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## SCHEDULES

### SCHEDULE 8

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Criminal Justice Act 1991 (c. 53)*

- 72 For subsection (3) of section 1 of the 1991 Act (restrictions on imposing custodial sentences) there shall be substituted the following subsection—
- “(3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he fails to express his willingness to comply with—
- (a) a requirement which is proposed by the court to be included in a probation order or supervision order and which requires an expression of such willingness; or
  - (b) a requirement which is proposed by the court to be included in a drug treatment and testing order or an order under section 61(6) of the Crime and Disorder Act 1998.”
- 73 In subsection (5)(a) of section 3 of the 1991 Act (procedural requirements for custodial sentences), for the words “a probation officer or by a social worker of a local authority social services department” there shall be substituted the following sub-paragraphs—
- “(i) a probation officer;
  - (ii) a social worker of a local authority social services department; or
  - (iii) where the offender is under the age of 18 years, a member of a youth offending team;”.
- 74 In subsection (4) of section 6 of the 1991 Act (restrictions on imposing community sentences)—
- (a) after paragraph (a) there shall be inserted the following paragraph—
    - “(aa) a drug treatment and testing order;”;
  - (b) the word “and” immediately following paragraph (e) shall cease to have effect; and
  - (c) after paragraph (f) there shall be inserted the following paragraph—
    - “(g) an action plan order.”
- 75 In subsection (3) of section 7 of the 1991 Act (procedural requirements for community sentences), after paragraph (a) there shall be inserted the following paragraph—
- “(aa) a drug treatment and testing order;”.
- 76 In subsection (1) of section 11 of the 1991 Act (combination orders), for the words “the supervision of a probation officer” there shall be substituted the word “supervision”.

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- 77 In subsection (3) of section 15 of the 1991 Act (regulation of community orders)—
- (a) in paragraph (a), after the words “probation officer” there shall be inserted the words “or member of a youth offending team”; and
  - (b) after that paragraph there shall be inserted the following paragraph—
    - “(aa) in relation to an offender who is subject to a drug treatment and testing order, the probation officer responsible for his supervision;”.
- 78 In subsection (1) of section 31 of the 1991 Act (interpretation of Part I)—
- (a) immediately before the definition of “attendance centre order” there shall be inserted the following definition—
    - ““action plan order” means an order under section 69 of the Crime and Disorder Act 1998;”;
  - (b) in the definition of “custodial sentence”, in paragraph (b), after the word “age,” there shall be inserted the words “a detention and training order,” and the words “or a secure training order under section 1 of the Criminal Justice and Public Order Act 1994” shall cease to have effect; and
  - (c) after that definition there shall be inserted the following definitions—
    - ““detention and training order” has the meaning given by section 73(3) of the Crime and Disorder Act 1998;
    - “drug treatment and testing order” means an order under section 61 of that Act;”.
- 79 (1) In subsection (1)(b) of section 32 of the 1991 Act (Parole Board), for the words “the functions conferred by Part II of the Crime (Sentences) Act 1997 (“Part II”)” there shall be substituted the words “the functions conferred by this Part in respect of long-term and short-term prisoners and by Chapter II of Part II of the Crime (Sentences) Act 1997 (“Chapter II”) in respect of life prisoners within the meaning of that Chapter”.
- (2) In subsections (3), (4) and (6) of that section, for the words “Part II” there shall be substituted the words “this Part or Chapter II”.
- 80 (1) In subsection (3) of section 33 of the 1991 Act (duty to release short-term and long-term prisoners)—
- (a) in paragraph (a), for the words “subsection (1)(b) or (2) above or section 35 or 36(1) below” there shall be substituted the words “this Part”; and
  - (b) in paragraph (b), for the words “38(2) or 39(1)” there shall be substituted the words “39(1) or (2)”.
- (2) After that subsection there shall be inserted the following subsection—
- “(3A) In the case of a prisoner to whom section 44A below applies, it shall be the duty of the Secretary of State to release him on licence at the end of the extension period (within the meaning of section 58 of the Crime and Disorder Act 1998).”
- (3) Subsection (4) of that section shall cease to have effect.
- 81 After that section there shall be inserted the following section—

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### “33A Duty to release prisoners: special cases

- (1) As soon as a prisoner—
- (a) whose sentence is for a term of less than twelve months; and
  - (b) who has been released on licence under section 34A(3) or 36(1) below and recalled to prison under section 38A(1) or 39(1) or (2) below,
- would (but for his release) have served one-half of his sentence, it shall be the duty of the Secretary of State to release him unconditionally.
- (2) As soon as a prisoner—
- (a) whose sentence is for a term of twelve months or more; and
  - (b) who has been released on licence under section 34A(3) below and recalled to prison under section 38A(1) below,
- would (but for his release) have served one-half of his sentence, it shall be the duty of the Secretary of State to release him on licence.
- (3) In the case of a prisoner who—
- (a) has been released on licence under this Part and recalled to prison under section 39(1) or (2) below; and
  - (b) has been subsequently released on licence under section 33(3) or (3A) above and recalled to prison under section 39(1) or (2) below, section 33(3) above shall have effect as if for the words “three-quarters” there were substituted the words “the whole” and the words “on licence” were omitted.”

82 In subsection (1) of section 36 of the 1991 Act (power to release prisoners on compassionate grounds), for word “prisoner” there shall be substituted the words “short-term or long-term prisoner”.

83 (1) In subsection (1) of section 37 of the 1991 Act (duration and conditions of licences) —

- (a) for the words “subsection (2)” there shall be substituted the words “subsections (1A), (1B) and (2)”; and
- (b) the words “any suspension under section 38(2) below or, as the case may be,” shall cease to have effect.

(2) After subsection (1A) of that section there shall be inserted the following subsection—

“(1B) Where a prisoner whose sentence is for a term of twelve months or more is released on licence under section 33A(2) or 34A(3) above, subsection (1) above shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the difference between—

- (a) that proportion of his sentence; and
- (b) the duration of the curfew condition to which he is or was subject.”

(3) In subsection (2) of that section, for the words “section 36(1) above” there shall be substituted the words “section 34A(3) or 36(1) above”.

(4) In subsection (4) of that section—

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- (a) after the words “a licence” there shall be inserted the words “under this Part”; and
  - (b) the words “(which shall include on his release conditions as to his supervision by a probation officer)” shall cease to have effect.
- (5) After that subsection there shall be inserted the following subsection—
- “(4A) The conditions so specified may in the case of a person released on licence under section 34A above whose sentence is for a term of less than twelve months, and shall in any other case, include on the person’s release conditions as to his supervision by—
- (a) a probation officer appointed for or assigned to the petty sessions area within which the person resides for the time being; or
  - (b) where the person is under the age of 18 years, a member of a youth offending team established by the local authority within whose area the person resides for the time being.”
- (6) For subsection (5) of that section there shall be substituted the following subsection—
- “(5) The Secretary of State shall not include on release, or subsequently insert, a condition in the licence of a long-term prisoner, or vary or cancel any such condition, except after consultation with the Board.”
- 84 After subsection (5) of section 39 of the 1991 Act (recall of prisoners while on licence) there shall be inserted the following subsection—
- “(5A) In the case of a prisoner to whom section 44A below applies, subsections (4) (b) and (5) of that section apply in place of subsection (5) above.”
- 85 After subsection (4) of section 40 of the 1991 Act (convictions during currency of original sentences) there shall be inserted the following subsections—
- “(5) Where the new 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.
- (6) For the purposes of any enactment conferring rights of appeal in criminal cases, any such order as is mentioned in subsection (2) or (3A) above made with regard to any person shall be treated as a sentence passed on him for the offence for which the sentence referred to in subsection (1) above was passed.”
- 86 (1) For subsections (1) and (2) of section 41 of the 1991 Act (remand time to count towards time served) there shall be substituted the following subsections—
- “(1) Where a person is sentenced to imprisonment for a term in respect of an offence, this section applies to him if the court directs under section 9 of the Crime (Sentences) Act 1997 that the number of days for which he was remanded in custody in connection with—
- (a) the offence; or
  - (b) any other offence the charge for which was founded on the same facts or evidence,
- shall count as time served by him as part of the sentence.

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- (2) For the purpose of determining for the purposes of this Part whether a person to whom this section applies—
- (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 shall, subject to subsections (3) and (4) below, be treated as having been served by him as part of that sentence or period.”
- (2) After subsection (3) of that section there shall be inserted the following subsection—
- “(4) Where the period for which a licence granted under section 33A(2), 34A(3) or 36(1) above to a short-term prisoner remains in force cannot exceed one-quarter of his sentence, nothing in subsection (2) above shall have the effect of reducing that period.”
- 87 (1) In subsection (3) of section 43 of the 1991 Act (young offenders), for the words “subsections (1)” there shall be substituted the words “subsection (1)”.
- (2) In subsection (5) of that section, for the words “section 37(4)” there shall be substituted the words “section 37(4A)”.
- 88 (1) In subsection (1) of section 45 of the 1991 Act (fine defaulters and contemnors), for the words “except sections 35 and 40” there shall be substituted the words “except sections 33A, 34A, 35 and 40”.
- (2) In subsection (3) of that section—
- (a) for the words “subsections (1) to (4)” there shall be substituted the words “subsections (1) to (3)”; and
  - (b) for the words “section 38(2) or 39(1)” there shall be substituted the words “section 39(1) or (2)”.
- (3) In subsection (4) of that section—
- (a) the words “any suspension under section 38(2) below; or” shall cease to have effect; and
  - (b) for the words “section 39(1)” there shall be substituted the words “section 39(1) or (2)”.
- 89 In subsection (2) of section 46 of the 1991 Act (persons liable to removal from the United Kingdom), for the words from “section 37(4)” to the end there shall be substituted the words “section 37 above shall have effect as if subsection (4A) were omitted”.
- 90 For subsection (2) of section 47 of the 1991 Act (persons extradited to the United Kingdom) there shall be substituted the following subsection—
- “(2) In the case of an extradited prisoner, section 9 of the Crime (Sentences) Act 1997 (crediting of periods of remand in custody) shall have 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.”

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- 91 In section 50 of the 1991 Act (transfer by order of certain functions to Board), for subsection (3) (including that subsection as applied by any order under subsection (1) of that section) there shall be substituted the following subsection—
- “(3) In section 37 above, in subsection (5) for the words “after consultation with the Board” there shall be substituted the words “in accordance with recommendations of the Board”, and subsection (6) shall be omitted.”
- 92 In subsection (4) of section 51 of the 1991 Act (interpretation of Part II)—
- (a) for the words “Subsections (2) and (3)” there shall be substituted the words “Subsection (3)”; and
- (b) for the words “as they apply” there shall be substituted the words “as it applies”.
- 93 After subsection (7) of section 53 of the 1991 Act (notices of transfer in certain cases involving children) there shall be inserted the following subsection—
- “(8) This section shall not apply in any case in which section 51 of the Crime and Disorder Act 1998 (no committal proceedings for indictable-only offences) applies.”
- 94 (1) In subsection (1) of section 65 of the 1991 Act (supervision of young offenders after release), for the words from “a probation officer” to the end there shall be substituted the following paragraphs—
- “(a) a probation officer;
- (b) a social worker of a local authority social services department; or
- (c) in the case of a person under the age of 18 years on his release, a member of a youth offending team.”
- (2) After that subsection there shall be inserted the following subsections—
- “(1A) Where the supervision is to be provided by a probation officer, the probation officer shall be an officer appointed for or assigned to the petty sessions area within which the offender resides for the time being.
- (1B) Where the supervision is to be provided by—
- (a) a social worker of a local authority social services department; or
- (b) a member of a youth offending team,
- the social worker or member shall be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.”
- 95 In subsection (1) of section 99 of the 1991 Act (general interpretation), after the definition of “young person” there shall be inserted the following definition—
- ““youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998.”
- 96 (1) After sub-paragraph (5) of paragraph 1 of Schedule 2 to the 1991 Act (enforcement etc. of community orders) there shall be inserted the following sub-paragraph—
- “(6) Where a drug treatment and testing order 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 this Schedule it shall be deemed to have been made by the Crown Court.”

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- (2) In sub-paragraph (1)(d) of paragraph 3 of that Schedule, the words “revoke the order and” shall cease to have effect.
- (3) After sub-paragraph (2) of that paragraph there shall be inserted the following sub-paragraph—
- “(2A) Where a magistrates' court deals with an offender under sub-paragraph (1) (d) above, it shall revoke the relevant order if it is still in force.”
- (4) In sub-paragraph (1)(d) of paragraph 4 of that Schedule, the words “revoke the order and” shall cease to have effect.
- (5) After sub-paragraph (2) of that paragraph there shall be inserted the following sub-paragraph—
- “(2A) Where the Crown Court deals with an offender under sub-paragraph (1) (d) above, it shall revoke the relevant order if it is still in force.”
- (6) After paragraph 12(4) of that Schedule there shall be inserted the following sub-paragraphs—
- “(5) Where—
- (a) the court amends a probation order or community service order under this paragraph;
- (b) a local authority is specified in the order in accordance with section 2(2)(b) or 14(4)(c) of the 1973 Act; and
- (c) the change, or proposed change, of residence also is or would be a change of residence from the area of that authority to the area of another such authority,
- the court shall further amend the order by substituting the other authority for the authority specified in the order.
- (6) In sub-paragraph (5) above “local authority” has the meaning given by section 42 of the Crime and Disorder Act 1998, and references to the area of a local authority shall be construed in accordance with that section.”
- (7) In paragraph 17(1) of that Schedule, the words from “and the court shall not” to the end shall cease to have effect.

- 97 In paragraph 1(2) of Schedule 5 to the 1991 Act (Parole Board: supplementary provisions), for the words “its functions under Part II of this Act” there shall be substituted the following paragraphs—
- “(a) its functions under this Part in respect of long-term and short-term prisoners; and
- (b) its functions under Chapter II of Part II of the Crime (Sentences) Act 1997 in respect of life prisoners within the meaning of that Chapter”.