

SCHEDULES

SCHEDULE 1

Sections 8(3) and 9(2).

AMENDMENTS OF 1973 ACT

PART I

PROVISIONS INSERTED AS SECTIONS 1A TO 1C

“Discharge

1A Absolute and conditional discharge

- (1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment, the court may make an order either—
 - (a) discharging him absolutely; or
 - (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.
- (2) An order discharging a person subject to such a condition is in this Act referred to as “an order for conditional discharge”, and the period specified in any such order as “the period of conditional discharge”.
- (3) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that if he commits another offence during the period of conditional discharge he will be liable to be sentenced for the original offence.
- (4) Where, under the following provisions of this Part of this Act, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, that order shall cease to have effect.
- (5) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.

1B Commission of further offence by person conditionally discharged

- (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with subsection (2) below, or to a justice of the peace having jurisdiction in accordance with that subsection, that a person in whose case an order for conditional discharge has been made—

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- (a) has been convicted by a court in any part of Great Britain of an offence committed during the period of conditional discharge; and
 - (b) has been dealt with in respect of that offence,that court or justice may, subject to subsection (3) below, issue a summons requiring that person to appear at the place and time specified therein or a warrant for his arrest.
- (2) Jurisdiction for the purposes of subsection (1) above may be exercised—
 - (a) if the order for conditional discharge was made by the Crown Court, by that court;
 - (b) if the order was made by a magistrates' court, by a justice acting for the petty sessions area for which that court acts.
- (3) A justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- (4) A summons or warrant issued under this section shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.
- (5) If a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—
 - (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and
 - (b) if it does so, shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the clerk of the court by whom the register is kept.
- (6) Where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with him, for the offence for which the order was made, in any manner in which it could deal with him if he had just been convicted by or before that court of that offence.
- (7) If a person in whose case an order for conditional discharge has been made by a magistrates' court—
 - (a) is convicted before the Crown Court of an offence committed during the period of conditional discharge; or
 - (b) is dealt with by the Crown Court for any such offence in respect of which he was committed for sentence to the Crown Court,the Crown Court may deal with him, for the offence for which the order was made, in any manner in which the magistrates' court could deal with him if it had just convicted him of that offence.
- (8) If a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may, with the consent of the court which made the order, deal with him, for the offence for which the order was made, in any manner in which the court could deal with him if it had just convicted him of that offence.

- (9) Where an order for conditional discharge has been made by a magistrates' court in the case of an offender under eighteen years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under subsection (6), (7) or (8) above by that or any other court in respect of the offender after he has attained the age of eighteen years shall be those which would be exercisable if that offence were an offence triable either way and had been tried summarily.
- (10) For the purposes of this section the age of an offender at a particular time shall be deemed to be or to have been that which appears to the court after considering any available evidence to be or to have been his age at that time.

1C Effect of discharge

- (1) Subject to subsection (2) below and to section 50(1A) of the Criminal Appeal Act 1968 and section 108(1A) of the Magistrates' Courts Act 1980, a conviction of an offence for which an order is made under this Part of this Act discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than—
- (a) the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the following provisions of this Act; and
 - (b) the purposes of section 1(2)(bb) of the Children and Young Persons Act 1969.
- (2) Where the offender was of or over eighteen years of age at the time of his conviction of the offence in question and is subsequently sentenced under this Part of this Act for that offence, subsection (1) above shall cease to apply to the conviction.
- (3) Without prejudice to the preceding provisions of this section, the conviction of an offender who is discharged absolutely or conditionally under this Part of this Act shall in any event be disregarded for the purposes of any enactment or instrument which—
- (a) imposes any disqualification or disability upon convicted persons; or
 - (b) authorises or requires the imposition of any such disqualification or disability.
- (4) The preceding provisions of this section shall not affect—
- (a) any right of any offender discharged absolutely or conditionally under this Part of this Act to rely on his conviction in bar of any subsequent proceedings for the same offence; or
 - (b) the restoration of any property in consequence of the conviction of any such offender; or
 - (c) the operation, in relation to any such offender, of any enactment or instrument in force at the commencement of this Act which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- (5) In this section “enactment” includes an enactment contained in a local Act and “instrument” means an instrument having effect by virtue of an Act.”

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PART II

PROVISIONS INSERTED AS SCHEDULE 1A

“SCHEDULE 1A

ADDITIONAL REQUIREMENTS IN PROBATION ORDERS

Requirements as to residence

- 1 (1) Subject to sub-paragraphs (2) and (3) below, a probation order may include requirements as to the residence of the offender.
- (2) Before making a probation order containing any such requirement, the court shall consider the home surroundings of the offender.
- (3) Where a probation order requires the offender to reside in an approved hostel or any other institution, the period for which he is so required to reside shall be specified in the order.

Requirements as to activities etc.

- 2 (1) Subject to the provisions of this paragraph, a probation order may require the offender—
- (a) to present himself to a person or persons specified in the order at a place or places so specified;
 - (b) to participate or refrain from participating in activities specified in the order—
 - (i) on a day or days so specified; or
 - (ii) during the probation period or such portion of it as may be so specified.
- (2) A court shall not include in a probation order a requirement such as is mentioned in sub-paragraph (1) above unless—
- (a) it has consulted a probation officer; and
 - (b) it is satisfied that it is feasible to secure compliance with the requirement.
- (3) A court shall not include a requirement such as is mentioned in sub-paragraph (1) (a) above or a requirement to participate in activities if it would involve the co-operation of a person other than the offender and the probation officer responsible for his supervision, unless that other person consents to its inclusion.
- (4) A requirement such as is mentioned in sub-paragraph (1)(a) above shall operate to require the offender—
- (a) in accordance with instructions given by the probation officer responsible for his supervision, to present himself at a place or places for not more than 60 days in the aggregate; and
 - (b) while at any place, to comply with instructions given by, or under the authority of, the person in charge of that place.
- (5) A place specified in an order shall have been approved by the probation committee for the area in which the premises are situated as providing facilities suitable for persons subject to probation orders.

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- (6) A requirement to participate in activities shall operate to require the offender—
- (a) in accordance with instructions given by the probation officer responsible for his supervision, to participate in activities for not more than 60 days in the aggregate; and
 - (b) while participating, to comply with instructions given by, or under the authority of, the person in charge of the activities.
- (7) Instructions given by a probation officer under sub-paragraph (4) or (6) above shall, as far as practicable, be such as to avoid any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

Requirements as to attendance at probation centre

- 3 (1) Subject to the provisions of this paragraph, a probation order may require the offender during the probation period to attend at a probation centre specified in the order.
- (2) A court shall not include such a requirement in a probation order unless—
- (a) it has consulted a probation officer; and
 - (b) it is satisfied—
 - (i) that arrangements can be made for the offender’s attendance at a centre; and
 - (ii) that the person in charge of the centre consents to the inclusion of the requirement.
- (3) A requirement under sub-paragraph (1) above shall operate to require the offender—
- (a) in accordance with instructions given by the probation officer responsible for his supervision, to attend on not more than 60 days at the centre specified in the order; and
 - (b) while attending there to comply with instructions given by, or under the authority of, the person in charge of the centre.
- (4) Instructions given by a probation officer under sub-paragraph (3) above shall, so far as is practicable, be such as to avoid any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.
- (5) References in this paragraph to attendance at a probation centre include references to attendance 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.
- (6) The Secretary of State may make rules for regulating the provision and carrying on of probation centres and the attendance at such centres of persons subject to probation orders; and such rules may in particular include provision with respect to hours of attendance, the reckoning of days of attendance and the keeping of attendance records.
- (7) In this paragraph “probation centre” means premises—
- (a) at which non-residential facilities are provided for use in connection with the rehabilitation of offenders; and

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- (b) which are for the time being approved by the Secretary of State as providing facilities suitable for persons subject to probation orders.

Extension of requirements for sexual offenders

- 4 (1) If the court so directs in the case of an offender who has been convicted of a sexual offence—
- (a) sub-paragraphs (4) and (6) of paragraph 2 above; and
 - (b) sub-paragraph (3) of paragraph 3 above,
- shall each have effect as if for the reference to 60 days there were substituted a reference to such greater number of days as may be specified in the direction.
- (2) In this paragraph “sexual offence” has the same meaning as in Part I of the Criminal Justice Act 1991.

Requirements as to treatment for mental condition etc.

- 5 (1) This paragraph applies where a court proposing to make a probation order is satisfied, on the evidence of a duly qualified medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983, that the mental condition of the offender—
- (a) is such as requires and may be susceptible to treatment; but
 - (b) is not such as to warrant the making of a hospital order or guardianship order within the meaning of that Act.
- (2) The probation order may include a requirement that the offender shall submit, during the whole of the probation period or during such part of that period as may be specified in the order, to treatment by or under the direction of a duly qualified medical practitioner with a view to the improvement of the offender’s mental condition.
- (3) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—
- (a) treatment as a resident patient in a mental hospital;
 - (b) treatment as a non-resident patient at such institution or place as may be specified in the order; and
 - (c) treatment by or under the direction of such duly qualified medical practitioner 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.
- (4) A court shall not by virtue of this paragraph include in a probation order a requirement that the offender shall submit to treatment for his mental condition unless it is satisfied that arrangements have been 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).
- (5) While the offender is under treatment as a resident patient in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

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- (6) Where the medical practitioner by whom or under whose direction an offender is being treated for his mental condition in pursuance of a probation order 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 order; and
 - (b) is one in or at which the treatment of the offender will be given by or under the direction of a duly qualified medical practitioner,
- he may, with the consent of the offender, make arrangements for him to be treated accordingly.
- (7) Such arrangements as are mentioned in sub-paragraph (6) above 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 probation order.
- (8) Where any such arrangements as are mentioned in sub-paragraph (6) above are made for the treatment of an offender—
- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the probation officer responsible for the supervision of the offender, 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 probation order.
- (9) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof for the purposes of sub-paragraph (1) above 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.
- (10) In this paragraph "mental hospital" means a hospital within the meaning of the Mental Health Act 1983 or mental nursing home within the meaning of the Registered Homes Act 1984, not being a special hospital within the meaning of the National Health Service Act 1977.

Requirements as to treatment for drug or alcohol dependency

- 6 (1) This paragraph applies where a court proposing to make a probation order is satisfied—
- (a) that the offender is dependent on drugs or alcohol;
 - (b) that his dependency caused or contributed to the offence in respect of which the order is proposed to be made; and
 - (c) that his dependency is such as requires and may be susceptible to treatment.
- (2) The probation order may include a requirement that the offender shall submit, during the whole of the probation period or during such part of that period as may be specified in the order, to treatment by or under the direction of a person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on drugs or alcohol.
- (3) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—

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- (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 as may be so specified; and
- (c) treatment by or under the direction of such person having the necessary qualifications 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.

- (4) A court shall not by virtue of this paragraph include in a probation order a requirement that the offender shall submit to treatment for his dependency on drugs or alcohol unless it is satisfied that arrangements have been 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).
- (5) While the offender is under treatment as a resident in pursuance of a requirement of the probation order, the probation officer responsible for his supervision shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.
- (6) Where the person by whom or under whose direction an offender is being treated for dependency on drugs or alcohol in pursuance of a probation order 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 order; and
 - (b) is one in or at which the treatment of the offender will be given by or under the direction of a person having the necessary qualifications or experience,he may, with the consent of the offender, make arrangements for him to be treated accordingly.
- (7) Such arrangements as are mentioned in sub-paragraph (6) above may provide for the offender to receive part of his treatment as a resident in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the probation order.
- (8) Where any such arrangements as are mentioned in sub-paragraph (6) above are made for the treatment of an offender—
 - (a) the person by whom the arrangements are made shall give notice in writing to the probation officer responsible for the supervision of the offender, 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 probation order.
- (9) In this paragraph the reference to the offender being dependent on drugs or alcohol includes a reference to his having a propensity towards the misuse of drugs or alcohol, and references to his dependency on drugs or alcohol shall be construed accordingly.”