



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 4

#### OTHER CRIMINAL JUSTICE PROVISIONS

##### *Alternatives to prosecution*

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

- (1) Schedule 9 amends the Crime and Disorder Act 1998 (c. 37)—
- (a) to make provision for the giving of youth conditional cautions to children and young persons,<sup>F1</sup>...
  - <sup>F1</sup>(b) .....
- (2) The Secretary of State may by order amend the Crime and Disorder Act 1998 (c. 37), as amended by Schedule 9, so as to vary the provision made by it for the giving of youth conditional cautions to children and young persons under the age of 16 (including doing so by adding or omitting any provision).

#### **Textual Amendments**

- F1** S. 48(1)(b) and preceding word omitted (8.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), s. 151(1), [Sch. 24 para. 29](#) (with s. 135(4)); S.I. 2013/453, art. 4(f)

#### **Commencement Information**

- I1** S. 48(1)(a) in force at 1.2.2009 by [S.I. 2009/140](#), [art. 2\(a\)](#)
- I2** S. 48(1)(b) in force at 16.11.2009 for specified purposes by [S.I. 2009/2780](#), [art. 2\(1\)\(a\)](#)

*Changes to legislation: Criminal Justice and Immigration Act 2008, Part 4 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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

- (1) Schedule 10 amends the Rehabilitation of Offenders Act 1974 (c. 53) so as to provide for the protection of spent cautions.
- (2) The provisions of Schedule 10 (and this section) extend only to England and Wales.

##### **Commencement Information**

**I3** S. 49 in force at 19.12.2008 by S.I. 2008/3260, art. 2(1)(a)

#### **50 Criminal conviction certificates and criminal record certificates**

- (1) Part 5 of the Police Act 1997 (c. 50) (certificates of criminal records) is amended as follows.
- (2) In section 112 (criminal conviction certificates)—
  - (a) in the definition of “central records”, after “convictions” insert “ and conditional cautions ”;
  - (b) after that definition insert—
 

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

##### **Commencement Information**

**I4** S. 50 in force at 19.12.2008 by S.I. 2008/3260, art. 2(1)(b)

#### *Bail*

#### **51 Bail conditions: electronic monitoring**

Schedule 11 makes provision in connection with the electronic monitoring of persons released on bail subject to conditions.

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#### Commencement Information

**I5** S. 51 in force at 3.11.2008 by S.I. 2008/2712, art. 2, Sch. para. 7

## 52 Bail for summary offences and certain other offences to be tried summarily

Schedule 12—

- (a) imposes a duty on a magistrates' court considering whether to withhold or grant bail in relation to a person under 18 accused of an offence mentioned in Schedule 2 to the Magistrates' Courts Act 1980 (c. 43) (offences for which the value involved is relevant to the mode of trial) to consider the value involved in the offence; and
- (b) amends Schedule 1 to the Bail Act 1976 (persons entitled to bail: supplementary provisions).

#### Commencement Information

**I6** S. 52 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 27

### *Proceedings in magistrates' courts*

## 53 Allocation of offences triable either way etc.

Schedule 13 amends Schedule 3 to the Criminal Justice Act 2003 (c. 44) (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).

## 54 Trial or sentencing in absence of accused in magistrates' courts

- (1) Section 11 of the Magistrates' Courts Act 1980 (non-appearance of accused) is amended as follows.
- (2) In subsection (1), for “the court may proceed in his absence” substitute “—
  - (a) if the accused is under 18 years of age, the court may proceed in his absence; and
  - (b) if the accused has attained the age of 18 years, the court shall proceed in his absence unless it appears to the court to be contrary to the interests of justice to do so.”

This is subject to subsections (2), (2A), (3) and (4). ”

- (3) After subsection (2) insert—

“(2A) The court shall not proceed in the absence of the accused if it considers that there is an acceptable reason for his failure to appear.”

- (4) In each of subsections (3) and (4), for “A magistrates' court” substitute “ In proceedings to which this subsection applies, the court. ”
- (5) After subsection (3) insert—

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“(3A) But where a sentence or order of a kind mentioned in subsection (3) is imposed or given in the absence of the offender, the offender must be brought before the court before being taken to a prison or other institution to begin serving his sentence (and the sentence or order is not to be regarded as taking effect until he is brought before the court).”

(6) After subsection (4) insert—

“(5) Subsections (3) and (4) apply to—

- (a) proceedings instituted by an information, where a summons has been issued; and
- (b) proceedings instituted by a written charge.

(6) Nothing in this section requires the court to enquire into the reasons for the accused's failure to appear before deciding whether to proceed in his absence.

(7) The court shall state in open court its reasons for not proceeding under this section in the absence of an accused who has attained the age of 18 years; and the court shall cause those reasons to be entered in its register of proceedings.”

(7) Section 13(5) of that Act (non-appearance of accused: issue of warrant) ceases to have effect.

#### **Commencement Information**

**I7** S. 54 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 28

## **55 Extension of powers of non-legal staff**

(1) Section 7A of the Prosecution of Offences Act 1985 (c. 23) (powers of non-legal staff) is amended as follows.

(2) In subsection (2) (powers of designated non-legal staff)—

(a) in paragraph (a)(ii), after “trials” insert “ of offences triable either way or offences which are punishable with imprisonment in the case of persons aged 21 or over ”;

(b) after paragraph (a)(ii) insert—

“(iii) the conduct of applications or other proceedings relating to preventative civil orders;

(iv) the conduct of proceedings (other than criminal proceedings) in, or in connection with, the discharge of functions assigned to the Director under section 3(2)(g) above.”;

(c) for paragraph (b) substitute—

“(b) any powers of a Crown Prosecutor that do not involve the exercise of such rights of audience as are mentioned in paragraph (a) above but are exercisable in relation to the conduct of—

(i) criminal proceedings in magistrates' courts, or

(ii) applications or proceedings falling within paragraph (a)(iii) or (iv).”

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(3) For subsection (5) (interpretation) substitute—

“(5) In this section—

“bail in criminal proceedings” has the same meaning as in the Bail Act 1976 (see section 1 of that Act);

“preventative civil orders” means—

- (a) orders within section 3(2)(fa) to (fe) above;
- (b) orders under section 5 or 5A of the Protection from Harassment Act 1997 (restraining orders); or
- (c) orders under section 8 of the Crime and Disorder Act 1998 (parenting orders).

(5A) For the purposes of this section a trial begins with the opening of the prosecution case after the entry of a plea of not guilty and ends with the conviction or acquittal of the accused.”

(4) Omit subsection (6) (powers not applicable to offences triable only on indictment etc.).

(5) After subsection (7) insert—

“(8) As from 1 May 2011 nothing in this section confers on persons designated under this section—

- (a) any rights of audience, or
- (b) any right to conduct litigation,

for the purposes of Part 3 of the Legal Services Act 2007 (reserved legal activities).

(9) As from that date the following provisions of that Act accordingly do not apply to persons designated under this section—

- (a) paragraph 1(3) of Schedule 3 (exemption for persons with statutory rights of audience), and
- (b) paragraph 2(3) of that Schedule (exemption for persons with statutory right to conduct litigation).

(10) The Attorney General may by order make such modifications in the application of any enactment (including this section) in relation to persons designated under this section as the Attorney General considers appropriate in consequence of, or in connection with, the matters provided for by subsections (8) and (9).

(11) The Attorney General may also by order amend subsection (2)(a)(ii) so as to omit the words “or offences which are punishable with imprisonment in the case of persons aged 21 or over”.

(12) The power to make an order under subsection (10) or (11) is exercisable by statutory instrument, but a statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

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

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**Commencement Information**

**18** S. 55 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), **Sch. 1 para. 29**

*Criminal legal aid*

**F2 56 Provisional grant of right to representation**

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**Textual Amendments**

**F2** Ss. 56-58 repealed (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 5 Pt. 2](#); S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

**F2 57 Disclosure of information to enable assessment of financial eligibility**

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**Textual Amendments**

**F2** Ss. 56-58 repealed (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 5 Pt. 2](#); S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

**F2 58 Pilot schemes**

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**Textual Amendments**

**F2** Ss. 56-58 repealed (1.4.2013) by [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\), s. 151\(1\), Sch. 5 Pt. 2](#); S.I. 2013/453, art. 3(h) (with savings and transitional provisions in S.I. 2013/534, art. 6)

*Miscellaneous*

**59 SFO's pre-investigation powers in relation to bribery and corruption: foreign officers etc.**

- (1) The Criminal Justice Act 1987 (c. 38) is amended as follows.
- (2) After section 2 insert—

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### **“2A Director's pre-investigation powers in relation to bribery and corruption: foreign officers etc**

- (1) The powers of the Director under section 2 are also exercisable for the purpose of enabling him to determine whether to start an investigation under section 1 in a case where it appears to him that conduct to which this section applies may have taken place.
  - (2) But—
    - (a) the power under subsection (2) of section 2 is so exercisable only if it appears to the Director that for the purpose of enabling him to make that determination it is expedient to require any person appearing to him to have relevant information to do as mentioned in that subsection, and
    - (b) the power under subsection (3) of that section is so exercisable only if it appears to the Director that for that purpose it is expedient to require any person to do as mentioned in that subsection.
  - (3) Accordingly, where the powers of the Director under section 2 are exercisable in accordance with subsections (1) and (2) above—
    - (a) the reference in subsection (2) of that section to the person under investigation or any other person whom the Director has reason to believe has relevant information is to be read as a reference to any such person as is mentioned in subsection (2)(a) above,
    - (b) the reference in subsection (3) of that section to the person under investigation or any other person is to be read as a reference to any such person as is mentioned in subsection (2)(b) above, and
    - (c) any reference in subsection (2), (3) or (4) of that section to the investigation is to be read as a reference to the making of any such determination as is mentioned in subsection (1) above.
  - (4) Any reference in section 2(16) to the carrying out of an investigation by the Serious Fraud Office into serious or complex fraud includes a reference to the making of any such determination as is mentioned in subsection (1) above.
  - (5) This section applies to any conduct which, as a result of section 108 of the Anti-terrorism, Crime and Security Act 2001 (bribery and corruption: foreign officers etc), constitutes a corruption offence (wherever committed).
  - (6) The following are corruption offences for the purposes of this section—
    - (a) any common law offence of bribery;
    - (b) the offences under section 1 of the Public Bodies Corrupt Practices Act 1889 (corruption in office); and
    - (c) the offences under section 1 of the Prevention of Corruption Act 1906 (corrupt transactions with agents).”
- (3) In section 17 (extent)—
- (a) in subsection (2) (provisions of Act extending to Scotland), for “section 2” substitute “ sections 2 and 2A ”; and
  - (b) in subsection (3) (provisions of Act extending to Northern Ireland), after “sections 2” insert “ , 2A ”.

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**Commencement Information**

**I9** S. 59 in force at 14.7.2008 by S.I. 2008/1586, art. 2(1), Sch. 1 para. 33

**60 Contents of an accused's defence statement**

- (1) In section 6A(1) of the Criminal Procedure and Investigations Act 1996 (c. 25) (contents of defence statement), after “prosecution,” in paragraph (c) insert—
  - “(ca) setting out particulars of the matters of fact on which he intends to rely for the purposes of his defence.”.
- (2) In section 11(2)(f)(ii) of that Act (faults in disclosure by accused), after “matter” insert “(or any particular of any matter of fact) ”.

**Commencement Information**

**I10** S. 60 in force at 3.11.2008 by S.I. 2008/2712, art. 2, Sch. para. 8 (with art. 3)

**61 Compensation for miscarriages of justice**

- (1) The Criminal Justice Act 1988 (c. 33) has effect subject to the following amendments.
- (2) Section 133 (compensation for miscarriages of justice) is amended as follows.
- (3) At the end of subsection (2) (compensation only payable if application for compensation is made) insert “before the end of the period of 2 years beginning with the date on which the conviction of the person concerned is reversed or he is pardoned.
  - (2A) But the Secretary of State may direct that an application for compensation made after the end of that period is to be treated as if it had been made within that period if the Secretary of State considers that there are exceptional circumstances which justify doing so.”
- (4) For subsection (4A) substitute—
 

“(4A) Section 133A applies in relation to the assessment of the amount of the compensation.”
- (5) After subsection (5) (meaning of “reversed” in relation to a conviction) insert—
 

“(5A) But in a case where—

  - (a) a person's conviction for an offence is quashed on an appeal out of time, and
  - (b) the person is to be subject to a retrial,

the conviction is not to be treated for the purposes of this section as “reversed” unless and until the person is acquitted of all offences at the retrial or the prosecution indicates that it has decided not to proceed with the retrial.
- (5B) In subsection (5A) above any reference to a retrial includes a reference to proceedings held following the remission of a matter to a magistrates' court by the Crown Court under section 48(2)(b) of the Supreme Court Act 1981.”



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(6) In subsection (6) (meaning of suffering punishment as a result of conviction) after “this section” insert “ and section 133A ”.

(7) After section 133 insert—

**“133A Miscarriages of justice: amount of compensation**

- (1) This section applies where an assessor is required to assess the amount of compensation payable to or in respect of a person under section 133 for a miscarriage of justice.
- (2) In assessing so much of any compensation payable under section 133 as is attributable to suffering, harm to reputation or similar damage, the assessor must have regard in particular to—
  - (a) the seriousness of the offence of which the person was convicted and the severity of the punishment suffered as a result of the conviction, and
  - (b) the conduct of the investigation and prosecution of the offence.
- (3) The assessor may make from the total amount of compensation that the assessor would otherwise have assessed as payable under section 133 any deduction or deductions that the assessor considers appropriate by reason of either or both of the following—
  - (a) any conduct of the person appearing to the assessor to have directly or indirectly caused, or contributed to, the conviction concerned; and
  - (b) any other convictions of the person and any punishment suffered as a result of them.
- (4) If, having had regard to any matters falling within subsection (3)(a) or (b), the assessor considers that there are exceptional circumstances which justify doing so, the assessor may determine that the amount of compensation payable under section 133 is to be a nominal amount only.
- (5) The total amount of compensation payable to or in respect of a person under section 133 for a particular miscarriage of justice must not exceed the overall compensation limit. That limit is—
  - (a) £1 million in a case to which section 133B applies, and
  - (b) £500,000 in any other case.
- (6) The total amount of compensation payable under section 133 for a person's loss of earnings or earnings capacity in respect of any one year must not exceed the earnings compensation limit.

That limit is an amount equal to 1.5 times the median annual gross earnings according to the latest figures published by the Office of National Statistics at the time of the assessment.

- (7) The Secretary of State may by order made by statutory instrument amend subsection (5) or (6) so as to alter any amount for the time being specified as the overall compensation limit or the earnings compensation limit.
- (8) No order may be made under subsection (7) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

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### **133B Cases where person has been detained for at least 10 years**

- (1) For the purposes of section 133A(5) this section applies to any case where the person concerned (“P”) has been in qualifying detention for a period (or total period) of at least 10 years by the time when—
  - (a) the conviction is reversed, or
  - (b) the pardon is given,
 as mentioned in section 133(1).
- (2) P was “in qualifying detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  - (a) by virtue of a sentence passed in respect of the relevant offence,
  - (b) under mental health legislation by reason of P's conviction of that offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P's having been remanded in custody in connection with the relevant offence or with any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (3) In calculating the period (or total period) during which P has been in qualifying detention as mentioned in subsection (1), no account is to be taken of any period of time during which P was both—
  - (a) in qualifying detention, and
  - (b) in excluded concurrent detention.
- (4) P was “in excluded concurrent detention” at any time when P was detained in a prison, a hospital or at any other place, if P was so detained—
  - (a) during the term of a sentence passed in respect of an offence other than the relevant offence,
  - (b) under mental health legislation by reason of P's conviction of any such other offence (disregarding any conditions other than the fact of the conviction that had to be fulfilled in order for P to be so detained), or
  - (c) as a result of P's having been remanded in custody in connection with an offence for which P was subsequently convicted other than—
    - (i) the relevant offence, or
    - (ii) any other offence the charge for which was founded on the same facts or evidence as that for the relevant offence.
- (5) But P was not “in excluded concurrent detention” at any time by virtue of subsection (4)(a), (b) or (c) if P's conviction of the other offence mentioned in that provision was quashed on appeal, or a pardon was given in respect of it.
- (6) In this section—
 

“mental health legislation” means—

  - (a) Part 3 of the Mental Health Act 1983,
  - (b) Part 3 of the Mental Health (Northern Ireland) Order 1986, or
  - (c) the provisions of any earlier enactment corresponding to Part 3 of that Act or Part 3 of that Order;

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“the relevant offence” means the offence in respect of which the conviction is quashed or the pardon is given (but see subsection (7));

“remanded in custody” is to be read in accordance with subsections (8) and (9);

“reversed” has the same meaning as in section 133 of this Act.

(7) If, as a result of the miscarriage of justice—

- (a) two or more convictions are reversed, or
- (b) a pardon is given in respect of two or more offences,

“the relevant offence” means any of the offences concerned.

(8) In relation to England and Wales, “remanded in custody” has the meaning given by section 242(2) of the Criminal Justice Act 2003, but that subsection applies for the purposes of this section as if any reference there to a provision of the Mental Health Act 1983 included a reference to any corresponding provision of any earlier enactment.

(9) In relation to Northern Ireland, “remanded in custody” means—

- (a) remanded in or committed to custody by an order of a court, or
- (b) remanded, admitted or removed to hospital under Article 42, 43, 45 or 54 of the Mental Health (Northern Ireland) Order 1986 or under any corresponding provision of any earlier enactment.”

(8) In section 172 (extent) in subsection (3) (provisions extending to Northern Ireland as well as England and Wales) for “section 133” substitute “ sections 133 to 133B ”.

(9) This section extends to England and Wales and Northern Ireland.

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**Commencement Information**

**III** S. 61 in force at 1.12.2008 by [S.I. 2008/2993](#), [art. 2\(1\)\(a\)](#)

## **62 Annual report on Criminal Justice (Terrorism and Conspiracy) Act 1998**

(1) Section 8 of the Criminal Justice (Terrorism and Conspiracy) Act 1998 (c. 40) (requirement for annual report on working of the Act) ceases to have effect.

(2) The following provisions, namely—

- (a) subsection (1), and
  - (b) the repeal of section 8 of that Act in Part 4 of Schedule 28,
- extend to England and Wales and Northern Ireland.

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 7 para. 5A and cross-heading inserted by [2008 c. 25 Sch. 1 para. 90\(3\)](#)