justice Act 1987 is amended as follows.

(2) In paragraphs (a) and (b) of section 11(1) (restrictions on reporting) for "Great Britain" there is substituted "the United Kingdom".

(3) In section 11A (offences in connection with reporting) after subsection (3) there is inserted—

"(3A) Proceedings for an offence under this section shall not be instituted in Northern Ireland otherwise than by or with the consent of the Attorney General for Northern Ireland."

(4) In section 17(3) (extent) after "sections 2 and 3;" there is inserted "sections 11 and 11A;".

(5) The Criminal Procedure and Investigations Act 1996 (c. 25) is amended as follows.

(6) In paragraphs (a) and (b) of section 37(1) (restrictions on reporting) for "Great Britain" there is substituted "the United Kingdom".

(7) In section 38 (offences in connection with reporting) after subsection (3) there is inserted—

"(3A) Proceedings for an offence under this section shall not be instituted in Northern Ireland otherwise than by or with the consent of the Attorney General for Northern Ireland."

(8) In paragraphs (a) and (b) of section 41(1) (restrictions on reporting) for "Great Britain" there is substituted "the United Kingdom".

(9) In section 79(3) (extent) after "Parts III" there is inserted "(other than sections 37 and 38)".

(10) In Schedule 4 (modifications for Northern Ireland) paragraph 16 is omitted.

312 Awards of costs

(1) The Prosecution of Offences Act 1985 (c. 23) is amended as follows.

(2) In section 16(4A) (defence costs on an appeal under section 9(11) of Criminal Justice Act 1987 (c. 38) may be met out of central funds) after "1987" there is inserted "or section 35(1) of the Criminal Procedure and Investigations Act 1996".

(3) In section 18(2) (award of costs against accused in case of dismissal of appeal under section 9(11) of the Criminal Justice Act 1987 etc) after paragraph (c) there is inserted "or

(d) an appeal or application for leave to appeal under section 35(1) of the Criminal Procedure and Investigations Act 1996."

313 Extension of investigations by Criminal Cases Review Commission in England and Wales

(1) Section 23A of the Criminal Appeal Act 1968 (c. 19) (power to order investigations by Criminal Cases Review Commission) is amended as follows.

(2) In subsection (1) after "conviction" there is inserted "or an application for leave to appeal against conviction,".

(3) In paragraph (a) of that subsection—

(a) at the beginning there is inserted "in the case of an appeal,", and

(b) for "case", in both places where it occurs, there is substituted "appeal".

(4) After paragraph (a) of that subsection there is inserted—

"(aa) in the case of an application for leave to appeal, the matter is relevant to the determination of the application and ought, if possible, to be resolved before the application is determined;".

(5) After that subsection there is inserted—

"(1A) A direction under subsection (1) above may not be given by a single judge, notwithstanding that, in the case of an application for leave to appeal, the

application may be determined by a single judge as provided for by section 31 of this Act."

(6) After subsection (4) there is inserted—

"(5) In this section "respondent" includes a person who will be a respondent if leave to appeal is granted."

314 Extension of investigations by Criminal Cases Review Commission in Northern Ireland

(1) Section 25A of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) (power to order investigations by Criminal Cases Review Commission) is amended as follows.

(2) In subsection (1) after "conviction" there is inserted "or an application for leave to appeal against conviction,".

(3) In paragraph (a) of that subsection—

(a) at the beginning there is inserted "in the case of an appeal,", and

(b) for "case", in both places where it occurs, there is substituted "appeal".

(4) After paragraph (a) of that subsection there is inserted—

"(aa) in the case of an application for leave to appeal, the matter is relevant to the determination of the application and ought, if possible, to be resolved before the application is determined;".

(5) After that subsection there is inserted—

"(1A) A direction under subsection (1) above may not be given by a single judge, notwithstanding that, in the case of an application for leave to appeal, the application may be determined by a single judge as provided for by section 45 below."

(6) After subsection (4) there is inserted—

"(5) In this section "respondent" includes a person who will be a respondent if leave to appeal is granted."

315 Appeals following reference by Criminal Cases Review Commission

(1) Section 14 of the Criminal Appeal Act 1995 (c. 35) (further provision about references by Criminal Cases Review Commission) is amended as follows.

(2) After subsection (4) there is inserted—

"(4A) Subject to subsection (4B), where a reference under section 9 or 10 is treated as an appeal against any conviction, verdict, finding or sentence, the appeal may not be on any ground which is not related to any reason given by the Commission for making the reference.

(4B) The Court of Appeal may give leave for an appeal mentioned in subsection (4A) to be on a ground relating to the conviction, verdict, finding or sentence which is not related to any reason given by the Commission for making the reference."

(3) In subsection (5) for "any of sections 9 to" there is substituted "section 11 or".

316 Power to substitute conviction of alternative offence on appeal in England and Wales

(1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.

(2) In section 3 (power to substitute conviction of alternative offence) in subsection (1) after "an offence" there is inserted "to which he did not plead guilty".

(3) After section 3 there is inserted—

"**3A Power to substitute conviction of alternative offence after guilty plea**

(1) This section applies on an appeal against conviction where—

(a) an appellant has been convicted of an offence to which he pleaded guilty,

(b) if he had not so pleaded, he could on the indictment have pleaded, or been found, guilty of some other offence, and

(c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of the other offence.

(2) The Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence, not being a sentence of greater severity."

317 Power to substitute conviction of alternative offence on appeal in Northern Ireland

(1) The Criminal Appeal (Northern Ireland) Act 1980 (c. 47) is amended as follows.

(2) In section 3 (power to substitute conviction of alternative offence) in subsection (1) after "an offence" there is inserted "to which he did not plead guilty".

(3) After section 3 there is inserted—

"**3A Power to substitute conviction of alternative offence after guilty plea**

(1) This section applies where—

(a) an appellant has been convicted of an offence to which he pleaded guilty,

(b) if he had not so pleaded, he could on the indictment have pleaded, or been found, guilty of some other offence, and

(c) it appears to the Court of Appeal that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of that other offence.

(2) The Court may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of that other offence and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law by the plea so substituted."

318 Substitution of conviction on different charge on appeal from court-martial

(1) The Courts-Martial (Appeals) Act 1968 (c. 20) is amended as follows.

(2) In section 14 (substitution of conviction on different charge) in subsection (1) after "an offence" there is inserted "to which he did not plead guilty".

(3) After section 14 there is inserted—

"**14A Substitution of conviction on different charge after guilty plea**

(1) This section applies where—

(a) an appellant has been convicted of an offence to which he pleaded guilty,

(b) if he had not so pleaded, he could lawfully have pleaded, or been found, guilty of some other offence, and

(c) it appears to the Appeal Court on an appeal against conviction that the plea of guilty indicates an admission by the appellant of facts which prove him guilty of that other offence.

(2) The Appeal Court may, instead of allowing or dismissing the appeal, substitute for the appellant's plea of guilty a plea of guilty of the other offence, and may pass on the appellant, in substitution for the sentence passed on him by the court-martial, such sentence as they think proper, being a sentence warranted by the relevant Service Act for that other offence, but not a sentence of greater severity."

319 Appeals against sentences in England and Wales

(1) The Criminal Appeal Act 1968 (c. 19) is amended as follows.

(2) In section 10 (appeal against sentence in certain cases) for subsection (3) there is substituted—

"(3) An offender dealt with for an offence before the Crown Court in a proceeding to which subsection (2) of this section applies may appeal to the Court of Appeal against any sentence passed on him for the offence by the Crown Court."

(3) In section 11 (supplementary provisions as to appeal against sentence) after subsection (6) there is inserted—

"(7) For the purposes of this section, any two or more sentences are to be treated as passed in the same proceeding if—

(a) they are passed on the same day; or

(b) they are passed on different days but the court in passing any one of them states that it is treating that one together with the other or others as substantially one sentence."

Outraging public decency

320 Offence of outraging public decency triable either way

(1) After paragraph 1 of Schedule 1 to the Magistrates' Courts Act 1980 (c. 43) (offences triable either way by virtue of section 17) there is inserted—

"1A An offence at common law of outraging public decency."

(2) This section does not apply in relation to any offence committed before the commencement of this section.

Jury service

321 Jury service

Schedule 33 (jury service) shall have effect.

Individual support orders

322 Individual support orders

After section 1A of the Crime and Disorder Act 1998 (c. 37) there is inserted—

"**1AA Individual support orders**

(1) Where a court makes an anti-social behaviour order in respect of a defendant who is a child or young person when that order is made, it must consider whether the individual support conditions are fulfilled.

(2) If it is satisfied that those conditions are fulfilled, the court must make an order under this section ("an individual support order") which—

(a) requires the defendant to comply, for a period not exceeding six months, with such requirements as are specified in the order; and

(b) requires the defendant to comply with any directions given by the responsible officer with a view to the implementation of the requirements under paragraph (a) above.

(3) The individual support conditions are—

(a) that an individual support order would be desirable in the interests of preventing any repetition of the kind of behaviour which led to the making of the anti-social behaviour order;

(b) that the defendant is not already subject to an individual support order; and

(c) that the court has been notified by the Secretary of State that arrangements for implementing individual support orders are available in the area in which it appears to it that the defendant resides or will reside and the notice has not been withdrawn.

(4) If the court is not satisfied that the individual support conditions are fulfilled, it shall state in open court that it is not so satisfied and why it is not.

(5) The requirements that may be specified under subsection (2)(a) above are those that the court considers desirable in the interests of preventing any repetition of the kind of behaviour which led to the making of the anti-social behaviour order.

(6) Requirements included in an individual support order, or directions given under such an order by a responsible officer, may require the defendant to do all or any of the following things—

(a) to participate in activities specified in the requirements or directions at a time or times so specified;

(b) to present himself to a person or persons so specified at a place or places and at a time or times so specified;

(c) to comply with any arrangements for his education so specified.

(7) But requirements included in, or directions given under, such an order may not require the defendant to attend (whether at the same place or at different places) on more than two days in any week; and "week" here means a period of seven days beginning with a Sunday.

(8) Requirements included in, and directions given under, an individual support order shall, as far as practicable, be such as to avoid—

(a) any conflict with the defendant's religious beliefs; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(9) Before making an individual support order, the court shall obtain from a social worker of a local authority social services department or a member of a youth offending team any information which it considers necessary in order—

(a) to determine whether the individual support conditions are fulfilled, or

(b) to determine what requirements should be imposed by an individual support order if made,

and shall consider that information.

(10) In this section and section 1AB below "responsible officer", in relation to an individual support order, means one of the following who is specified in the order, namely—

(a) a social worker of a local authority social services department;

(b) a person nominated by a person appointed as chief education officer under section 532 of the Education Act 1996 (c. 56);

(c) a member of a youth offending team.

1AB Individual support orders: explanation, breach, amendment etc

(1) Before making an individual support order, the court shall explain to the defendant 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 subsection (3) below) if he fails to comply with any of those requirements; and

(c) that the court has power (under subsection (6) below) to review the order on the application either of the defendant or of the responsible officer.

(2) The power of the Secretary of State under section 174(4) of the Criminal Justice Act 2003 includes power by order to—

(a) prescribe cases in which subsection (1) above does not apply; and

(b) prescribe cases in which the explanation referred to in that subsection may be made in the absence of the defendant, or may be provided in written form.

(3) If the person in respect of whom an individual support order is made fails without reasonable excuse to comply with any requirement included in the order, he is guilty of an offence and liable on summary conviction to a fine not exceeding—

(a) if he is aged 14 or over at the date of his conviction, £1,000;

(b) if he is aged under 14 then, £250.

(4) No referral order under section 16(2) or (3) of the Powers of Criminal Courts (Sentencing) Act 2000 (referral of young offenders to youth offender panels) may be made in respect of an offence under subsection (3) above.

(5) If the anti-social behaviour order as a result of which an individual support order was made ceases to have effect, the individual support order (if it has not previously ceased to have effect) ceases to have effect when the anti-social behaviour order does.

(6) On an application made by complaint by—

(a) the person subject to an individual support order, or

(b) the responsible officer,

the court which made the individual support order may vary or discharge it by a further order.

(7) If the anti-social behaviour order as a result of which an individual support order was made is varied, the court varying the anti-social behaviour order may by a further order vary or discharge the individual support order."

323 Individual support orders: consequential amendments

(1) The Crime and Disorder Act 1998 (c. 37) is amended as mentioned in subsections (2) to (5).

(2) In section 4 of that Act (appeals against orders)—

(a) in subsection (1) after "an anti-social behaviour order" there is inserted ", an individual support order", and

(b) in subsection (3) after "1(8)" there is inserted ", 1AB(6)".

(3) In section 18(1) of that Act (interpretation of Chapter 1)—

(a) after the definition of "curfew notice" there is inserted—

""individual support order" has the meaning given by section 1AA(2) above;", and

(b) in the definition of "responsible officer", before paragraph (a) there is inserted—

"(za) in relation to an individual support order, has the meaning given by section 1AA(10) above;".

(4) In section 18(4) of that Act (cases where social worker or member of a youth offending team to give supervision or directions)—

(a) after "directions under" there is inserted "an individual support order or", and

(b) for "the child or, as the case may be, the parent" there is substituted "the child, defendant or parent, as the case may be,".

(5) In section 38 of that Act (local provision of youth justice services), in subsection (4)(f) after "in relation to" there is inserted "individual support orders,".

(6) In section 143(2) (provisions in which sums may be altered) of the Magistrates' Courts Act 1980 (c. 43), after paragraph (d) there is inserted—

"(da) section 1AB(3) of the Crime and Disorder Act 1998 (failure to comply with individual support order);".

Parenting orders and referral orders

324 Parenting orders and referral orders

Schedule 34 (parenting orders and referral orders) shall have effect.

Assessing etc. risks posed by sexual or violent offenders

325 Arrangements for assessing etc risks posed by certain offenders

(1) In this section—

"relevant sexual or violent offender" has the meaning given by section 327;

"responsible authority", in relation to any area, means the chief officer of police, the local probation board for that area and the Minister of the Crown exercising functions in relation to prisons, acting jointly.

(2) The responsible authority for each area must establish arrangements for the purpose of assessing and managing the risks posed in that area by—

(a) relevant sexual and violent offenders, and

(b) other persons who, by reason of offences committed by them (wherever committed), are considered by the responsible authority to be persons who may cause serious harm to the public.

(3) In establishing those arrangements, the responsible authority must act in co-operation with the persons specified in subsection (6); and it is the duty of those persons to co-operate in the establishment by the responsible authority of those arrangements, to the extent that such co-operation is compatible with the exercise by those persons of their functions under any other enactment.

(4) Co-operation under subsection (3) may include the exchange of information.

(5) The responsible authority for each area ("the relevant area") and the persons specified in subsection (6) must together draw up a memorandum setting out the ways in which they are to co-operate.

(6) The persons referred to in subsections (3) and (5) are—

(a) every youth offending team established for an area any part of which falls within the relevant area,

(b) the Ministers of the Crown exercising functions in relation to social security, child support, war pensions, employment and training,

(c) every local education authority any part of whose area falls within the relevant area,

(d) every local housing authority or social services authority any part of whose area falls within the relevant area,

(e) every registered social landlord which provides or manages residential accommodation in the relevant area in which persons falling within subsection (2)(a) or (b) reside or may reside,

(f) every Health Authority or Strategic Health Authority any part of whose area falls within the relevant area,

(g) every Primary Care Trust or Local Health Board any part of whose area falls within the relevant area,

(h) every NHS trust any part of whose area falls within the relevant area, and

(i) every person who is designated by the Secretary of State by order for the purposes of this paragraph as a provider of electronic monitoring services.

(7) The Secretary of State may by order amend subsection (6) by adding or removing any person or description of person.

(8) The Secretary of State may issue guidance to responsible authorities on the discharge of the functions conferred by this section and section 326.

(9) In this section—

"local education authority" has the same meaning as in the Education Act 1996 (c. 56);

"local housing authority" has the same meaning as in the Housing Act 1985 (c. 68);

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975 (c. 26);

"NHS trust" has the same meaning as in the National Health Service Act 1977 (c. 49);

"prison" has the same meaning as in the Prison Act 1952 (c. 52);

"registered social landlord" has the same meaning as in Part 1 of the Housing Act 1996 (c. 52);

"social services authority" means a local authority for the purposes of the Local Authority Social Services Act 1970 (c. 42).

326 Review of arrangements

(1) The responsible authority for each area must keep the arrangements established by it under section 325 under review with a view to monitoring their effectiveness and making any changes to them that appear necessary or expedient.

(2) The responsible authority for any area must exercise their functions under subsection (1) in consultation with persons appointed by the Secretary of State as lay advisers in relation to that authority.

(3) The Secretary of State must appoint two lay advisers under subsection (2) in relation to each responsible authority.

(4) The responsible authority must pay to or in respect of the persons so appointed such allowances as the Secretary of State may determine.

(5) As soon as practicable after the end of each period of 12 months beginning with 1st April, the responsible authority for each area must—

(a) prepare a report on the discharge by it during that period of the functions conferred by section 325 and this section, and

(b) publish the report in that area.

(6) The report must include—

(a) details of the arrangements established by the responsible authority, and

(b) information of such descriptions as the Secretary of State has notified to the responsible authority that he wishes to be included in the report.

327 Section 325: interpretation

(1) For the purposes of section 325, a person is a relevant sexual or violent offender if he falls within one or more of subsections (2) to (5).

(2) A person falls within this subsection if he is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003 (c. 42).

(3) A person falls within this subsection if—

(a) he is convicted by a court in England or Wales of murder or an offence specified in Schedule 15, and

(b) one of the following sentences is imposed on him in respect of the conviction—

(i) a sentence of imprisonment for a term of 12 months or more,

(ii) a sentence of detention in a young offender institution for a term of 12 months or more,

(iii) a sentence of detention during Her Majesty's pleasure,

(iv) a sentence of detention for public protection under section 226,

(v) a sentence of detention for a period of 12 months or more under section 91 of the Sentencing Act (offenders under 18 convicted of certain serious offences),

(vi) a sentence of detention under section 228,

(vii) a detention and training order for a term of 12 months or more, or

(viii) a hospital or guardianship order within the meaning of the Mental Health Act 1983 (c. 20).

(4) A person falls within this subsection if—

(a) he is found not guilty by a court in England and Wales of murder or an offence specified in Schedule 15 by reason of insanity or to be under a disability and to have done the act charged against him in respect of such an offence, and

(b) one of the following orders is made in respect of the act charged against him as the offence—

(i) an order that he be admitted to hospital, or

(ii) a guardianship order within the meaning of the Mental Health Act 1983.

(5) A person falls within this subsection if—

(a) the first condition set out in section 28(2) or 29(2) of the Criminal Justice and Court Services Act 2000 (c. 43) or the second condition set out in section 28(3) or 29(3) of that Act is satisfied in his case, or

(b) an order under section 29A of that Act has been made in respect of him.

(6) In this section "court" does not include a service court, as defined by section 305(1).

Criminal record certificates

328 Criminal record certificates: amendments of Part 5 of Police Act 1997

Schedule 35 (which contains amendments of Part 5 of the Police Act 1997 (c. 50)) shall have effect.

Civil proceedings brought by offenders

329 Civil proceedings for trespass to the person brought by offender

(1) This section applies where—

(a) a person ("the claimant") claims that another person ("the defendant") did an act amounting to trespass to the claimant's person, and

(b) the claimant has been convicted in the United Kingdom of an imprisonable offence committed on the same occasion as that on which the act is alleged to have been done.

(2) Civil proceedings relating to the claim may be brought only with the permission of the court.

(3) The court may give permission for the proceedings to be brought only if there is evidence that either—

(a) the condition in subsection (5) is not met, or

(b) in all the circumstances, the defendant's act was grossly disproportionate.

(4) If the court gives permission and the proceedings are brought, it is a defence for the defendant to prove both—

(a) that the condition in subsection (5) is met, and

(b) that, in all the circumstances, his act was not grossly disproportionate.

(5) The condition referred to in subsection (3)(a) and (4)(a) is that the defendant did the act only because—

(a) he believed that the claimant—

(i) was about to commit an offence,

(ii) was in the course of committing an offence, or

(iii) had committed an offence immediately beforehand; and

(b) he believed that the act was necessary to—

(i) defend himself or another person,

(ii) protect or recover property,

(iii) prevent the commission or continuation of an offence, or

(iv) apprehend, or secure the conviction, of the claimant after he had committed an offence;

or was necessary to assist in achieving any of those things.

(6) Subsection (4) is without prejudice to any other defence.

(7) Where—

(a) in service disciplinary proceedings, as defined by section 305(1), a person has been found guilty of an offence under section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 42 of the Naval Discipline Act 1957 (c. 53), and

(b) the corresponding civil offence (within the meaning of that Act) was an imprisonable offence,

he is to be treated for the purposes of this section as having been convicted in the United Kingdom of the corresponding civil offence.

(8) In this section—

(a) the reference to trespass to the person is a reference to—

(i) assault,

(ii) battery, or

(iii) false imprisonment;

(b) references to a defendant's belief are to his honest belief, whether or not the belief was also reasonable;

(c) "court" means the High Court or a county court; and

(d) "imprisonable offence" means an offence which, in the case of a person aged 18 or over, is punishable by imprisonment.

PART 14

GENERAL

330 Orders and rules

(1) This section applies to—

(a) any power conferred by this Act on the Secretary of State to make an order or rules;

(b) the power conferred by section 168 on the Lord Chancellor to make an order.

(2) The power is exercisable by statutory instrument.

(3) The power—

(a) may be exercised so as to make different provision for different purposes or different areas, and

(b) may be exercised either for all the purposes to which the power extends, or for those purposes subject to specified exceptions, or only for specified purposes.

(4) The power includes power to make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitory, transitional or saving provision,

which the Minister making the instrument considers necessary or expedient.

(5) A statutory instrument containing—

(a) an order under any of the following provisions—

section 25(5),
section 103,
section 161(7),
section 178,
section 197(3),
section 223,
section 246(5),
section 260,
section 267,
section 269(6),
section 281(2),
section 283(1),
section 291,
section 301(5),
section 325(7), and
paragraph 5 of Schedule 31,

(b) an order under section 336(3) bringing section 43 into force,

(c) an order making any provision by virtue of section 333(2)(b) which adds to, replaces or omits any part of the text of an Act, or

(d) rules under section 240(4)(a),

may only be made if a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament.

(6) Any other statutory instrument made in the exercise of a power to which this section applies is subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Subsection (6) does not apply to a statutory instrument containing only an order made under one or more of the following provisions—

section 202(3)(b),
section 215(3),
section 253(5),
section 325(6)(i), and
section 336.

331 Further minor and consequential amendments

Schedule 36 (further minor and consequential amendments) shall have effect.

332 Repeals

Schedule 37 (repeals) shall have effect.

333 Supplementary and consequential provision, etc.

(1) The Secretary of State may by order make—

(a) any supplementary, incidental or consequential provision, and

(b) any transitory, transitional or saving provision,

which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to any provision of this Act.

(2) An order under subsection (1) may, in particular—

(a) provide for any provision of this Act which comes into force before another such provision has come into force to have effect, until that other provision has come into force, with such modifications as are specified in the order, and

(b) amend or repeal—

(i) any Act passed before, or in the same Session as, this Act, and

(ii) subordinate legislation made before the passing of this Act.

(3) Nothing in this section limits the power by virtue of section 330(4)(b) to include transitional or saving provision in an order under section 336.

(4) The amendments that may be made under subsection (2)(b) are in addition to those made by or under any other provision of this Act.

(5) In this section "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30).

(6) Schedule 38 (which contains transitory and transitional provisions and savings) shall have effect.

334 Provision for Northern Ireland

(1) An Order in Council under section 85 of the Northern Ireland Act 1998 (c. 47) (provision dealing with certain reserved matters) which contains a statement that it is made only for purposes corresponding to those of any provisions of this Act specified in subsection (2)—

(a) shall not be subject to subsections (3) to (9) of that section (affirmative resolution of both Houses of Parliament), but

(b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) The provisions are—

(a) in Part 1, sections 1, 3(3), 4, 7 to 10 and 12 and paragraphs 1, 2, 5 to 10 and 20 of Schedule 1, and

(b) Parts 8, 9 and 11.

(3) In relation to any time when section 1 of the Northern Ireland Act 2000 (c. 1) is in force (suspension of devolved government in Northern Ireland)—

(a) the reference in subsection (1) above to section 85 of the Northern Ireland Act 1998 shall be read as a reference to paragraph 1 of the Schedule to the Northern Ireland Act 2000 (legislation by Order in Council during suspension), and

(b) the reference in subsection (1)(a) above to subsections (3) to (9) of that section shall be read as a reference to paragraph 2 of that Schedule.

(4) The reference in section 41(2) of the Justice (Northern Ireland) Act 2002 (c. 26) (transfer of certain functions to Director of Public Prosecutions for Northern Ireland) to any function of the Attorney General for Northern Ireland of consenting to the institution of criminal proceedings includes any such function which is conferred by an amendment made by this Act.

(5) Any reference to any provision of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) in the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)) is to be read as a reference to that provision as amended by this Act.

335 Expenses

There shall be paid out of money provided by Parliament—

(a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and

(b) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

336 Commencement

(1) The following provisions of this Act come into force on the passing of this Act—

section 168(1) and (2),

section 183(8),

section 307(1) to (3), (5) and (6),

section 330,

section 333(1) to (5),

sections 334 and 335,

this section and sections 337, 338 and 339, and

the repeal in Part 9 of Schedule 37 of section 81(2) and (3) of the Countryside and Rights of Way Act 2000 (c. 37) (and section 332 so far as relating to that repeal), and

paragraphs 1 and 6 of Schedule 38 (and section 333(6) so far as relating to those paragraphs).

(2) The following provisions of this Act come into force at the end of the period of four weeks beginning with the day on which this Act is passed—

Chapter 7 of Part 12 (and Schedules 21 and 22);

section 303(b)(i) and (ii);

paragraphs 42, 43(3), 66, 83(1) to (3), 84 and 109(2), (3)(b), (4) and (5) of Schedule 32 (and section 304 so far as relating to those provisions);

Part 8 of Schedule 37 (and section 332 so far as relating to that Part of that Schedule).

(3) The remaining provisions of this Act come into force in accordance with provision made by the Secretary of State by order.

(4) Different provision may be made for different purposes and different areas.

337 Extent

(1) Subject to the following provisions of this section and to section 338, this Act extends to England and Wales only.

(2) The following provisions extend also to Scotland and Northern Ireland—

sections 71 and 72;

sections 82 and 83;

section 180 and Schedule 9;

section 188 and Schedule 11;
section 194 and Schedule 13;
section 293;
section 306
section 307;
section 311;
this Part, except sections 331, 332 and 334(5);
paragraphs 19, 70 and 71 of Schedule 3;
paragraph 12(3) of Schedule 12;
paragraphs 3, 6, 7 and 8 of Schedule 27;
paragraphs 6 to 8 of Schedule 31.

(3) The following provisions extend also to Scotland—
section 50(14);
section 286;
sections 287, 288, and 291;
section 302;
paragraph 2 of Schedule 23;
paragraphs 1, 2 and 5 of Schedule 27;
paragraph 7 of Schedule 38.

(4) Section 290 extends to Scotland only.

(5) The following provisions extend also to Northern Ireland—
Part 5;
Part 7;
sections 75 to 81;
sections 84 to 93;
sections 95 to 97;
section 315;
Schedule 5.

(6) The following provisions extend to Northern Ireland only—
section 292 and Schedule 29;
sections 296 and 297;
section 314;
section 317;
section 334(5).

(7) The amendment or repeal of any enactment by any provision of—
(a) Part 1,
(b) section 285,
(c) Part 2 of Schedule 3 (except as mentioned in subsection (8)),
(d) Schedule 27,
(e) Schedule 28,
(f) Part 1 of Schedule 32,
(g) Parts 1 to 4 and 6 of Schedule 36, and

(h) Parts 1 to 4, 6 to 8, 10 and 12 of Schedule 37 (except as mentioned in subsection (9)),

extends to the part or parts of the United Kingdom to which the enactment extends.

(8) Paragraphs 29, 30, 31, 39, 41, 50, 53 and 63 of Schedule 3 do not extend to Northern Ireland.

(9) The repeals in Part 4 of Schedule 37 relating to—

(a) the Bankers' Books Evidence Act 1879 (c. 11),

(b) the Explosive Substances Act 1883 (c. 3),

(c) the Backing of Warrants (Republic of Ireland) Act 1965 (c. 45),

(d) the Customs and Excise Management Act 1979 (c. 2), and

(e) the Contempt of Court Act 1981 (c. 49),

do not extend to Northern Ireland.

(10) The provisions mentioned in subsection (11), so far as relating to proceedings before a particular service court, have the same extent as the Act under which the court is constituted.

(11) Those provisions are—

section 113 and Schedule 6;

section 135 and Schedule 7.

(12) Nothing in subsection (1) affects —

(a) the extent of Chapter 7 of Part 12 so far as relating to sentences passed by a court-martial, or

(b) the extent of section 299 and Schedule 30 so far as relating to the making of orders by, or orders made by, courts-martial or the Courts-Martial Appeal Court.

(13) Any provision of this Act which—

(a) relates to any enactment contained in—

(i) the Army Act 1955 (3 & 4 Eliz. 2 c. 18),

(ii) the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19),

(iii) the Naval Discipline Act 1957 (c. 53),

(iv) the Courts-Martial (Appeals) Act 1968 (c. 20),

(v) the Armed Forces Act 1976 (c. 52),

(vi) section 113 of the Police and Criminal Evidence Act 1984 (c. 60),

(vii) the Reserve Forces Act 1996 (c. 14), or

(viii) the Armed Forces Act 2001 (c. 19), and

(b) is not itself contained in Schedule 25 or Part 9 of Schedule 37,

has the same extent as the enactment to which it relates.

338 Channel Islands and Isle of Man

(1) Subject to subsections (2) and (3), Her Majesty may by Order in Council extend any provision of this Act, with such modifications as appear to Her Majesty in Council to be appropriate, to any of the Channel Islands or the Isle of Man.

(2) Subsection (1) does not authorise the extension to any place of a provision of this Act so far as the provision amends an enactment that does not itself extend there and is

not itself capable of being extended there in the exercise of a power conferred on Her Majesty in Council.

(3) Subsection (1) does not apply in relation to any provision that extends to the Channel Islands or the Isle of Man by virtue of any of subsections (10) to (13) of section 337.

(4) Subsection (4) of section 330 applies to the power to make an Order in Council under subsection (1) as it applies to any power of the Secretary of State to make an order under this Act, but as if references in that subsection to the Minister making the instrument were references to Her Majesty in Council.

339 Short title

This Act may be cited as the Criminal Justice Act 2003.