

SCHEDULES

SCHEDULE 6

Section 94(2).

DRUG TREATMENT AND TESTING ORDERS: AMENDMENT OF THE 1995 ACT

PART I

AMENDMENTS RELATING TO COMBINATION OF ORDERS

- 1 In section 228(1) (probation orders), for the words “section 245D” there shall be substituted the words “sections 234J and 245D”.
- 2 (1) Section 232 (failure to comply with requirements of probation orders) shall be amended as follows.
- (2) In subsection (3A)—
- (a) for the words “a restriction of liberty order” there shall be substituted—
- “(a) a restriction of liberty order; or
- (b) a restriction of liberty order and a drug treatment and testing order.”; and
- (b) at the end there shall be added the words “or, as the case may be, the restriction of liberty order and the drug treatment and testing order.”
- (3) After that subsection there shall be inserted the following subsection—
- “(3B) Where the court intends to sentence an offender under subsection (2)(b) above and the offender is by virtue of section 234J of this Act subject to a drug treatment and testing order, it shall, before sentencing the offender under that paragraph, revoke the drug treatment and testing order.”
- 3 For section 245D there shall be substituted the following section—

“245D Combination of restriction of liberty order with other orders

- (1) Subsection (3) applies where the court—
- (a) intends to make a restriction of liberty order under section 245A(1) of this Act; and
- (b) considers it expedient that the offender should also be subject to a probation order made under section 228(1) of this Act or to a drug treatment and testing order made under section 234B(2) of this Act or to both such orders.
- (2) In deciding whether it is expedient to make a probation order or a drug treatment and testing order by virtue of paragraph (b) of subsection (1) above, the court shall—
- (a) have regard to the circumstances, including the nature of the offence and the character of the offender; and

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- (b) obtain a report as to the circumstances and character of the offender.
- (3) Where this subsection applies, the court, notwithstanding sections 228(1), 234B(2) and 245A(1) of this Act, may make a restriction of liberty order and either or both of a probation order and a drug treatment and testing order.
- (4) Where the court makes a restriction of liberty order and a probation order by virtue of subsection (3) above, the clerk of the court shall send a copy of each order to—
 - (a) any person responsible for monitoring the offender’s compliance with the restriction of liberty order; and
 - (b) the officer of the local authority who is to supervise the probationer.
- (5) Where the court makes a restriction of liberty order and a drug treatment and testing order by virtue of subsection (3) above, the clerk of the court shall send a copy of each order to—
 - (a) any person responsible for monitoring the offender’s compliance with the restriction of liberty order;
 - (b) the treatment provider, within the meaning of section 234C(1) of this Act; and
 - (c) the officer of the local authority who is appointed or assigned to be the supervising officer under section 234C(6) of this Act.
- (6) Where the court makes a restriction of liberty order, a probation order and a drug treatment and testing order the clerk of the court shall send copies of each of the orders to the persons mentioned—
 - (a) in subsection (4) above;
 - (b) in paragraph (b) of subsection (5) above; and
 - (c) in paragraph (c) of that subsection, if that person would not otherwise receive such copies.
- (7) Where the offender by an act or omission fails to comply with a requirement of an order made by virtue of subsection (3) above—
 - (a) if the failure relates to a requirement contained in a probation order and is dealt with under section 232(2)(c) of this Act, the court may, in addition, exercise the powers conferred by section 234G(2)(b) of this Act in relation to a drug treatment and testing order to which the offender is subject by virtue of subsection (3) above and by section 245F(2) of this Act in relation to the restriction of liberty order;
 - (b) if the failure relates to a requirement contained in a drug treatment and testing order and is dealt with under section 234G(2)(b) of this Act, the court may, in addition, exercise the powers conferred by section 232(2)(c) of this Act in relation to a probation order to which the offender is subject by virtue of subsection (3) above and by section 245F(2)(b) of this Act in relation to the restriction of liberty order; and
 - (c) if the failure relates to a requirement contained in a restriction of liberty order and is dealt with under section 245F(2)(b) of this Act, the court may, in addition, exercise the powers conferred by section 232(2)(c) of this Act in relation to a probation order and by section 234G(2)(b) of this Act in relation to a drug treatment and

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testing order to which, in either case, the offender is subject by virtue of subsection (3) above.

(8) In any case to which this subsection applies, the offender may, without prejudice to subsection (7) above, be dealt with as respects that case under section 232(2) or, as the case may be, section 234G or section 245F(2) of this Act but he shall not be liable to be otherwise dealt with as respects that case.

(9) Subsection (8) applies in a case where—

- (a) the offender by an act or omission fails to comply with both a requirement contained in a restriction of liberty order and in a probation order to which he is subject by virtue of subsection (3) above;
- (b) the offender by an act or omission fails to comply with both a requirement contained in a restriction of liberty order and in a drug treatment and testing order to which he is subject by virtue of subsection (3) above;
- (c) the offender by an act or omission fails to comply with a requirement contained in each of a restriction of liberty order, a probation order and a drug treatment and testing order to which he is subject by virtue of subsection (3) above.”

4 (1) Section 245G (disposal on revocation of restriction of liberty order) shall be amended as follows.

(2) In subsection (2), for the words from “by” to the end there shall be substituted the words “by virtue of section 245D(3) of this Act, subject to a probation order or a drug treatment and testing order or to both such orders, it shall, before disposing the offender under subsection (1) above—

- (a) where he is subject to a probation order, discharge that order;
- (b) where he is subject to a drug treatment and testing order, revoke that order; and
- (c) where he is subject to both such orders, discharge the probation order and revoke the drug treatment and testing order.”

(3) After subsection (2) there shall be added—

“(3) Where the court orders a probation order discharged or a drug treatment and testing order revoked the clerk of the court shall forthwith give copies of that order to the persons mentioned in subsection (4) or, as the case may be, (5) of section 245D of this Act.

(4) Where the court orders a probation order discharged and a drug treatment and testing order revoked, the clerk of the court shall forthwith give copies of that order to the persons mentioned in section 245D(6) of this Act.”

PART II

AMENDMENTS RELATING TO APPEALS

5 In section 106 (solemn appeals), in paragraph (d), after the words “probation order” there shall be inserted the words “, drug treatment and testing order”.

6 (1) Section 108 (right of appeal of prosecutor) shall be amended as follows.

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- (2) In subsection (1), after paragraph (d) there shall be inserted the following paragraph—
 “(dd) a drug treatment and testing order;”.
- (3) In subsection (2)(b)(iii), for the word “or”, where it first occurs, there shall be substituted the word “to”.
- 7 (1) Section 175 (appeals in summary cases) shall be amended as follows.
- (2) In subsection (2)(c), after the words “probation order” there shall be inserted the words “, drug treatment and testing order”.
- (3) In subsection (4), after paragraph (d) there shall be inserted the following paragraph—
 “(dd) a drug treatment and testing order;”.
- (4) In subsection (4A)(b)(iii), for the word “or”, where it first occurs, there shall be substituted the word “to”.