Criminal Justice and Immigration Act 2008

2008 CHAPTER 4

PART 1

YOUTH REHABILITATION ORDERS

Youth rehabilitation orders

1 Youth rehabilitation orders

(1) Where a person aged under 18 is convicted of an offence, the court by or before which the person is convicted may in accordance with Schedule 1 make an order (in this Part referred to as a "youth rehabilitation order") imposing on the person any one or more of the following requirements—

(a) an activity requirement (see paragraphs 6 to 8 of Schedule 1),

(b) a supervision requirement (see paragraph 9 of that Schedule),

(c) in a case where the offender is aged 16 or 17 at the time of the conviction, an unpaid work requirement (see paragraph 10 of that Schedule),

(d) a programme requirement (see paragraph 11 of that Schedule),

(e) an attendance centre requirement (see paragraph 12 of that Schedule),

(f) a prohibited activity requirement (see paragraph 13 of that Schedule),

(g) a curfew requirement (see paragraph 14 of that Schedule),

(h) an exclusion requirement (see paragraph 15 of that Schedule),

(i) a residence requirement (see paragraph 16 of that Schedule),

(j) a local authority residence requirement (see paragraph 17 of that Schedule),

(k) a mental health treatment requirement (see paragraph 20 of that Schedule),

(l) a drug treatment requirement (see paragraph 22 of that Schedule),

(m) a drug testing requirement (see paragraph 23 of that Schedule),

(n) an intoxicating substance treatment requirement (see paragraph 24 of that Schedule), and

(o) an education requirement (see paragraph 25 of that Schedule).

(2) A youth rehabilitation order—

(a) may also impose an electronic monitoring requirement (see paragraph 26 of Schedule 1), and

(b) must do so if paragraph 2 of that Schedule so requires.

(3) A youth rehabilitation order may be—

(a) a youth rehabilitation order with intensive supervision and surveillance (see paragraph 3 of Schedule 1), or

(b) a youth rehabilitation order with fostering (see paragraph 4 of that Schedule).

(4) But a court may only make an order mentioned in subsection (3)(a) or (b) if—

(a) the court is dealing with the offender for an offence which is punishable with imprisonment,

(b) the court 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, but for paragraph 3 or 4 of Schedule 1, a custodial sentence would be appropriate (or, if the offender was aged under 12 at the time of conviction, would be appropriate if the offender had been aged 12), and

(c) if the offender was aged under 15 at the time of conviction, the court is of the opinion that the offender is a persistent offender.

(5) Schedule 1 makes further provision about youth rehabilitation orders.

(6) This section is subject to—

(a) sections 148 and 150 of the Criminal Justice Act 2003 (c. 44) (restrictions on community sentences etc.), and

(b) the provisions of Parts 1 and 3 of Schedule 1.

2 Breach, revocation or amendment of youth rehabilitation orders

Schedule 2 makes provision about failures to comply with the requirements of youth rehabilitation orders and about the revocation or amendment of such orders.

3 Transfer of youth rehabilitation orders to Northern Ireland

Schedule 3 makes provision about the transfer of youth rehabilitation orders to Northern Ireland.

4 Meaning of "the responsible officer"

(1) For the purposes of this Part, "the responsible officer", in relation to an offender to whom a youth rehabilitation 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 1(1), and

(ii) imposes an electronic monitoring requirement,

the person who under paragraph 26(4) of Schedule 1 is responsible for the electronic monitoring required by the order;

(b) in a case where 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) In this section "qualifying officer", in relation to a youth rehabilitation order, means—

(a) a member of a youth offending team established by a local authority for the time being specified in the order for the purposes of this section, or

(b) an officer of a local probation board appointed for or assigned to the local justice area for the time being so specified or (as the case may be) an officer of a provider of probation services acting in the local justice area for the time being so specified.

(3) The Secretary of State may by order—

(a) amend subsections (1) and (2), and

(b) make any other amendments of—

(i) this Part, or

(ii) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) (general provisions about sentencing),

that appear 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 youth rehabilitation order.

5 Responsible officer and offender: duties in relation to the other

(1) Where a youth rehabilitation 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 subsection (1) "responsible officer" does not include a person falling within section 4(1)(a).

(3) In giving instructions in pursuance of a youth rehabilitation order relating to an offender, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid—

(a) any conflict with the offender's religious beliefs,

(b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and

(c) any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject.

(4) The Secretary of State may by order provide that subsection (3) is to have effect with such additional restrictions as may be specified in the order.

(5) An offender in respect of whom a youth rehabilitation order is in force—

(a) must keep in touch with the responsible officer in accordance with such instructions as the offender may from time to time be given by that officer, and

(b) must notify the responsible officer of any change of address.

(6) The obligation imposed by subsection (5) is enforceable as if it were a requirement imposed by the order.

Supplementary

6 Abolition of certain youth orders and related amendments

(1) Chapters 1, 2, 4 and 5 of Part 4 of (and Schedules 3 and 5 to 7 to) the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (curfew orders, exclusion orders, attendance centre orders, supervision orders and action plan orders) cease to have effect.

(2) Part 1 of Schedule 4 makes amendments consequential on provisions of this Part.

(3) Part 2 of Schedule 4 makes minor amendments regarding other community orders which are related to the consequential amendments in Part 1 of that Schedule.

7 Youth rehabilitation orders: interpretation

(1) In this Part, except where the contrary intention appears—

"accommodation provided by or on behalf of a local authority" has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 105 of that Act;

"activity requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 6 of Schedule 1;

"associated", in relation to offences, is to be read in accordance with section 161(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

"attendance centre" has the meaning given by section 221(2) of the Criminal Justice Act 2003 (c. 44);

"attendance centre requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 12 of Schedule 1;

"curfew requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 14 of Schedule 1;

"custodial sentence" has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;

"detention and training order" has the same meaning as it has in that Act by virtue of section 163 of that Act;

"drug treatment requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 22 of Schedule 1;

"drug testing requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 23 of Schedule 1;

"education requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 25 of Schedule 1;

"electronic monitoring requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 26 of Schedule 1;

"exclusion requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 15 of Schedule 1;

"extended activity requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 3 of Schedule 1;

"fostering requirement", in relation to a youth rehabilitation order with fostering, has the meaning given by paragraph 18 of Schedule 1;

"guardian" has the same meaning as in the Children and Young Persons Act 1933 (c. 12);

"intoxicating substance treatment requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 24 of Schedule 1;

"local authority" means—

(a) in relation to England—

(i) a county council,

(ii) a district council whose district does not form part of an area that has a county council,

(iii) a London borough council, or

(iv) the Common Council of the City of London in its capacity as a local authority, and

(b) in relation to Wales—

(i) a county council, or

(ii) a county borough council;

"local authority residence requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 17 of Schedule 1;

"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 youth rehabilitation order, has the meaning given by paragraph 20 of Schedule 1;

"programme requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 11 of Schedule 1;

"prohibited activity requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 13 of Schedule 1;

"residence requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 16 of Schedule 1;

"the responsible officer", in relation to an offender to whom a youth rehabilitation order relates, has the meaning given by section 4;

"supervision requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 9 of Schedule 1;

"unpaid work requirement", in relation to a youth rehabilitation order, has the meaning given by paragraph 10 of Schedule 1;

"youth offending team" means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37);

"youth rehabilitation order" has the meaning given by section 1;

"youth rehabilitation order with fostering" has the meaning given by paragraph 4 of Schedule 1;

"youth rehabilitation order with intensive supervision and surveillance" has the meaning given by paragraph 3 of Schedule 1.

(2) For the purposes of any provision of this Part which requires the determination of the age of a person by the court, the Secretary of State or a local authority, the person's

age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State or a local authority 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) If a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, any reference in this Part (except in paragraphs 4 and 25 of Schedule 1) to the offender's parent or guardian is to be read as a reference to that authority.

(5) In subsection (4)—

"parental responsibility" has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 3 of that Act, and

"social services functions" has the same meaning as it has in the Local Authority Social Services Act 1970 (c. 42) by virtue of section 1A of that Act.

8 Isles of Scilly

This Part has effect in relation to the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may by order specify.

PART 2

SENTENCING

General sentencing provisions

9 Purposes etc. of sentencing: offenders under 18

(1) After section 142 of the Criminal Justice Act 2003 (c. 44) insert—

"**142A Purposes etc. of sentencing: offenders under 18**

(1) This section applies where a court is dealing with an offender aged under 18 in respect of an offence.

(2) The court must have regard to—

(a) the principal aim of the youth justice system (which is to prevent offending (or re-offending) by persons aged under 18: see section 37(1) of the Crime and Disorder Act 1998),

(b) in accordance with section 44 of the Children and Young Persons Act 1933, the welfare of the offender, and

(c) the purposes of sentencing mentioned in subsection (3) (so far as it is not required to do so by paragraph (a)).

(3) Those purposes of sentencing are—

(a) the punishment of offenders,

(b) the reform and rehabilitation of offenders,

(c) the protection of the public, and

(d) the making of reparation by offenders to persons affected by their offences.

(4) This section does not apply—

(a) to an offence the sentence for which is fixed by law,

(b) to an offence the sentence for which falls to be imposed under—

(i) section 51A(2) of the Firearms Act 1968 (minimum sentence for certain firearms offences),

(ii) section 29(6) of the Violent Crime Reduction Act 2006 (minimum sentences in certain cases of using someone to mind a weapon), or

(iii) section 226(2) of this Act (detention for life for certain dangerous offenders), or

(c) in relation to the making under Part 3 of the Mental Health Act 1983 of a hospital order (with or without a restriction order), an interim hospital order, a hospital direction or a limitation direction."

(2) In section 142 of the Criminal Justice Act 2003 (purposes of sentencing in relation to offenders aged 18 or over at the time of conviction)—

(a) in the heading, at the end insert ": offenders aged 18 or over", and

(b) in subsection (2)(a) omit "at the time of conviction".

(3) In section 44 of the Children and Young Persons Act 1933 (c. 12) (general considerations) after subsection (1) insert—

"(1A) Subsection (1) is to be read with paragraphs (a) and (c) of section 142A(2) of the Criminal Justice Act 2003 (which require a court dealing with an offender aged under 18 also to have regard to the principal aim of the youth justice system and the specified purposes of sentencing).

(1B) Accordingly, in determining in the case of an offender whether it should take steps as mentioned in subsection (1), the court shall also have regard to the matters mentioned in those paragraphs."

(4) In section 42(1) of the Crime and Disorder Act 1998 (c. 37) (interpretation of Part 3 of Act), after the definition of "local authority" insert—

""offending" includes re-offending;".

10 Effect of restriction on imposing community sentences

In section 148 of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences), after subsection (4) insert—

"(5) The fact that by virtue of any provision of this section—

(a) a community sentence may be passed in relation to an offence; or

(b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,

does not require a court to pass such a sentence or to impose those restrictions."

11 Restriction on power to make a community order

(1) After section 150 of the Criminal Justice Act 2003 (community sentence not available where sentence fixed by law etc.) insert—

"**150A Community order available only for offences punishable with imprisonment or for persistent offenders previously fined**

(1) The power to make a community order is only exercisable in respect of an offence if—

(a) the offence is punishable with imprisonment; or

(b) in any other case, section 151(2) confers power to make such an order.

(2) For the purposes of this section and section 151 an offence triable either way that was tried summarily is to be regarded as punishable with imprisonment only if it is so punishable by the sentencing court (and for this purpose section 148(1) is to be disregarded)."

(2) Section 151 of that Act (community order for persistent offender previously fined) is amended as follows.

(3) Before subsection (1) insert—

"(A1) Subsection (2) provides for the making of a community order by the court in respect of an offence ("the current offence") committed by a person to whom subsection (1) or (1A) applies."

(4) In subsection (1)—

(a) for "Subsection (2) applies where" substitute "This subsection applies to the offender if—

(za) the current offence is punishable with imprisonment;";

(b) for paragraph (a) substitute—

"(a) the offender was aged 16 or over when he was convicted;";

(c) in paragraph (b) for "he" substitute "the offender".

(5) After subsection (1) insert—

"(1A) This subsection applies to the offender if—

(a) the current offence is not punishable with imprisonment;

(b) the offender was aged 16 or over when he was convicted; and

(c) on three or more previous occasions the offender 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."

(6) In subsection (3)(a) after "(1)(b)" insert "or (1A)(b) (as the case may be)".

(7) In subsections (4), (5) and (6), for "subsection (1)(b)" insert "subsections (1)(b) and (1A)(b)".

(8) In section 166 of that Act (savings for powers to mitigate etc.), in subsection (1)(a), after "148" insert "or 151(2)".

12 Pre-sentence reports

In section 158 of the Criminal Justice Act 2003 (c. 44) (meaning of "pre-sentence report"), after subsection (1) insert—

"(1A) Subject to any rules made under subsection (1)(b) and to subsection (1B), the court may accept a pre-sentence report given orally in open court.

(1B) But a pre-sentence report that—

(a) relates to an offender aged under 18, and

(b) is required to be obtained and considered before the court forms an opinion mentioned in section 156(3)(a),

must be in writing."

Custodial sentences

13 Sentences of imprisonment for public protection

(1) In section 225 of the Criminal Justice Act 2003 (life sentence or imprisonment for public protection), for subsection (3) substitute—

"(3) In a case not falling within subsection (2), the court may impose a sentence of imprisonment for public protection if the condition in subsection (3A) or the condition in subsection (3B) is met.

(3A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(3B) The condition in this subsection is that the notional minimum term is at least two years.

(3C) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of imprisonment for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand)."

(2) After Schedule 15 to that Act, insert the Schedule set out in Schedule 5 to this Act.

14 Sentences of detention for public protection

In section 226 of the Criminal Justice Act 2003 (c. 44) (detention for life or detention for public protection), for subsection (3) substitute—

"(3) In a case not falling within subsection (2), the court may impose a sentence of detention for public protection if the notional minimum term is at least two years.

(3A) The notional minimum term is the part of the sentence that the court would specify under section 82A(2) of the Sentencing Act (determination of tariff) if it imposed a sentence of detention for public protection but was required to disregard the matter mentioned in section 82A(3)(b) of that Act (crediting periods of remand)."

15 Extended sentences for certain violent or sexual offences: persons 18 or over

(1) Section 227 of the Criminal Justice Act 2003 (extended sentence for certain violent or sexual offences: persons 18 or over) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (a) the words ", other than a serious offence," are omitted, and

(b) after paragraph (b) insert ", but

(c) the court is not required by section 225(2) to impose a sentence of imprisonment for life."

(3) In subsection (2) —

(a) for "The court must" substitute "The court may", and

(b) for the words from "that is to say" to the end substitute "if the condition in subsection (2A) or the condition in subsection (2B) is met."

(4) After subsection (2) insert—

"(2A) The condition in this subsection is that, at the time the offence was committed, the offender had been convicted of an offence specified in Schedule 15A.

(2B) The condition in this subsection is that, if the court were to impose an extended sentence of imprisonment, the term that it would specify as the appropriate custodial term would be at least 4 years.

(2C) An extended sentence of imprisonment is 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."

(5) In subsection (3) for "subsection (2)" substitute "subsections (2B) and (2C)".

(6) After subsection (5) insert—

"(6) The Secretary of State may by order amend subsection (2B) so as to substitute a different period for the period for the time being specified in that subsection."

16 Extended sentences for certain violent or sexual offences: persons under 18

(1) Section 228 of the Criminal Justice Act 2003 (c. 44) (extended sentence for certain violent or sexual offences: persons under 18) is amended as follows.

(2) In subsection (1)(b)(ii) the words from "or by section 226(3)" to the end are omitted.

(3) In subsection (2) —

(a) for "The court must" substitute "The court may", and

(b) for the words from ", that is to say" to the end substitute "if the condition in subsection (2A) is met."

(4) After subsection (2) insert—

"(2A) The condition in this subsection is that, if the court were to impose an extended sentence of detention, the term that it would specify as the appropriate custodial term would be at least 4 years.

(2B) An extended sentence of detention is 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."

(5) In subsection (3)—

(a) for "subsection (2)" substitute "subsections (2A) and (2B)", and

(b) paragraph (a) is omitted.

(6) After subsection (6) insert—

"(7) The Secretary of State may by order amend subsection (2A) so as to substitute a different period for the period for the time being specified in that subsection."

17 The assessment of dangerousness

(1) Section 229 of the Criminal Justice Act 2003 (the assessment of dangerousness) is amended as follows.

(2) In subsection (2)—

(a) the words from the beginning to "18" are omitted,

(b) after paragraph (a) insert—

"(aa) may take into account all such information as is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world,", and

(c) in paragraph (b) for "the offence" substitute "any of the offences mentioned in paragraph (a) or (aa)".

(3) After subsection (2) insert—

"(2A) The reference in subsection (2)(aa) to a conviction by a court includes a reference to—

(a) a finding of guilt in service disciplinary proceedings, and

(b) a conviction of a service offence within the meaning of the Armed Forces Act 2006 ("conviction" here including anything that under section 376(1) and (2) of that Act is to be treated as a conviction)."

(4) Subsections (3) and (4) are omitted.

(5) Schedules 16 and 17 to that Act are omitted.

18 Further amendments relating to sentences for public protection

(1) In section 231 of the Criminal Justice Act 2003 (c. 44) (appeals where previous convictions set aside), for subsection (1) substitute—

"(1) This section applies where—

(a) a sentence has been imposed on any person under section 225(3) or 227(2),

(b) the condition in section 225(3A) or (as the case may be) 227(2A) was met but the condition in section 225(3B) or (as the case may be) 227(2B) was not, and

(c) any previous conviction of his without which the condition in section 225(3A) or (as the case may be) 227(2A) would not have been met has been subsequently set aside on appeal."

(2) In section 232 of that Act (certificates for purposes of section 229)—

(a) in the heading for "section 229" substitute "sections 225 and 227",

(b) in paragraph (a)—

(i) for "the commencement of this section" substitute "the commencement of Schedule 15A", and

(ii) for "a relevant offence" substitute "an offence specified in that Schedule", and

(c) for "section 229" substitute "sections 225(3A) and 227(2A)".

(3) Section 234 of that Act (determination of day when offence committed) is omitted.

19 Indeterminate sentences: determination of tariffs

(1) Section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (determination of tariffs in cases where the sentence is not fixed by law) is amended as follows.

(2) In subsection (3) (determination of the appropriate part of the sentence) at the end insert—

"In Case A or Case B below, this subsection has effect subject to, and in accordance with, subsection (3C) below."

(3) After subsection (3) insert—

"(3A) Case A is where the offender was aged 18 or over when he committed the offence and the court is of the opinion that the seriousness of the offence, or of the combination of the offence and one or more other offences associated with it,—

(a) is exceptional (but not such that the court proposes to make an order under subsection (4) below), and

(b) would not be adequately reflected by the period which the court would otherwise specify under subsection (2) above.

(3B) Case B is where the court is of the opinion that the period which it would otherwise specify under subsection (2) above would have little or no effect on time spent in custody, taking into account all the circumstances of the particular offender.

(3C) In Case A or Case B above, in deciding the effect which the comparison required by subsection (3)(c) above is to have on reducing the period which the court determines for the purposes of subsection (3)(a) (and before giving effect to subsection (3)(b) above), the court may, instead of reducing that period by one-half,—

(a) in Case A above, reduce it by such lesser amount (including nil) as the court may consider appropriate according to the seriousness of the offence, or

(b) in Case B above, reduce it by such lesser amount (but not by less than one-third) as the court may consider appropriate in the circumstances."

(4) In subsection (4A) (no order to be made under subsection (4) in the case of certain sentences) after "No order under subsection (4) above may be made" insert ", and Case A above does not apply,".

20 Consecutive terms of imprisonment

(1) Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) is amended as follows.

(2) In section 181 (consecutive terms of imprisonment complying with section 181) after subsection (7) insert—

"(7A) For the purposes of subsection (7)(a) the aggregate length of the terms of imprisonment is not to be regarded as being more than 65 weeks if the aggregate of all the custodial periods and the longest of the licence periods in relation to those terms is not more than 65 weeks."

(3) In section 264A (consecutive terms: intermittent custody)—

(a) in subsection (3), omit the words from "and none" to the end;

(b) in subsection (4)(b), for "the longest of the total" substitute "all the"; and

(c) in subsection (5), for the definition of "total licence period" substitute—

""licence period" has the same meaning as in section 183(3);".

(4) In section 265 (restriction on consecutive sentences for released prisoners)—

(a) in subsection (1), for "early under this Chapter" substitute "—

(a) under this Chapter; or

(b) under Part 2 of the Criminal Justice Act 1991."; and

(b) after that subsection insert—

"(1A) Subsection (1) applies to a court sentencing a person to—

(a) a term of imprisonment for an offence committed before 4 April 2005, or

(b) a term of imprisonment of less than 12 months for an offence committed on or after that date,

as it applies to the imposition of any other term of imprisonment.

(1B) Where an intermittent custody order applies to the other sentence, the reference in subsection (1) to release under this Chapter does not include release by virtue of section 183(1)(b)(i) (periods of temporary release on licence before the custodial days specified under section 183(1)(a) have been served)."

(5) Any saving by virtue of which section 84 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (restrictions on consecutive sentences for released prisoners) continues to apply in certain cases (despite the repeal of that section by the Criminal Justice Act 2003) shall cease to have effect.

Release and recall of prisoners

21 Credit for period of remand on bail: terms of imprisonment and detention

(1) The Criminal Justice Act 2003 (c. 44) is amended as follows.

(2) In section 237 (meaning of "fixed term prisoner"), in subsection (1B), after "Armed Forces Act 2006)" insert "or section 240A".

(3) In the italic heading before section 240, after "*custody*" insert "*or on bail subject to certain types of condition*".

(4) After section 240 insert—

"**240A Crediting periods of remand on bail: 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 on or after 4th April 2005,

(b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, after the coming into force of section 21 of the Criminal Justice and Immigration Act 2008, and

(c) the offender's bail was subject to a qualifying curfew condition and an electronic monitoring condition ("the relevant conditions").

(2) Subject to subsection (4), the court must direct that the credit period is to count as time served by the offender as part of the sentence.

(3) The "credit period" is the number of days represented by half of the sum of—

(a) the day on which the offender's bail was first subject to conditions that, had they applied throughout the day in question, would have been relevant conditions, and

(b) the number of other days on which the offender's bail was subject to those conditions (excluding the last day on which it was so subject),

rounded up to the nearest whole number.

(4) Subsection (2) does not apply if and to the extent that—

(a) rules made by the Secretary of State so provide, 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 as a result of paragraph (a) or (b) of subsection (4) the court does not give a direction under subsection (2), it may give a direction in accordance with either of those paragraphs to the effect that a period of days which is

less than the credit period is to count as time served by the offender as part of the sentence.

(6) Rules made under subsection (4)(a) may, in particular, make provision in relation to—

(a) sentences of imprisonment for consecutive terms;

(b) sentences of imprisonment for terms which are wholly or partly concurrent;

(c) periods during which a person granted bail subject to the relevant conditions is also subject to electronic monitoring required by an order made by a court or the Secretary of State.

(7) In considering whether it is of the opinion mentioned in subsection (4)(b) the court must, in particular, take into account whether or not the offender has, at any time whilst on bail subject to the relevant conditions, broken either or both of them.

(8) Where the court gives a direction under subsection (2) or (5) it shall state in open court—

(a) the number of days on which the offender was subject to the relevant conditions, and

(b) the number of days in relation to which the direction is given.

(9) Subsection (10) applies where the court—

(a) does not give a direction under subsection (2) but gives a direction under subsection (5), or

(b) decides not to give a direction under this section.

(10) The court 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.

(11) Subsections (7) to (10) of section 240 apply for the purposes of this section as they apply for the purposes of that section but as if—

(a) in subsection (7)—

(i) the reference to a suspended sentence is to be read as including a reference to a sentence to which an order under section 118(1) of the Sentencing Act relates;

(ii) in paragraph (a) after "Schedule 12" there were inserted "or section 119(1)(a) or (b) of the Sentencing Act"; and

(b) in subsection (8) the reference to subsection (3) of section 240 is to be read as a reference to subsection (2) of this section and, in paragraph (b), after "Chapter" there were inserted "or Part 2 of the Criminal Justice Act 1991".

(12) In this section—

"electronic monitoring condition" means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person's compliance with a qualifying curfew condition;

"qualifying curfew condition" means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day; and

"related offence" means an offence, other than the offence for which the sentence is imposed ("offence A"), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A."

(5) In section 241 (effect of direction under section 240 of that Act) after the words "section 240", in each place where they occur (including in the title), insert "or 240A".

(6) In section 242 (interpretation of sections 240 and 241), in the title and in subsection (1), after "sections 240" insert ", 240A".

(7) In section 330 (Parliamentary procedure for subordinate legislation made under that Act), in subsection (5)(d), after "section 240(4)(a)" insert "or 240A(4)(a)".

22 Credit for period of remand on bail: other cases

(1) The Criminal Justice Act 2003 (c. 44) is amended in accordance with subsections (2) and (3).

(2) In section 246(4) (exceptions to power to release prisoner on licence before required to do so), in paragraph (i), after "section 240" insert "or 240A".

(3) In section 269(3) (part of mandatory life prisoner's sentence to be specified for purposes of early release provisions), in paragraph (b), before "if" insert "or under section 240A (crediting periods of remand on bail spent subject to certain types of condition)".

(4) In paragraph 2 of Schedule 2 to the Criminal Appeal Act 1968 (c. 19) (sentence on conviction at retrial), in sub-paragraph (4), for the words from the beginning to "custody:" substitute "Sections 240 and 240A of the Criminal Justice Act 2003 (crediting of periods of remand in custody or on bail subject to certain types of condition:".

(5) In section 82A(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (part of discretionary life prisoner's sentence to be specified for purposes of early release provisions), in paragraph (b), before "if" insert "or under section 240A of that Act of 2003 (crediting periods of remand on bail subject to certain types of condition)".

(6) In section 101 of that Act (detention and training orders: taking account of remand etc.)—

(a) in subsection (8) for "in custody" substitute "—

(a) in custody, or

(b) on bail subject to a qualifying curfew condition and an electronic monitoring condition (within the meaning of section 240A of the Criminal Justice Act 2003),"; and

(b) in subsection (9) for "in custody" substitute "as mentioned in that subsection".

(7) In paragraph 2(1) of Schedule 7 to the International Criminal Court Act 2001 (c. 17) (provisions of law of England and Wales affecting length of sentence which are not applicable to ICC prisoners), for paragraph (d) substitute—

"(d) sections 240 and 240A of the Criminal Justice Act 2003 (crediting of periods spent on remand in custody or on bail subject to certain types of condition: terms of imprisonment and detention)."

23 Credit for period of remand on bail: transitional provisions

Schedule 6 (which, for the purposes of certain repealed provisions which continue to have effect in relation to persons convicted of certain offences, makes provision similar to that made by sections 21 and 22) has effect.

24 Minimum conditions for early release under section 246(1) of Criminal Justice Act 2003

In section 246(2) of the Criminal Justice Act 2003 (c. 44) (minimum conditions for early release of fixed-term prisoner other than intermittent custody prisoner) for paragraph (b) substitute "and

(b) he has served—

(i) at least 4 weeks of that period, and

(ii) at least one-half of that period."

25 Release on licence under Criminal Justice Act 2003 of prisoners serving extended sentences

(1) Section 247 of the Criminal Justice Act 2003 (release on licence of prisoner serving extended sentence) is amended as follows.

(2) In subsection (2)—

(a) the word "and" at the end of paragraph (a) is omitted, and

(b) paragraph (b) is omitted.

(3) Subsections (3), (4), (5) and (6) are omitted.

26 Release of certain long-term prisoners under Criminal Justice Act 1991

(1) Part 2 of the Criminal Justice Act 1991 (c. 53) (early release of prisoners: offences committed before 4th April 2005 etc.) is amended as follows.

(2) In section 33 (duty to release short-term and long-term prisoners), after subsection (1) insert—

"(1A) As soon as a long-term prisoner has served one-half of his sentence, it shall be the duty of the Secretary of State to release him on licence.

(1B) Subsection (1A) does not apply to a long-term prisoner if the offence or one of the offences in respect of which he is serving the sentence is specified in Schedule 15 to the Criminal Justice Act 2003 (specified violent offences and specified sexual offences).

(1C) The reference in subsection (1B) to an offence specified in Schedule 15 to the Criminal Justice Act 2003 includes a reference to—

(a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as

respects which the corresponding civil offence (within the meaning of the Act in question) is an offence specified in that Schedule, and

(b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence specified in that Schedule.

(1D) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc.) applies for the purposes of subsection (1C)(b) as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (1C)(b).”

(3) In that section, in subsection (2) after “a long-term prisoner” insert “to whom subsection (1A) does not apply”.

(4) In section 35 (power to release long-term prisoners etc.) after subsection (1) insert—

“(1A) Subsection (1) does not apply to a long-term prisoner to whom section 33(1A) applies.”

(5) In section 37 (duration and conditions of licences)—

(a) in subsection (1), for “(1B) and (2)” substitute “(1B), (2) and (8)”, and

(b) after subsection (7) insert—

“(8) This section does not apply in relation to a long-term prisoner to whom section 33(1A) applies (provision as to the duration and conditions of licences for such prisoners being made by section 37ZA).”

(6) After section 37 insert—

“**37ZA Duration and conditions of licences under section 33(1A) etc.**

(1) Where a long-term prisoner is released on licence under section 33(1A), the licence shall (subject to any revocation under section 254 of the 2003 Act) remain in force for the remainder of the sentence.

(2) Section 250(1), (4) and (8) of the 2003 Act apply in relation to a licence under section 33(1A) of this Act as they apply in relation to a licence under Chapter 6 of Part 12 of the 2003 Act in respect of a prisoner serving a sentence of imprisonment for a term of twelve months or more.

(3) A person subject to a licence under section 33(1A) must comply with such conditions as may for the time being be specified in the licence.

(4) The reference in section 254(1) of the 2003 Act to a person who has been released on licence under Chapter 6 of Part 12 of that Act includes a reference to a person released on licence under section 33(1A).

(5) In this section, “the 2003 Act” means the Criminal Justice Act 2003.”

27 Application of section 35(1) of Criminal Justice Act 1991 to prisoners liable to removal from the UK

(1) The following provisions of Part 2 of the Criminal Justice Act 1991 (c. 53) (which apply to persons sentenced for offences committed before 4th April 2005 etc.) cease to have effect—

(a) section 46(1) (which makes the early release power under section 35(1) exercisable in relation to long term prisoners liable to removal without a Parole Board recommendation), and

(b) in section 50(2), the words from "but nothing" to the end (which exclude prisoners liable to removal from the cases in which prisoners must be released if recommended for release by the Parole Board);

and, accordingly, the Parole Board (Transfer of Functions) Order 1998 (S.I. 1998/3218) applies to prisoners liable to removal as it applies to other prisoners.

(2) In this section "prisoners liable to removal" means prisoners liable to removal from the United Kingdom (within the meaning of section 46(3) of the Criminal Justice Act 1991).

28 Release of fine defaulters and contemnors under Criminal Justice Act 1991

(1) Section 45 of the Criminal Justice Act 1991 (fine defaulters and contemnors: persons committed to prison before 4th April 2005) is amended as follows.

(2) In subsection (2) after "(3)" insert ", (3A)".

(3) In subsection (3)—

(a) for "the following subsections" substitute "the following subsection", and

(b) in the substituted text, subsection (2) is omitted.

(4) After subsection (3) insert—

"(3A) In section 36 above—

(a) in subsection (1) for "on licence" there shall be substituted "unconditionally", and

(b) subsection (2) shall be omitted."

(5) Subsection (4) is omitted.

29 Release of prisoners after recall

(1) In section 254 of the Criminal Justice Act 2003 (c. 44) (recall of prisoners while on licence)—

(a) subsections (3) to (5) cease to have effect;

(b) in subsection (7) for "subsections (2) to (6)" substitute "this section".

(2) After section 255 of that Act (recall of prisoners released early under section 246) insert—

"**255A Further release after recall: introductory**

(1) This section applies for the purpose of identifying which of sections 255B to 255D governs the further release of a person who has been recalled under section 254 ("the prisoner").

(2) The prisoner is eligible to be considered for automatic release unless—

(a) he is an extended sentence prisoner or a specified offence prisoner;

(b) in a case where paragraph (a) does not apply, he was recalled under section 254 before the normal entitlement date (having been released before that date under section 246 or 248); or

(c) in a case where neither of the preceding paragraphs applies, he has, during the same term of imprisonment, already been released under section 255B(1)(b) or (2) or section 255C(2).

(3) If the prisoner is eligible to be considered for automatic release the Secretary of State must, on recalling him, consider whether he is suitable for automatic release.

(4) For this purpose "automatic release" means release at the end of the period of 28 days beginning with the date on which the prisoner is returned to prison.

(5) The person is suitable for automatic release only if the Secretary of State is satisfied that he will not present a risk of serious harm to members of the public if he is released at the end of that period.

(6) The prisoner must be dealt with—

(a) in accordance with section 255B if he is eligible to be considered for automatic release and is suitable for automatic release;

(b) in accordance with section 255C if he is eligible to be considered for automatic release but was not considered to be suitable for it;

(c) in accordance with section 255C if he is a specified offence prisoner or if he is not eligible to be considered for automatic release by virtue of subsection (2)(b) or (c);

(d) in accordance with section 255D if he is an extended sentence prisoner.

(7) The prisoner is an "extended sentence prisoner" if he is serving an extended sentence imposed under section 227 or 228 of this Act, section 58 of the Crime and Disorder Act 1998 or section 85 of the Powers of Criminal Courts (Sentencing) Act 2000.

(8) The prisoner is a "specified offence prisoner" if (not being an extended sentence prisoner) he is serving a sentence imposed for a specified offence within the meaning of section 224.

(9) The reference in subsection (8) to a specified offence (within the meaning of section 224) includes a reference to—

(a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is a specified offence, and

(b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is a specified offence.

(10) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc.) applies for the purposes of subsection (9)(b) as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (9)(b).

(11) In subsection (2)(b) the "normal entitlement date" means the date on which the prisoner would (but for his earlier release) have been entitled to be released under section 244.

(12) For the purposes of subsection (2)(c) terms of imprisonment which are consecutive 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 prisoner 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.

(13) In subsection (5) "serious harm" means death or serious personal injury, whether physical or psychological.

(14) 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.

255B Automatic release

(1) A prisoner who is suitable for automatic release must—

(a) on his return to prison, be informed that he will be released under this subsection, and

(b) at the end of the 28 day period mentioned in section 255A(4) (or such other period as is specified for the purposes of that subsection), be released by the Secretary of State on licence under this Chapter (unless he has already been released under subsection (2)).

(2) The Secretary of State may, at any time after a prisoner who is suitable for automatic release is returned to prison, release him again on licence under this Chapter.

(3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison until the end of the period mentioned in subsection (1)(b).

(4) If a prisoner who is suitable for automatic release makes representations under section 254(2) before the end of that period, the Secretary of State must refer his case to the Board on the making of those representations.

(5) Where on a reference under subsection (4) 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.

(6) 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.

255C Specified offence prisoners and those not suitable for automatic release

(1) This section applies to a prisoner who—

(a) is a specified offence prisoner,

(b) is not eligible to be considered for automatic release by virtue of section 255A(2)(b) or (c), or

(c) was eligible to be considered for automatic release but was not considered to be suitable for it.

(2) The Secretary of State may, at any time after the person is returned to prison, release him again on licence under this Chapter.

(3) The Secretary of State must not release a person under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that he should remain in prison.

(4) The Secretary of State must refer to the Board the case of any person to whom this section applies—

(a) if the person makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which he is returned to prison, on the making of those representations, or

(b) if, at the end of that period, the person has not been released under subsection (2) and has not made such representations, at that time.

(5) Where on a reference under subsection (4) 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.

(6) 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.

255D Extended sentence prisoners

(1) The Secretary of State must refer to the Board the case of any extended sentence prisoner.

(2) Where on a reference under subsection (1) 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."

(3) In section 256 of that Act (further release after recall) in subsection (1) (powers of Board on a reference) for "section 254(3)" substitute "section 255B(4), 255C(4) or 255D(1)".

30 Further review and release of prisoners after recall

(1) Section 256 of the Criminal Justice Act 2003 (c. 44) (further release after recall) is amended as follows.

(2) In subsection (1) for paragraph (b) substitute—

"(b) determine the reference by making no recommendation as to his release."

(3) In subsection (2) omit "or (b)".

(4) Subsections (3) and (5) cease to have effect.

(5) In consequence of the amendments made by section 29 and this section, the heading to section 256 becomes "Review by the Board".

(6) After section 256 insert—

"**256A Further review**

(1) The Secretary of State must, not later than the first anniversary of a determination by the Board under section 256(1) or subsection (4) below, refer the person's case to the Board.

(2) The Secretary of State may, at any time before that anniversary, refer the person's case to the Board.

(3) The Board may at any time recommend to the Secretary of State that a person's case be referred under subsection (2).

(4) On a reference under subsection (1) or (2), the Board must determine the reference by—

(a) recommending the person's immediate release on licence under this Chapter,

(b) fixing a date for his release on licence, or

(c) making no recommendation as to his release.

(5) The Secretary of State—

(a) where the Board makes a recommendation under subsection (4)(a) for the person's immediate release on licence, must give effect to the recommendation; and

(b) where the Board fixes a release date under subsection (4)(b), must release the person on licence on that date."

31 Recall of life prisoners: abolition of requirement for recommendation by Parole Board

(1) Section 32 of the Crime (Sentences) Act 1997 (c. 43) (recall of life prisoners while on licence) is amended as follows.

(2) For subsections (1) and (2) (power of Secretary of State to revoke licence) substitute—

"(1) The Secretary of State may, in the case of any life prisoner who has been released on licence under this Chapter, revoke his licence and recall him to prison."

(3) In subsection (3) (representations by prisoner) for "subsection (1) or (2) above" substitute "this section".

(4) In subsection (4) (reference to Parole Board by Secretary of State) for paragraphs (a) and (b) substitute "the case of a life prisoner recalled under this section".

32 Release of prisoners recalled following release under Criminal Justice Act 1991

(1) Before section 51 of the Criminal Justice Act 1991 (c. 53) insert—

"**50A Prisoners recalled under section 254 of Criminal Justice Act 2003**

(1) This section applies to a person who is—

(a) released on licence under any provision of this Part, and

(b) recalled to prison under section 254(1) of the 2003 Act (recall of prisoners while on licence).

(2) Nothing in the following provisions of this Part (which authorise or require the Secretary of State to release prisoners) applies in relation to the person—

(a) section 33;

(b) section 33A;

(c) section 34A;

(d) section 35;

(e) section 43(4).

(3) Sections 254(2) and (6) and 255A to 256A of the 2003 Act (which authorise release on licence etc) apply in relation to a person to whom this section applies with the modifications specified in subsection (4).

(4) Section 255A applies as if—

(a) the reference in subsection (2)(b) to section 246 or 248 of the 2003 Act were a reference to section 34A or 36 of this Act,

(b) the reference in subsection (11) to section 244 of the 2003 Act were a reference to section 33(1), (1A) or (2) of this Act,

(c) subsection (12) were omitted (provision to the same effect being made by section 51(2) of this Act, as it applies by virtue of subsection (9) below), and

(d) subsection (14) provided that "term of imprisonment" included any sentence of detention mentioned in section 43(1) of this Act.

(5) The provisions of Chapter 6 of Part 12 of the 2003 Act specified in subsection (6) apply in relation to—

(a) a licence under that Chapter granted to a person to whom this section applies, and

(b) a licence under section 36 of this Act granted to such a person.

(6) The provisions of the 2003 Act specified in this subsection are—

(a) section 249 (duration of licence), as modified by subsection (7) below;

(b) section 250(1), (4) and (8) (licence conditions), as modified by subsection (8) below;

(c) section 252 (duty to comply with licence conditions).

(7) Section 249 of the 2003 Act applies—

(a) as if the reference in subsection (1) to a fixed-term prisoner were a reference to a person to whom this section applies, and

(b) as if for subsection (3) there were substituted—

"(3) Subsection (1) has effect subject to section 51(2) to (2D) of the Criminal Justice Act 1991 (treatment of consecutive and concurrent terms etc.)."

(8) Section 250(4) of the 2003 Act applies as if the reference to a prisoner serving a sentence mentioned in that subsection were a reference to a person to whom this section applies.

(9) In relation to a person to whom this section applies, subsections (2) to (2D) of section 51 of this Act (treatment of consecutive and concurrent terms etc.) apply as if any reference in those subsections to this Part of this Act included the provisions of the 2003 Act mentioned in subsections (3) and (6).

(10) Except as provided by subsections (7)(b) and (9), nothing in this Part applies in relation to the duration and conditions of—

(a) a licence under Chapter 6 of Part 12 of the 2003 Act granted to a person to whom this section applies, or

(b) a licence under section 36 of this Act granted to such a person.

(11) In this section, "the 2003 Act" means the Criminal Justice Act 2003."

(2) The savings made by paragraph 19 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No.8 and Transitional and Saving Provisions) Order 2005 (S.I. 2005/950) in respect of sections 249 and 250 of the Criminal Justice Act 2003 (c. 44) do not apply in relation to a licence granted under Chapter 6 of Part 12 of that Act, or under section 36 of the Criminal Justice Act 1991 (c. 53), to a person to whom section 50A of the Criminal Justice Act 1991 applies.

Early removal of prisoners from the United Kingdom

33 Removal under Criminal Justice Act 1991

(1) Part 2 of the Criminal Justice Act 1991 (early release of prisoners: offences before 4th April 2005 etc.) is amended as follows.

(2) After section 46 insert—

"**46ZA Persons eligible for removal from the United Kingdom**

(1) For the purposes of section 46A below, to be "eligible for removal from the United Kingdom" a person must show, to the satisfaction of the Secretary of State, that the condition in subsection (2) is met.

(2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 46A below.

(3) The person must not be one who is liable to removal from the United Kingdom."

(3) Section 46A (early removal of persons liable to removal from the United Kingdom) is amended as follows.

(4) In subsection (1) (the power of removal) after "is liable to" insert ", or eligible for,".

(5) Also in subsection (1), for "at any time after he has served the requisite period" substitute "at any time in the period—

(a) beginning when the person has served the requisite period (see subsection (5)), and

(b) ending when the person has served one-half of the term."

(6) Subsection (2) (cases where subsection (1) does not apply) ceases to have effect.

(7) In subsection (3) (purpose of removal from prison etc.)—

(a) at the beginning of paragraph (a) insert "if liable to removal from the United Kingdom,";

(b) for "and" at the end of that paragraph substitute—

"(aa) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and";

(c) at the beginning of paragraph (b) insert "in either case,".

(8) In consequence of the amendments made by this section, the heading to section 46A becomes "Early removal of persons liable to, or eligible for, removal from United Kingdom".

34 Removal under Criminal Justice Act 2003

(1) In Part 12 of the Criminal Justice Act 2003 (c. 44) (sentencing) Chapter 6 (release on licence) is amended as follows.

(2) After section 259 (persons liable to removal from the United Kingdom) insert—

"**259A Persons eligible for removal from the United Kingdom**

(1) For the purposes of this Chapter, to be "eligible for removal from the United Kingdom" a person must show, to the satisfaction of the Secretary of State, that the condition in subsection (2) is met.

(2) The condition is that the person has the settled intention of residing permanently outside the United Kingdom if removed from prison under section 260.

(3) The person must not be one who is liable to removal from the United Kingdom."

(3) Section 260 (early removal of prisoners liable to removal from United Kingdom) is amended as follows.

(4) In subsection (1) (the power of removal)—

(a) for "subsections (2) and (3)" substitute "subsection (2)", and

(b) after "is liable to" insert ", or eligible for,".

(5) For subsection (2) (conditions relating to time) substitute—

"(2) Subsection (1) does not apply in relation to a prisoner unless he has served at least one-half of the requisite custodial period."

(6) Subsections (3) and (3A) (cases where subsection (1) does not apply) cease to have effect.

(7) In subsection (4) (purpose of removal from prison etc.)—

(a) at the beginning of paragraph (a) insert "if liable to removal from the United Kingdom,";

(b) for "and" at the end of that paragraph substitute—

"(aa) if eligible for removal from the United Kingdom, is so removed only for the purpose of enabling the prisoner to leave the United Kingdom in order to reside permanently outside the United Kingdom, and";

(c) at the beginning of paragraph (b) insert "in either case,".

(8) In subsection (6) (order-making powers)—

(a) in paragraph (a) omit "or (3)(e)",

(b) omit paragraph (b), and

(c) in paragraph (c) for "subsection (2)(b)(ii)" substitute "subsection (2)".

(9) For subsection (7) (meaning of "requisite custodial period") substitute—

"(7) In this section "requisite custodial period"—

(a) in relation to a prisoner serving an extended sentence imposed under section 227 or 228, means one-half of the appropriate custodial term (determined by the court under that section);

(b) in any other case, has the meaning given by paragraph (a), (b) or (d) of section 244(3)."

(10) In consequence of the amendments made by this section—

(a) the italic heading preceding section 259 becomes "Persons liable to, or eligible for, removal from the United Kingdom", and

(b) the heading to section 260 becomes "Early removal of persons liable to, or eligible for, removal from the United Kingdom".

Referral orders

35 Referral conditions

(1) Section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (the referral conditions) is amended as follows.

(2) In subsection (1)—

(a) after "section 16(2) above" insert "and subsection (2) below",

(b) insert "and" at the end of paragraph (a), and

(c) omit paragraph (c).

(3) For subsections (1A) and (2) substitute—

"(2) For the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if—

(a) the compulsory referral conditions are not satisfied in relation to the offence;

(b) the offender pleaded guilty—

(i) to the offence; or

(ii) if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences; and

(c) subsection (2A), (2B) or (2C) below is satisfied in relation to the offender.

(2A) This subsection is satisfied in relation to the offender if the offender has never been convicted by or before a court in the United Kingdom ("a UK court") of any offence other than the offence and any connected offence.

(2B) This subsection is satisfied in relation to the offender if the offender has been dealt with by a UK court for any offence other than the offence and any connected offence on only one previous occasion, but was not referred to a youth offender panel under section 16 above on that occasion.

(2C) This subsection is satisfied in relation to the offender if—

(a) the offender has been dealt with by a UK court for any offence other than the offence and any connected offence on one or more previous occasions, but has been referred to a youth offender panel under section 16 above on only one previous occasion;

(b) an appropriate officer recommends to the court as suitable for the offender a referral to a youth offender panel under that section in respect of the offence; and

(c) the court considers that there are exceptional circumstances which justify ordering the offender to be so referred.

(2D) In subsection (2C)(b) above "appropriate officer" means—

(a) a member of a youth offending team;

(b) an officer of a local probation board; or

(c) an officer of a provider of probation services."

(4) Omit subsection (5).

36 Power to revoke a referral order

(1) Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (mandatory and discretionary referral of young offenders) is amended as follows.

(2) After section 27 insert—

"Referrals back to court in the interests of justice

27A Revocation of referral order where offender making good progress etc.

(1) This section applies where, having regard to circumstances which have arisen since a youth offender contract took effect under section 23 above, it appears to the youth offender panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.

(2) The panel may refer the offender back to the appropriate court requesting it—

(a) to exercise only the power conferred by sub-paragraph (2) of paragraph 5 of Schedule 1 to this Act to revoke the order (or each of the orders); or

(b) to exercise both—

(i) the power conferred by that sub-paragraph to revoke the order (or each of the orders); and

(ii) the power conferred by sub-paragraph (4) of that paragraph to deal with the offender for the offence in respect of which the revoked order was made.

(3) The circumstances in which the panel may make a referral under subsection (2) above include the offender's making good progress under the contract.

(4) Where—

(a) the panel makes a referral under subsection (2) above in relation to any offender and any youth offender contract, and

(b) the appropriate court decides not to exercise the power conferred by paragraph 5(2) of Schedule 1 to this Act in consequence of that referral,

the panel may not make a further referral under that subsection in relation to that offender and contract during the relevant period except with the consent of the appropriate court.

(5) In subsection (4) above "the relevant period" means the period of 3 months beginning with the date on which the appropriate court made the decision mentioned in paragraph (b) of that subsection."

(3) In paragraph 1(1) of Schedule 1 (youth offender panels: further court proceedings), for "or 27(4)" substitute ", 27(4) or 27A(2)".

37 Extension of period for which young offender contract has effect

(1) Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (mandatory and discretionary referral of young offenders) is amended as follows.

(2) After section 27A (as inserted by section 36 above) insert—

"**27B Extension of period for which young offender contract has effect**

(1) This section applies where at any time—

(a) a youth offender contract has taken effect under section 23 above for a period which is less than twelve months;

(b) that period has not ended; and

(c) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of that period to be extended.

(2) The panel may refer the offender back to the appropriate court requesting it to extend the length of that period.

(3) The requested period of extension must not exceed three months."

(3) In Schedule 1 (youth offender panels: further court proceedings), after Part 1 insert—

"**PART 1ZA**

REFERRAL BACK TO APPROPRIATE COURT: EXTENSION OF PERIOD FOR WHICH CONTRACT HAS EFFECT

Introductory

9ZB (1) This Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 27B of this Act with a view to the court extending the period for which the offender's youth offender contract has effect.

(2) For the purposes of this Part of this Schedule and that section the appropriate court is—

(a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) the offender first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and

(b) otherwise, a magistrates' court (other than a youth court) acting in that area.

Mode of referral back to court

9ZC The panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

Power of court

9ZD (1) If it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since

the contract took effect, the court may make an order extending the length of the period for which the contract has effect.

(2) An order under sub-paragraph (1) above—

(a) must not extend that period by more than three months; and

(b) must not so extend that period as to cause it to exceed twelve months.

(3) In deciding whether to make an order under sub-paragraph (1) above, the court shall have regard to the extent of the offender's compliance with the terms of the contract.

(4) The court may not make an order under sub-paragraph (1) above unless—

(a) the offender is present before it; and

(b) the contract has effect at the time of the order.

Supplementary

9ZE The following paragraphs of Part 1 of this Schedule apply for the purposes of this Part of this Schedule as they apply for the purposes of that Part—

(a) paragraph 3 (bringing the offender before the court);

(b) paragraph 4 (detention and remand of arrested offender); and

(c) paragraph 9ZA (power to adjourn hearing and remand offender)."

Enforcement of sentences

38 Imposition of unpaid work requirement for breach of community order

(1) Part 2 of Schedule 8 to the Criminal Justice Act 2003 (c. 44) (breach of community order) is amended as follows.

(2) In paragraph 9 (powers of magistrates' court) after sub-paragraph (3) insert—

"(3A) Where—

(a) the court is dealing with the offender under sub-paragraph (1)(a), and

(b) the community order does not contain an unpaid work requirement,

section 199(2)(a) applies in relation to the inclusion of such a requirement as if for "40" there were substituted "20"."

(3) In paragraph 10 (powers of Crown Court) after sub-paragraph (3) insert—

"(3A) Where—

(a) the court is dealing with the offender under sub-paragraph (1)(a), and

(b) the community order does not contain an unpaid work requirement,

section 199(2)(a) applies in relation to the inclusion of such a requirement as if for "40" there were substituted "20"."

39 Youth default orders

(1) Subsection (2) applies in any case where, in respect of a person aged under 18, a magistrates' court would, but for section 89 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (restrictions on custodial sentences), have power 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)).

(2) The magistrates' court may, instead of 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) in the case of a person aged 16 or 17, an unpaid work requirement (see paragraph 10 of Schedule 1),

(b) an attendance centre requirement (see paragraph 12 of that Schedule), or

(c) a curfew requirement (see paragraph 14 of that Schedule).

(3) In this section (and Schedule 7) "youth default order" means an order under subsection (2).

(4) Section 1(2) and paragraph 2 of Schedule 1 (power or requirement to impose electronic monitoring requirement) have effect in relation to a youth default order as they have effect in relation to a youth rehabilitation order.

(5) Where a magistrates' court has power to make a youth 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) The following provisions have effect in relation to youth default orders as they have effect in relation to youth rehabilitation orders, but subject to the modifications contained in Schedule 7—

(a) sections 4, 5 and 7,

(b) paragraphs 1, 10, 12, 14, 26, 27, 29, 33 and 34 of Schedule 1 (youth rehabilitation orders: further provisions),

(c) Schedule 2 (breach, revocation or amendment of youth rehabilitation orders), and

(d) Schedule 3 (transfer of youth rehabilitation orders to Northern Ireland).

(7) Where a youth 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 ceases 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.

40 Power to impose attendance centre requirement on fine defaulter

(1) Section 300 of the Criminal Justice Act 2003 (c. 44) (power to impose unpaid work requirement or curfew requirement on fine defaulter) is amended as follows.

(2) In the heading for "or curfew requirement" substitute "curfew requirement or attendance centre requirement".

(3) In subsection (2), at the end of paragraph (b) insert ", or

(c) in a case where the person is aged under 25, an attendance centre requirement (as defined by section 214)".

41 Disclosure of information for enforcing fines

(1) Part 3 of Schedule 5 to the Courts Act 2003 (c. 39) (attachment of earnings orders and applications for benefit deductions) is amended as follows.

(2) After paragraph 9 insert—

"Disclosure of information in connection with application for benefit deductions

9A (1) The designated officer for a magistrates' court may make an information request to the Secretary of State for the purpose of facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an application for benefit deductions in respect of P.

(2) An information request is a request for the disclosure of some or all of the following information—

(a) P's full name;

(b) P's address (or any of P's addresses);

(c) P's date of birth;

(d) P's national insurance number;

(e) P's benefit status.

(3) On receiving an information request, the Secretary of State may disclose the information requested to—

(a) the officer who made the request, or

(b) a justices' clerk specified in the request.

Restrictions on disclosure

9B (1) A person to whom information is disclosed under paragraph 9A(3), or this sub-paragraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the court as to whether it is practicable or appropriate to make an application for benefit deductions in respect of P.

(2) A person to whom such information is disclosed commits an offence if the person—

(a) discloses or uses the information, and

(b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph.

(3) But it is not an offence under sub-paragraph (2)—

(a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or

(b) to disclose any information which has previously been lawfully disclosed to the public.

(4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful.

(5) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Paragraphs 9A and 9B: supplementary

9C (1) This paragraph applies for the purposes of paragraphs 9A and 9B.

(2) "Benefit status", in relation to P, means whether or not P is in receipt of any prescribed benefit or benefits and, if so (in the case of each benefit)—

(a) which benefit it is,

(b) where it is already subject to deductions under any enactment, the nature of the deductions concerned, and

(c) the amount received by P by way of the benefit, after allowing for any such deductions.

(3) "Information" means information held in any form.

(4) "Prescribed" means prescribed by regulations made by the Lord Chancellor.

(5) Nothing in paragraph 9A or 9B authorises the making of a disclosure which contravenes the Data Protection Act 1998."

PART 3

APPEALS

Appeals by defendant

42 Power to dismiss certain appeals following references by the CCRC: England and Wales

After section 16B of the Criminal Appeal Act 1968 (c. 19) insert—

"Appeals following references by the CCRC

16C Power to dismiss certain appeals following references by the CCRC

(1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 9(1)(a), (5) or (6) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.

(2) Notwithstanding anything in section 2, 13 or 16 of this Act, the Court of Appeal may dismiss the appeal if—

(a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and

(b) the condition in subsection (3) is met.

(3) The condition in this subsection is that if—

(a) the reference had not been made, but

(b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,

the Court would not think it appropriate to grant the application by exercising the power conferred by section 18(3)."

43 Power to dismiss certain appeals following references by the CCRC: Northern Ireland

After section 13A of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) insert—

"Appeals following references by the CCRC

13B Power to dismiss certain appeals following references by the CCRC

(1) This section applies where there is an appeal under this Part following a reference by the Criminal Cases Review Commission under section 10(1)(a), (6) or (7) of the Criminal Appeal Act 1995 or section 1(1) of the Criminal Cases Review (Insanity) Act 1999.

(2) Notwithstanding anything in section 2, 12 or 13A of this Act, the Court of Appeal may dismiss the appeal if—

(a) the only ground for allowing it would be that there has been a development in the law since the date of the conviction, verdict or finding that is the subject of the appeal, and

(b) the condition in subsection (3) is met.

(3) The condition in this subsection is that if—

(a) the reference had not been made, but

(b) the appellant had made (and had been entitled to make) an application for an extension of time within which to seek leave to appeal on the ground of the development in the law,

the Court would not think it appropriate to grant the application by exercising the power conferred by section 16(2)."

Appeals by prosecution

44 Determination of prosecution appeals: England and Wales

In section 61 of the Criminal Justice Act 2003 (c. 44) (determination of prosecution appeal by Court of Appeal) for subsection (5) substitute—

"(5) But the Court of Appeal may not make an order under subsection (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under subsection (4)(a) or (b)."

45 Determination of prosecution appeals: Northern Ireland

In Article 20 of the Criminal Justice (Northern Ireland) Order 2004 (S.I. 2004/1500 (N.I.9)) (determination of prosecution appeal by Court of Appeal) for paragraph (5) substitute—

"(5) But the Court of Appeal may not make an order under paragraph (4)(c) in respect of an offence unless it considers that the defendant could not receive a fair trial if an order were made under paragraph (4)(a) or (b)."

Miscellaneous

46 Review of sentence on reference by Attorney General

(1) Section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) is amended as follows.

(2) For subsection (3A) substitute—

"(3A) Where a reference under this section relates to a case in which the judge made an order specified in subsection (3B), the Court of Appeal shall not, in deciding what sentence 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.

(3B) The orders specified in this subsection are—

(a) an order under section 269(2) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence);

(b) an order under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in relation to discretionary life sentences and certain other sentences)."

(3) In subsection (9) after paragraph (b) insert ", and

(c) the reference in subsection (3A) to an order specified in subsection (3B) shall be construed as a reference to an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001."

47 Further amendments relating to appeals in criminal cases

Schedule 8 amends the Criminal Appeal Act 1968 (c. 19), the Criminal Appeal (Northern Ireland) Act 1980 (c. 47) and other Acts relating to appeals in criminal cases.

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, and

(b) to make minor amendments relating to reprimands and warnings under section 65 of that Act.

(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).

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.

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—

(a) so far as it applies to convictions, is a question";

(b) in that definition, at the end insert "; and—

(b) 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.

Bail

51 Bail conditions: electronic monitoring

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

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).

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—

"(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.

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)."

(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".

Criminal legal aid

56 Provisional grant of right to representation

(1) Part 1 of the Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 14(1) (representation)—

(a) after "criminal proceedings" insert "and about the provisional grant of a right to representation in prescribed circumstances";

(b) after "granted" insert ", or provisionally granted,".

(3) In section 15(1) (selection of representative) after "granted" insert ", or provisionally granted,".

(4) In section 25(9) (orders, regulations and directions subject to affirmative resolution procedure) for "paragraph 2A" substitute "paragraph 1A, 2A,".

(5) In section 26 (interpretation) after the definition of "representation" insert—

"and, for the purposes of the definition of "representation", "proceedings" includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation concerned."

(6) After paragraph 1 of Schedule 3 (individuals to whom right may be granted) insert—

"Individuals to whom right may be provisionally granted

1A (1) Regulations may provide that, in prescribed circumstances, and subject to any prescribed conditions, a right to representation may be provisionally granted to an individual where—

(a) the individual is involved in an investigation which may result in criminal proceedings, and

(b) the right is so granted for the purposes of criminal proceedings that may result from the investigation.

(2) Regulations under sub-paragraph (1) may, in particular, make provision about—

(a) the stage in an investigation at which a right to representation may be provisionally granted;

(b) the circumstances in which a right which has been so granted—

(i) is to become, or be treated as if it were, a right to representation under paragraph 1, or

(ii) is to be, or may be, withdrawn."

(7) In paragraph 2A of Schedule 3 (grant of right by Commission) at the end of sub-paragraph (1)(b) insert—

"(c) provide that any provisional grant of a right to representation, or any withdrawal of a right so granted, in accordance with regulations under paragraph 1A is to be made by the Commission."

(8) In paragraph 3A(1) of Schedule 3 (form of the grant of a right to representation) after "grant" insert ", or provisional grant,".

(9) In paragraph 3B of Schedule 3 (financial eligibility)—

(a) in sub-paragraph (1)—

(i) after "grant" insert ", or provisionally grant,",

(ii) after "granted" insert ", or provisionally granted,";

(b) in sub-paragraph (2)(a), after "granted" insert ", or provisionally granted,".

(10) In paragraph 4 of Schedule 3 (appeals) at the end insert—

"This paragraph does not apply in relation to any right to representation granted in accordance with paragraph 1A."

(11) In paragraph 5 of Schedule 3 (criteria for grant of right)—

(a) in sub-paragraph (1), after "grant" insert ", or provisionally grant,";

(b) after sub-paragraph (2) insert—

"(2A) For the purposes of sub-paragraph (2), "proceedings" includes, in the context of a provisional grant of a right to representation, proceedings that may result from the investigation in which the individual is involved.";

(c) in sub-paragraph (4), after "grant" insert ", or provisional grant,".

57 Disclosure of information to enable assessment of financial eligibility

(1) The Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 25(9) (orders, regulations and directions subject to affirmative resolution procedure), for "or 4" substitute "4 or 6".

(3) In Schedule 3 (criminal defence service: right to representation), after paragraph 5 insert—

"Information requests

6 (1) The relevant authority may make an information request to—

(a) the Secretary of State, or

(b) the Commissioners,

for the purpose of facilitating the making of a decision by the authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.

(2) An information request made to the Secretary of State is a request for the disclosure of some or all of the following information—

(a) the individual's full name;

(b) the individual's address;

(c) the individual's date of birth;

(d) the individual's national insurance number;

(e) the individual's benefit status;

(f) information of any description specified in regulations.

(3) An information request made to the Commissioners is a request for the disclosure of some or all of the following information—

(a) whether or not the individual is employed;

(b) the name and address of the employer (if the individual is employed);

(c) the individual's national insurance number;

(d) information of any description specified in regulations made with the agreement of the Commissioners.

(4) The information that may be specified under subsection (3)(d) includes, in particular, information relating to the individual's income (as defined in the regulations) for a period so specified.

(5) On receiving an information request, the Secretary of State or (as the case may be) the Commissioners may disclose the information requested to the relevant authority.

Restrictions on disclosure

7 (1) A person to whom information is disclosed under paragraph 6(5), or this sub-paragraph, may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating the making of a decision by the relevant authority about the application of paragraph 3B(1) or (2), or regulations under paragraph 3B(3), in relation to an individual.

(2) A person to whom such information is disclosed commits an offence if the person—

(a) discloses or uses the information, and

(b) the disclosure is not authorised by sub-paragraph (1) or (as the case may be) the use is not for the purpose of facilitating the making of such a decision as is mentioned in that sub-paragraph.

(3) But it is not an offence under sub-paragraph (2)—

(a) to disclose any information in accordance with any enactment or order of a court or for the purposes of any proceedings before a court; or

(b) to disclose any information which has previously been lawfully disclosed to the public.

(4) It is a defence for a person charged with an offence under sub-paragraph (2) to prove that the person reasonably believed that the disclosure or use was lawful.

(5) A person guilty of an offence under sub-paragraph (2) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.

(6) In sub-paragraph (5)(b) the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003.

(7) Nothing in section 20 applies in relation to the disclosure of information to which sub-paragraph (1) applies.

Paragraphs 6 and 7: supplementary

8 (1) This paragraph applies for the purposes of paragraphs 6 and 7.

(2) "Benefit status", in relation to an individual, means whether or not the individual is in direct or indirect receipt of any prescribed benefit or benefits and, if so (in the case of each benefit)—

(a) which benefit the individual is so receiving, and

(b) (in prescribed cases) the amount the individual is so receiving by way of the benefit.

(3) "The Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

(4) "Information" means information held in any form.

(5) Nothing in paragraph 6 or 7 authorises the making of a disclosure which contravenes the Data Protection Act 1998."

58 Pilot schemes

(1) The Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 17A (contribution orders) omit subsection (5) (piloting of regulations).

(3) After section 18 insert—

"**18A Pilot schemes**

(1) This section applies to the following instruments—

(a) any order under section 14 or paragraph 5 of Schedule 3,

(b) any regulations under section 12, 13, 15, 17 or 17A or any of paragraphs 1A to 5 of Schedule 3, and

(c) any regulations under section 22(5) having effect in relation to the Criminal Defence Service.

(2) Any instrument to which this section applies may be made so as to have effect for a specified period not exceeding 12 months.

(3) But if the Lord Chancellor thinks that it is necessary or expedient for either of the purposes in subsection (4), the period specified in the instrument—

(a) may in the first instance be a period not exceeding 18 months;

(b) may be varied so as to become a period not exceeding 18 months.

(4) The purposes are—

(a) ensuring the effective operation of the instrument;

(b) co-ordinating the operation of the instrument with the operation of any other provision made under an enactment relating to any aspect of the criminal justice system.

(5) The period for the time being specified in an instrument to which this section applies may also be varied so that the instrument has effect for such further period as the Lord Chancellor thinks necessary for the purpose of securing that it remains in operation until the coming into force of any order or regulations made under the same provision of this Act that will have effect—

(a) generally, or

(b) for purposes wider than those for which the instrument has effect.

(6) In the following provisions of this section "pilot scheme" means any instrument which, in accordance with subsections (2) to (5), is to have effect for a limited period.

(7) A pilot scheme may provide that its provisions are to apply only in relation to—

(a) one or more specified areas or localities;

(b) one or more specified descriptions of court;

(c) one or more specified offences or descriptions of offence;

(d) one or more specified classes of person;

(e) persons selected—

(i) by reference to specified criteria; or

(ii) on a sampling basis.

(8) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period (or that period as varied under subsection (3)(b) or (5)).

(9) A pilot scheme may be replaced by a further pilot scheme making the same or similar provision."

(4) In section 25 (regulations, orders and directions) after subsection (9A) insert—

"(9B) No order or regulations which, by virtue of section 18A, is or are to have effect for a limited period shall be made unless a draft of the order or regulations has been laid before, and approved by a resolution of, each House of Parliament."

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—

"**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”.

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)”.

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."

(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.

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;

"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.

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.

PART 5

CRIMINAL LAW

Pornography etc.

63 Possession of extreme pornographic images

(1) It is an offence for a person to be in possession of an extreme pornographic image.

(2) An "extreme pornographic image" is an image which is both—

(a) pornographic, and

(b) an extreme image.

(3) An image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—

(a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, where—

(a) an image forms an integral part of a narrative constituted by a series of images, and

(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An "extreme image" is an image which—

(a) falls within subsection (7), and

(b) is grossly offensive, disgusting or otherwise of an obscene character.

(7) An image falls within this subsection if it portrays, in an explicit and realistic way, any of the following—

(a) an act which threatens a person's life,

(b) an act which results, or is likely to result, in serious injury to a person's anus, breasts or genitals,

(c) an act which involves sexual interference with a human corpse, or

(d) a person performing an act of intercourse or oral sex with an animal (whether dead or alive),

and a reasonable person looking at the image would think that any such person or animal was real.

(8) In this section "image" means—

(a) a moving or still image (produced by any means); or

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(9) In this section references to a part of the body include references to a part surgically constructed (in particular through gender reassignment surgery).

(10) Proceedings for an offence under this section may not be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

64 Exclusion of classified films etc.

(1) Section 63 does not apply to excluded images.

(2) An "excluded image" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an "excluded image" if—

(a) it is contained in a recording of an extract from a classified work, and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to—

(a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;

and section 63(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—

(a) a defect caused for technical reasons or by inadvertence on the part of any person, or

(b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

(6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 63 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.

(7) In this section—

"classified work" means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);

"classification certificate" and "video work" have the same meanings as in the Video Recordings Act 1984 (c. 39);

"designated authority" means an authority which has been designated by the Secretary of State under section 4 of that Act;

"extract" includes an extract consisting of a single image;

"image" and "pornographic" have the same meanings as in section 63;

"recording" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

(8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

65 Defences: general

(1) Where a person is charged with an offence under section 63, it is a defence for the person to prove any of the matters mentioned in subsection (2).

(2) The matters are—

(a) that the person had a legitimate reason for being in possession of the image concerned;

(b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be an extreme pornographic image;

(c) that the person—

(i) was sent the image concerned without any prior request having been made by or on behalf of the person, and

(ii) did not keep it for an unreasonable time.

(3) In this section "extreme pornographic image" and "image" have the same meanings as in section 63.

66 Defence: participation in consensual acts

(1) This section applies where—

(a) a person ("D") is charged with an offence under section 63, and

(b) the offence relates to an image that portrays an act or acts within paragraphs (a) to (c) (but none within paragraph (d)) of subsection (7) of that section.

(2) It is a defence for D to prove—

(a) that D directly participated in the act or any of the acts portrayed, and

(b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and

(c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse.

(3) For the purposes of this section harm inflicted on a person is "non-consensual" harm if—

(a) the harm is of such a nature that the person cannot, in law, consent to it being inflicted on himself or herself; or

(b) where the person can, in law, consent to it being so inflicted, the person does not in fact consent to it being so inflicted.

67 Penalties etc. for possession of extreme pornographic images

(1) This section has effect where a person is guilty of an offence under section 63.

(2) Except where subsection (3) applies to the offence, the offender is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine or both.

(3) If the offence relates to an image that does not portray any act within section 63(7)(a) or (b), the offender is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(4) In subsection (2)(a) or (3)(a) "the relevant period" means—

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

68 Special rules relating to providers of information society services

Schedule 14 makes special provision in connection with the operation of section 63 in relation to persons providing information society services within the meaning of that Schedule.

69 Indecent photographs of children: England and Wales

(1) The Protection of Children Act 1978 (c. 37) is amended as follows.

(2) In section 1B(1)(b) (exception for members of the Security Service)—

(a) after "Security Service" insert "or the Secret Intelligence Service";

(b) for "the Service" substitute "that Service".

(3) After section 7(4) (meaning of photograph), insert—

"(4A) References to a photograph also include—

(a) a tracing or other image, whether made by electronic or other means (of whatever nature)—

(i) which is not itself a photograph or pseudo-photograph, but

(ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);

and subsection (8) applies in relation to such an image as it applies in relation to a pseudo-photograph."

(4) In section 7(9)(b) (meaning of indecent pseudo-photograph), for "a pseudo-photograph" substitute "an indecent pseudo-photograph".

70 Indecent photographs of children: Northern Ireland

(1) The Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) is amended as follows.

(2) In Article 2(2) (interpretation) in paragraph (b) of the definition of "indecent pseudo-photograph", for "a pseudo-photograph" substitute "an indecent pseudo-photograph".

(3) After Article 2(2) insert—

"(2A) In this Order, references to a photograph also include—

(a) a tracing or other image, whether made by electronic or other means (of whatever nature)—

(i) which is not itself a photograph or pseudo-photograph, but

(ii) which is derived from the whole or part of a photograph or pseudo-photograph (or a combination of either or both); and

(b) data stored on a computer disc or by other electronic means which is capable of conversion into an image within paragraph (a);

and paragraph (3)(c) applies in relation to such an image as it applies in relation to a pseudo-photograph."

(4) In article 3A(1)(b) (exception for members of the Security Service)—

(a) after "Security Service" insert "or the Secret Intelligence Service";

(b) for "the Service" substitute "that Service".

71 Maximum penalty for publication etc. of obscene articles

In section 2(1)(b) of the Obscene Publications Act 1959 (c. 66) (maximum penalty on indictment for publication etc. of obscene articles) for "three years" substitute "five years".

Sexual offences

72 Offences committed outside the United Kingdom

(1) For section 72 of the Sexual Offences Act 2003 (c. 42) substitute—

"**72 Offences outside the United Kingdom**

(1) If—

(a) a United Kingdom national does an act in a country outside the United Kingdom, and

(b) the act, if done in England and Wales or Northern Ireland, would constitute a sexual offence to which this section applies,

the United Kingdom national is guilty in that part of the United Kingdom of that sexual offence.

(2) If—

(a) a United Kingdom resident does an act in a country outside the United Kingdom,

(b) the act constitutes an offence under the law in force in that country, and

(c) the act, if done in England and Wales or Northern Ireland, would constitute a sexual offence to which this section applies,

the United Kingdom resident is guilty in that part of the United Kingdom of that sexual offence.

(3) If—

(a) a person does an act in a country outside the United Kingdom at a time when the person was not a United Kingdom national or a United Kingdom resident,

(b) the act constituted an offence under the law in force in that country,

(c) the act, if done in England and Wales or Northern Ireland, would have constituted a sexual offence to which this section applies, and

(d) the person meets the residence or nationality condition at the relevant time,

proceedings may be brought against the person in that part of the United Kingdom for that sexual offence as if the person had done the act there.

(4) The person meets the residence or nationality condition at the relevant time if the person is a United Kingdom national or a United Kingdom resident at the time when the proceedings are brought.

(5) An act punishable under the law in force in any country constitutes an offence under that law for the purposes of subsections (2) and (3) however it is described in that law.

(6) The condition in subsection (2)(b) or (3)(b) is to be taken to be met unless, not later than rules of court may provide, the defendant serves on the prosecution a notice—

(a) stating that, on the facts as alleged with respect to the act in question, the condition is not in the defendant's opinion met,

(b) showing the grounds for that opinion, and

(c) requiring the prosecution to prove that it is met.

(7) But the court, if it thinks fit, may permit the defendant to require the prosecution to prove that the condition is met without service of a notice under subsection (6).

(8) In the Crown Court the question whether the condition is met is to be decided by the judge alone.

(9) In this section—

"country" includes territory;

"United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;

(b) a person who under the British Nationality Act 1981 is a British subject; or

(c) a British protected person within the meaning of that Act;

"United Kingdom resident" means an individual who is resident in the United Kingdom.

(10) Schedule 2 lists the sexual offences to which this section applies."

(2) Schedule 2 to that Act (list of sexual offences to which section 72 applies) is amended as follows.

(3) In paragraph 1 (offences under the law of England and Wales)—

(a) for paragraphs (a) and (b) substitute—

"(a) an offence under any of sections 5 to 19, 25 and 26 and 47 to 50;

(b) an offence under any of sections 1 to 4, 30 to 41 and 61 where the victim of the offence was under 18 at the time of the offence;";

(b) in paragraph (c), for "16" substitute "18"; and

(c) in paragraph (d), omit "in relation to a photograph or pseudo-photograph showing a child under 16".

(4) In paragraph 2 (offences under the law of Northern Ireland)—

(a) in sub-paragraph (1)(c)(iv), for "17" substitute "18"; and

(b) in sub-paragraph (2), for "17" substitute "18".

73 Grooming and adoption

Schedule 15—

(a) amends section 15 of the Sexual Offences Act 2003 (c. 42) (meeting a child following sexual grooming etc.),

(b) amends that Act in relation to adoption, and

(c) amends the Adoption Act 1976 (c. 36) in relation to offences under sections 64 and 65 of the Sexual Offences Act 2003.

Hatred on the grounds of sexual orientation

74 Hatred on the grounds of sexual orientation

Schedule 16—

(a) amends Part 3A of the Public Order Act 1986 (c. 64) (hatred against persons on religious grounds) to make provision about hatred against a group of persons defined by reference to sexual orientation, and

(b) makes minor amendments of that Part.

Offences relating to nuclear material and nuclear facilities

75 Offences relating to the physical protection of nuclear material and nuclear facilities

(1) Part 1 of Schedule 17 amends the Nuclear Material (Offences) Act 1983 (c. 18) to create—

(a) further offences relating to the physical protection of nuclear material, and

(b) offences relating to the physical protection of nuclear facilities,

and makes other amendments to that Act.

(2) Part 2 of that Schedule makes related amendments to the Customs and Excise Management Act 1979 (c. 2).

Self-defence etc.

76 Reasonable force for purposes of self-defence etc.

(1) This section applies where in proceedings for an offence—

(a) an issue arises as to whether a person charged with the offence ("D") is entitled to rely on a defence within subsection (2), and

(b) the question arises whether the degree of force used by D against a person ("V") was reasonable in the circumstances.

(2) The defences are—

(a) the common law defence of self-defence; and

(b) the defences provided by section 3(1) of the Criminal Law Act 1967 (c. 58) or section 3(1) of the Criminal Law Act (Northern Ireland) 1967 (c. 18 (N.I.)) (use of force in prevention of crime or making arrest).

(3) The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be, and subsections (4) to (8) also apply in connection with deciding that question.

(4) If D claims to have held a particular belief as regards the existence of any circumstances—

(a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but

(b) if it is determined that D did genuinely hold it, D is entitled to rely on it for the purposes of subsection (3), whether or not—

(i) it was mistaken, or

(ii) (if it was mistaken) the mistake was a reasonable one to have made.

(5) But subsection (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in subsection (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case)—

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) Subsection (7) is not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in subsection (3).

(9) This section is intended to clarify the operation of the existing defences mentioned in subsection (2).

(10) In this section—

(a) "legitimate purpose" means—

(i) the purpose of self-defence under the common law, or

(ii) the prevention of crime or effecting or assisting in the lawful arrest of persons mentioned in the provisions referred to in subsection (2)(b);

(b) references to self-defence include acting in defence of another person; and

(c) references to the degree of force used are to the type and amount of force used.

Unlawfully obtaining etc. personal data

77 Power to alter penalty for unlawfully obtaining etc. personal data

(1) The Secretary of State may by order provide for a person who is guilty of an offence under section 55 of the Data Protection Act 1998 (c. 29) (unlawful obtaining etc. of personal data) to be liable—

(a) on summary conviction, to imprisonment for a term not exceeding the specified period or to a fine not exceeding the statutory maximum or to both,

(b) on conviction on indictment, to imprisonment for a term not exceeding the specified period or to a fine or to both.

(2) In subsection (1)(a) and (b) "specified period" means a period provided for by the order but the period must not exceed—

(a) in the case of summary conviction, 12 months (or, in Northern Ireland, 6 months), and

(b) in the case of conviction on indictment, two years.

(3) The Secretary of State must ensure that any specified period for England and Wales which, in the case of summary conviction, exceeds 6 months is to be read as a reference to 6 months so far as it relates to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (c. 44) (increase in sentencing powers of magistrates' courts from 6 to 12 months for certain offences triable either way).

(4) Before making an order under this section, the Secretary of State must consult—

(a) the Information Commissioner,

(b) such media organisations as the Secretary of State considers appropriate, and

(c) such other persons as the Secretary of State considers appropriate.

(5) An order under this section may, in particular, amend the Data Protection Act 1998.

78 New defence for purposes of journalism and other special purposes

In section 55(2) of the Data Protection Act 1998 (c. 29) (defences against offence of unlawfully obtaining etc. personal data) after "it," at the end of paragraph (c) insert—

"(ca) that he acted—

(i) for the special purposes,

(ii) with a view to the publication by any person of any journalistic, literary or artistic material, and

(iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest,".

Blasphemy

79 Abolition of common law offences of blasphemy and blasphemous libel

(1) The offences of blasphemy and blasphemous libel under the common law of England and Wales are abolished.

(2) In section 1 of the Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8) (orders for seizure of copies of blasphemous or seditious libel) the words "any blasphemous libel, or" are omitted.

(3) In sections 3 and 4 of the Law of Libel Amendment Act 1888 (c. 64) (privileged matters) the words "blasphemous or" are omitted.

(4) Subsections (2) and (3) (and the related repeals in Schedule 28) extend to England and Wales only.

PART 6

INTERNATIONAL CO-OPERATION IN RELATION TO CRIMINAL JUSTICE MATTERS

Recognition of financial penalties: requests to other member States

80 Requests to other member States: England and Wales

(1) In Schedule 5 to the Courts Act 2003 (c. 39) (collection of fines and other sums imposed on conviction) in paragraph 38 (the range of further steps available against defaulters)—

(a) after sub-paragraph (1)(e) insert—

"(f) subject to sub-paragraph (4), issuing a certificate requesting enforcement under the Framework Decision on financial penalties;", and

(b) after sub-paragraph (3) insert—

"(4) A certificate requesting enforcement under the Framework Decision on financial penalties may only be issued where—

(a) the sum due is a financial penalty within the meaning of section 80 of the Criminal Justice and Immigration Act 2008, and

(b) it appears to the fines officer or the court that P is normally resident, or has property or income, in a member State other than the United Kingdom.

(5) In this paragraph, references to a certificate requesting enforcement under the Framework Decision on financial penalties are to be construed in accordance with section 92(3) of the Criminal Justice and Immigration Act 2008."

(2) The designated officer for a magistrates' court may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—

(a) a person is required to pay a financial penalty,

(b) the penalty is not paid in full within the time allowed for payment,

(c) there is no appeal outstanding in relation to the penalty,

(d) Schedule 5 to the Courts Act 2003 (c. 39) does not apply in relation to the enforcement of the penalty, and

(e) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.

(3) For the purposes of subsection (2)(c), there is no appeal outstanding in relation to a financial penalty if—

(a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or

(b) such an appeal has been brought but the proceedings on appeal have been concluded.

(4) Where the person required to pay the financial penalty is a body corporate, subsection (2)(e) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom.

(5) In this section, "financial penalty" means—

(a) a fine imposed by a court in England and Wales on a person's conviction of an offence;

(b) any sum payable under a compensation order (within the meaning of section 130(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6));

(c) a surcharge under section 161A of the Criminal Justice Act 2003 (c. 44);

(d) any sum payable under any such order as is mentioned in paragraphs 1 to 9 of Schedule 9 to the Administration of Justice Act 1970 (c. 31) (orders for payment of costs);

(e) any sum payable by virtue of section 137(1) or (1A) of the Powers of Criminal Courts (Sentencing) Act 2000 (orders requiring parents to pay fines etc.);

(f) any fine or other sum mentioned in section 82(4)(b)(i) to (iv), or any fine imposed by a court in Scotland, which is enforceable in a local justice area in England and Wales by virtue of section 91 of the Magistrates' Courts Act 1980 (c. 43);

(g) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor.

81 Procedure on issue of certificate: England and Wales

(1) This section applies where—

(a) a magistrates' court or a fines officer has, under paragraph 39(3)(b) or 40 of Schedule 5 to the Courts Act 2003 (c. 39), issued a certificate requesting enforcement under the Framework Decision on financial penalties, or

(b) the designated officer for a magistrates' court has issued such a certificate under section 80(2) of this Act.

(2) The fines officer (in the case of a certificate issued by the officer) or the designated officer for the magistrates' court (in any other case) must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty.

(3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income.

(4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in England and Wales except in accordance with provision made by order by the Lord Chancellor.

(5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

82 Requests to other member States: Northern Ireland

(1) A designated officer of the Northern Ireland Court Service may issue a certificate requesting enforcement under the Framework Decision on financial penalties where—

(a) a person is required to pay a financial penalty,

(b) the penalty is not paid in full within the time allowed for payment,

(c) there is no appeal outstanding in relation to the penalty, and

(d) it appears to the designated officer that the person is normally resident in, or has property or income in, a member State other than the United Kingdom.

(2) For the purposes of subsection (1)(c), there is no appeal outstanding in relation to a financial penalty if—

(a) no appeal has been brought in relation to the imposition of the financial penalty within the time allowed for making such an appeal, or

(b) such an appeal has been brought but the proceedings on appeal have been concluded.

(3) Where the person required to pay the financial penalty is a body corporate, subsection (1)(d) applies as if the reference to the person being normally resident in a member State other than the United Kingdom were a reference to the person having its registered office in a member State other than the United Kingdom.

(4) In this section—

(a) "designated officer of the Northern Ireland Court Service" means a member of the staff of the Northern Ireland Court Service designated by the Lord Chancellor for the purposes of this section;

(b) "financial penalty" means—

(i) a fine imposed by a court in Northern Ireland on a person's conviction of an offence;

(ii) any sum payable under a compensation order (within the meaning of Article 14 of the Criminal Justice (Northern Ireland) Order 1994 (S.I.1994/2795 (N.I.15));

(iii) any sum payable under an order made under section 2(1), 4(1) or 5(1) of the Costs in Criminal Cases Act (Northern Ireland) 1968 (N.I. 10) or section 41(1) of the Criminal Appeal (Northern Ireland) Act 1980 (c. 47);

(iv) any sum payable by virtue of Article 35 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9) (orders requiring parents to pay fines etc.);

(v) any fine or other sum mentioned in section 80(5)(a) to (e), or any fine imposed by a court in Scotland, which is enforceable in a petty sessions district in Northern Ireland by virtue of Article 96 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26));

(vi) any other financial penalty, within the meaning of the Framework Decision on financial penalties, specified in an order made by the Lord Chancellor.

83 Procedure on issue of certificate: Northern Ireland

(1) This section applies where a designated officer has issued a certificate under section 82(1).

(2) The designated officer must give the Lord Chancellor the certificate, together with a certified copy of the decision requiring payment of the financial penalty.

(3) On receipt of the documents mentioned in subsection (2), the Lord Chancellor must give those documents to the central authority or competent authority of the member State in which the person required to pay the penalty appears to be normally resident or (as the case may be) to have property or income.

(4) Where a certified copy of the decision is given to the central authority or competent authority of a member State in accordance with subsection (3), no further steps to enforce the decision may be taken in Northern Ireland except in accordance with provision made by order by the Lord Chancellor.

(5) Where the person required to pay the financial penalty is a body corporate, subsection (3) applies as if the reference to the member State in which the person appears to be normally resident were a reference to the member State in which the person appears to have its registered office.

Recognition of financial penalties: requests from other member States

84 Requests from other member States: England and Wales

(1) This section applies where—

(a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—

(i) a certificate requesting enforcement under the Framework Decision on financial penalties, and

(ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and

(b) the financial penalty is suitable for enforcement in England and Wales (see section 91(1)).

(2) If the certificate states that the person required to pay the financial penalty is normally resident in England and Wales, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the designated officer for the local justice area in which it appears that the person is normally resident.

(3) Otherwise, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the designated officer for such local justice area as appears appropriate.

(4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the designated officer a notice—

(a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 91(2)), and

(b) giving reasons for that opinion.

(5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if the reference to the local justice area in which it appears that the person is normally resident were a reference to the local justice area in which it appears that the person has its registered office.

(6) Where—

(a) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in subsection (1)(a), and

(b) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor,

this section applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor.

85 Procedure on receipt of certificate by designated officer

(1) This section applies where the Lord Chancellor gives the designated officer for a local justice area—

(a) a certificate requesting enforcement under the Framework Decision on financial penalties,

(b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and

(c) a notice under section 84(4).

(2) The designated officer must refer the matter to a magistrates' court acting for that area.

(3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 91(2)).

(4) The designated officer must inform the Lord Chancellor of the decision of the magistrates' court.

(5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.

(6) The enactments specified in subsection (7) apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4).

(7) The enactments specified in this subsection are—

(a) Part 3 of the Magistrates' Courts Act 1980 (c. 43) (satisfaction and enforcement);

(b) Schedules 5 and 6 to the Courts Act 2003 (c. 39) (collection of fines etc. and discharge of fines etc. by unpaid work);

(c) any subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made under the enactments specified in paragraphs (a) and (b).

(8) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

86 Modification of Magistrates' Courts Act 1980

(1) Section 90 of the Magistrates' Courts Act 1980 is modified as follows in its application to financial penalties by virtue of section 85(6) of this Act.

(2) Subsection (1) applies as if for the words from "he is residing" to the end of that subsection there were substituted "he is residing, or has property or a source of income, in any petty sessions district in Northern Ireland—

(a) the court or the fines officer (as the case may be) may order that payment of the sum shall be enforceable in that petty sessions district, and

(b) if such an order is made, the court or the fines officer must notify the Lord Chancellor."

87 Requests from other member States: Northern Ireland

(1) This section applies where—

(a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—

(i) a certificate requesting enforcement under the Framework Decision on financial penalties, and

(ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and

(b) the financial penalty is suitable for enforcement in Northern Ireland (see section 91(1)).

(2) If the certificate states that the person required to pay the financial penalty is normally resident in Northern Ireland, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the clerk of petty sessions for the petty sessions district in which it appears that the person is normally resident.

(3) Otherwise, the Lord Chancellor must give the documents mentioned in subsection (1)(a) to the clerk of petty sessions for such petty sessions district as appears appropriate.

(4) Where the Lord Chancellor acts under subsection (2) or (3), the Lord Chancellor must also give the clerk of petty sessions a notice—

(a) stating whether the Lord Chancellor thinks that any of the grounds for refusal apply (see section 91(2)), and

(b) giving reasons for that opinion.

(5) Where the person required to pay the financial penalty is a body corporate, subsection (2) applies as if the reference to the petty sessions district in which it appears that the person is normally resident were a reference to the petty sessions district in which it appears that the person has its registered office.

(6) Where—

(a) the competent authority or central authority of a member State other than the United Kingdom gives the central authority for Scotland the documents mentioned in subsection (1)(a), and

(b) without taking any action to enforce the financial penalty in Scotland, the central authority for Scotland gives the documents to the Lord Chancellor,

this section applies as if the competent authority or central authority of the other member State gave the documents to the Lord Chancellor.

88 Procedure on receipt of certificate by clerk of petty sessions

(1) This section applies where the Lord Chancellor gives the clerk of petty sessions for a petty sessions district—

(a) a certificate requesting enforcement under the Framework Decision on financial penalties,

(b) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, and

(c) a notice under section 87(4).

(2) The clerk must refer the matter to a magistrates' court acting for the petty sessions district.

(3) The magistrates' court must decide whether it is satisfied that any of the grounds for refusal apply (see section 91(2)).

(4) The clerk must inform the Lord Chancellor of the decision of the magistrates' court.

(5) Subsection (6) applies unless the magistrates' court is satisfied that one or more of the grounds for refusal apply.

(6) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I.26)), and any instrument made under that Part, apply in relation to the financial penalty as if it were a sum adjudged to be paid by a conviction of the magistrates' court on the date when the court made the decision mentioned in subsection (4).

(7) If the certificate requesting enforcement under the Framework Decision on financial penalties states that part of the financial penalty has been paid, the reference in subsection (6) to the financial penalty is to be read as a reference to such part of the penalty as remains unpaid.

89 Modification of Magistrates' Courts (Northern Ireland) Order 1981

(1) Part 9 of the Magistrates' Courts (Northern Ireland) Order 1981 is modified as follows in its application to financial penalties by virtue of section 88(6) of this Act.

(2) Article 92 applies in relation to any financial penalty for an amount exceeding £20,000 as if for paragraph (5) there were substituted—

"(5) The period for which a person may be committed to prison under this Article in default of payment or levy of any sum or part of such sum shall not exceed the maximum period which the Crown Court could have fixed under section 35(1)(c) of the Criminal Justice Act (Northern Ireland) 1945 had the financial penalty been a fine imposed by the Crown Court."

(3) For the purposes of subsection (2), if the amount of a financial penalty is specified in a currency other than sterling, that amount must be converted to sterling by reference to the London closing exchange rate on the relevant date.

(4) In subsection (3), the "relevant date" means the date on which the decision imposing the financial penalty was made.

(5) Article 95 applies as if for the words from "he is residing" in paragraph (1) to the end of that paragraph there were substituted "he is residing, or has property or a source of income, in any local justice area in England and Wales—

(a) the court may order that payment of the sum shall be enforceable in that local justice area, and

(b) if such an order is made, the court must notify the Lord Chancellor."

90 Transfer of certificates to central authority for Scotland

(1) This section applies where—

(a) the competent authority or central authority of a member State other than the United Kingdom gives the Lord Chancellor—

(i) a certificate requesting enforcement under the Framework Decision on financial penalties, and

(ii) the decision, or a certified copy of the decision, requiring payment of the financial penalty to which the certificate relates, but

(b) the Lord Chancellor is not required by section 84 or 87 to give the documents to a designated officer for a local justice area in England and Wales or to a clerk of petty sessions for a petty sessions district in Northern Ireland.

(2) If the certificate states that the person is normally resident or has property or a source of income in Scotland, the Lord Chancellor must give the documents to the central authority for Scotland.

Recognition of financial penalties: miscellaneous

91 Recognition of financial penalties: general

(1) Schedule 18 specifies when a financial penalty is suitable for enforcement in England and Wales for the purposes of section 84(1) and when a financial penalty is suitable for enforcement in Northern Ireland for the purposes of section 87(1).

(2) Schedule 19 specifies the grounds for refusal for the purposes of sections 84(4)(a), 85(3) and (5), 87(4)(a) and 88(3) and (5).

(3) The Lord Chancellor may by order make further provision for or in connection with giving effect to the Framework Decision on financial penalties.

(4) An order under section 81(4), 83(4) or subsection (3) of this section may in particular modify, amend, repeal or revoke any provision of—

(a) any Act (including this Act and any Act passed in the same Session as this Act);

(b) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)) made before the passing of this Act;

(c) Northern Ireland legislation passed, or made, before the passing of this Act;

(d) any instrument made, before the passing of this Act, under Northern Ireland legislation.

92 Interpretation of sections 80 to 91 etc.

(1) In sections 80 to 91 and Schedules 18 and 19—

"central authority", in relation to a member State other than the United Kingdom, means an authority designated by the State as a central authority for the purposes of the Framework Decision on financial penalties;

"central authority for Scotland" means the person or body which, by virtue of an order under section 56 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6) (recognition of EU financial penalties), acts as the central authority in relation to Scotland for the purposes of the Framework Decision;

"competent authority", in relation to a member State, means an authority designated by the State as a competent authority for the purposes of that Decision;

"the Framework Decision on financial penalties" means the Framework Decision of the Council of the European Union made on 24 February 2005 on the application of the principle of mutual recognition to financial penalties (2005/214/JHA).

(2) In sections 84 to 91 and Schedules 18 and 19—

"decision" has the meaning given by Article 1 of the Framework Decision on financial penalties (except in sections 85(4) and 88(4));

"financial penalty" has the meaning given by that Article.

(3) References in sections 80 to 91 to a certificate requesting enforcement under the Framework Decision on financial penalties are references to such a certificate as is provided for by Article 4 of that Decision.

Repatriation of prisoners

93 Delivery of prisoner to place abroad for purposes of transfer out of the United Kingdom

In section 2(1) of the Repatriation of Prisoners Act 1984 (c. 47) (transfer out of the UK), for subsection (1) substitute—

"(1) The effect of a warrant under section 1 providing for the transfer of the prisoner out of the United Kingdom shall be to authorise—

(a) the taking of the prisoner to any place in any part of the United Kingdom, his delivery at a place of departure from the United Kingdom into the custody of an appropriate person and his removal by that person from the United Kingdom to a place outside the United Kingdom; or

(b) the taking of the prisoner to any place in any part of the United Kingdom, his removal from the United Kingdom and his delivery, at the place of arrival from the United Kingdom, into the custody of an appropriate person.

(1A) In subsection (1) "appropriate person" means a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred."

94 Issue of warrant transferring responsibility for detention and release of an offender to or from the relevant Minister

After section 4 of the Repatriation of Prisoners Act 1984 (transfer into the United Kingdom) insert—

"Transfer of responsibility for detention and release of offender present outside the country or territory in which he is required to be detained

4A Issue of warrant transferring responsibility for detention and release of offender

(1) This section enables responsibility for the detention and release of a person to whom subsection (2) or (3) applies to be transferred between the relevant Minister in the United Kingdom and the appropriate authority in a country or territory outside the British Islands.

(2) A person falls within this subsection if that person—

(a) is a person to whom section 1(7) applies by virtue of—

(i) an order made in the course of the exercise by a court or tribunal in any part of the United Kingdom of its criminal jurisdiction; or

(ii) any of the provisions of this Act or any similar provisions of the law of any part of the United Kingdom; and

(b) is present in a country or territory outside the British Islands.

(3) A person falls within this subsection if that person—

(a) is a person to whom section 1(7) applies by virtue of —

(i) an order made in the course of the exercise by a court or tribunal in a country or territory outside the British Islands of its criminal jurisdiction; or

(ii) any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and

(b) is present in the United Kingdom.

(4) Terms used in subsection (2)(a) and (3)(a) have the same meaning as in section 1(7).

(5) Subject to the following provisions of this section, where—

(a) the United Kingdom is a party to international arrangements providing for the transfer between the United Kingdom and a country or territory outside the British Islands of responsibility for the detention and release of persons to whom subsection (2) or (3) applies,

(b) the relevant Minister and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of responsibility for the detention and release of a particular person to whom subsection (2) or (3) applies (in this Act referred to as "the relevant person"), and

(c) in a case in which the terms of those arrangements provide for the transfer of responsibility to take place only with the relevant person's consent, that consent has been given,

the relevant Minister shall issue a warrant providing for the transfer of responsibility for the detention and release of the relevant person from that Minister (where subsection (2) applies) or to that Minister (where subsection (3) applies).

(6) The relevant Minister shall not issue a warrant under this section providing for the transfer of responsibility for the detention and release of a person to the relevant Minister unless—

(a) that person is a British citizen;

(b) the transfer appears to the relevant Minister to be appropriate having regard to any close ties which that person has with the United Kingdom.

(7) The relevant Minister shall not issue a warrant under this section where, after the duty in subsection (5) has arisen, circumstances arise or are brought to his attention which in his opinion make it inappropriate that the transfer of responsibility should take place.

(8) The relevant Minister shall not issue a warrant under this section (other than one superseding an earlier warrant) unless he is satisfied that all reasonable steps have been taken to inform the relevant person in writing in his own language—

(a) of the substance, so far as relevant to the case, of the international arrangements in accordance with which it is proposed to transfer responsibility for his detention and release;

(b) of the effect in relation to the relevant person of the warrant which it is proposed to issue under this section;

(c) in the case of a person to whom subsection (2) applies, of the effect in relation to his case of so much of the law of the country or territory concerned as has effect with respect to transfers under those arrangements of responsibility for his detention and release;

(d) in the case of a person to whom subsection (3) applies, of the effect in relation to his case of the law relating to his detention under that warrant and subsequent release (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant); and

(e) of the powers of the relevant Minister under section 6;

and the relevant Minister shall not issue a warrant superseding an earlier warrant under this section unless the requirements of this subsection were fulfilled in relation to the earlier warrant.

(9) A consent given for the purposes of subsection (5)(c) shall not be capable of being withdrawn after a warrant under this section has been issued in respect of the relevant person; and, accordingly, a purported withdrawal of that consent after that time shall not affect the validity of the warrant, or of any provision which by virtue of section 6 subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 4B(3).

(10) In this section "relevant Minister" means—

(a) the Scottish Ministers in a case where the person who is the subject of the proposed transfer of responsibility is—

(i) a person to whom subsection (2) applies who is for the time being required to be detained at a place in Scotland; or

(ii) a person to whom subsection (3) applies, if it is proposed that he will be detained at a place in Scotland;

(b) the Secretary of State, in any other case.

4B Transfer of responsibility from the United Kingdom

(1) The effect of a warrant under section 4A relating to a person to whom subsection (2) of that section applies shall be to transfer responsibility for the detention and release of that person from the relevant Minister (as defined in section 4A(10)) to the appropriate authority of the country or territory in which he is present.

(2) Subject to subsections (3) to (6), the order by virtue of which the relevant person is required to be detained at the time such a warrant is issued in respect of him shall continue to have effect after the transfer of responsibility so as to apply to him if he comes to be in the United Kingdom at any time when under that order he is to be, or may be, detained.

(3) If, at any time after the transfer of responsibility, it appears to the relevant Minister appropriate to do so in order that effect may be given to the international arrangements in accordance with which the transfer took place, the relevant Minister may give a direction—

(a) varying the order referred to in subsection (2); or

(b) providing for the order to cease to have effect.

(4) In subsection (3) "relevant Minister" means—

(a) the Scottish Ministers, where Scotland is the part of the United Kingdom in which the order referred to in subsection (2) has effect; and

(b) the Secretary of State in any other case.

(5) The power by direction under subsection (3) to vary the order referred to in subsection (2) includes power by direction—

(a) to provide for how any period during which the detention and release of the relevant person is, by virtue of a warrant under section 4A, the responsibility of a country or territory outside the United Kingdom is to be treated for the purposes of the order; and

(b) to provide for the relevant person to be treated as having been released or discharged as mentioned in any paragraph of section 2(4)(b).

(6) Except in relation to any period during which a restriction order is in force in respect of the relevant person, subsection (2) shall not apply in relation to a hospital order; and, accordingly, a hospital order shall cease to have effect in relation to that person—

(a) at the time of the transfer of responsibility, if no restriction order is in force in respect of him at that time; and

(b) if at that time a restriction order is in force in respect of him, as soon after the transfer of responsibility as the restriction order ceases to have effect.

(7) In subsection (6) "hospital order" and "restriction order" have the same meaning as in section 2(6).

(8) References in this section to the order by virtue of which a person is required to be detained at the time a warrant under section 4A is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect.

4C Transfer of responsibility to the United Kingdom

(1) The effect of a warrant under section 4A relating to a person to whom subsection (3) of that section applies shall be to transfer responsibility for the detention and release of that person to the relevant Minister (as defined in section 4A(10)) and to authorise—

(a) the taking of that person in custody to such place in any part of the United Kingdom as may be specified in the warrant, being a place at which effect may be given to the provisions contained in the warrant by virtue of paragraph (b); and

(b) the detention of that person in any part of the United Kingdom in accordance with such provisions as may be contained in the warrant, being provisions appearing to the relevant Minister to be appropriate for giving effect to the international arrangements in accordance with which responsibility for that person is transferred.

(2) A provision shall not be contained by virtue of subsection (1)(b) in a warrant under section 4A unless it satisfies the following two conditions, that is to say—

(a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution; and

(b) it is a provision which at the time the warrant is issued may be contained in an order made either—

(i) in the course of the exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which the person is to be detained; or

(ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in sub-paragraph (i).

(3) Section 3(3) applies for determining for the purposes of paragraph (b) of subsection (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph in a relevant person's

case as it applies for the purposes of section 3(1)(c) in the case of a prisoner who is to be transferred into the United Kingdom.

(4) Subject to subsection (6) and Part 2 of the Schedule to this Act, a provision contained by virtue of subsection (1)(b) in a warrant under section 4A shall for all purposes have the same effect as the same provision contained in an order made as mentioned in sub-paragraph (i) or, as the case may be, sub-paragraph (ii) of subsection (2)(b).

(5) A provision contained by virtue of subsection (1)(b) in a warrant under section 4A shall take effect with the delivery of the relevant person to the place specified in the warrant for the purposes of subsection (1)(a).

(6) Subsection (4) shall not confer any right of appeal on the relevant person against provisions contained by virtue of subsection (1)(b) in a warrant under this section.

(7) Part 2 of the Schedule to this Act shall have effect with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(b) in a warrant under section 4A.

(8) For the purposes of determining whether at any particular time any such order as is mentioned in subsection (2)(b) could have been made as so mentioned, there shall be disregarded both—

(a) any requirement that certain conditions must be satisfied before the order is made; and

(b) any restriction on the minimum period in respect of which the order may be made."

95 Powers to arrest and detain persons believed to fall within section 4A(3) of Repatriation of Prisoners Act 1984

After section 4C of the Repatriation of Prisoners Act 1984 (c. 47) (as inserted by section 94) insert—

"Persons believed to fall within section 4A(3): powers of arrest and detention

4D Arrest and detention with a view to establishing whether a person falls within section 4A(3) etc.

(1) The Secretary of State or the Scottish Ministers may issue a certificate stating that the issuing authority—

(a) considers that there are reasonable grounds for believing that a person in the United Kingdom is a person falling within section 4A(3), and

(b) has requested written confirmation from the country or territory concerned of the details of that person's case.

(2) The issuing authority may send the certificate (with any other documents appearing to the authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).

(3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).

(4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not he is in possession of the warrant or a copy of it).

(5) A person arrested under this section shall, as soon as is practicable—

(a) be given a copy of the warrant for his arrest; and

(b) be brought before the appropriate judge.

(6) The appropriate judge may order that a person before him who is the subject of a certificate under this section is to be detained from the time the order is made until the end of the period of seven days beginning with the day after that on which the order is made.

(7) The purpose of an order under subsection (6) is to secure the detention of the person concerned while—

(a) written confirmation is obtained from a representative of the country or territory concerned of the details of his case;

(b) it is established whether he is a person falling within section 4A(3); and

(c) any application for an order under section 4E(6) is made in respect of him.

(8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).

(9) Subsection (8) ceases to apply to the detained person if, during that period, an order under section 4E is made in respect of him.

(10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested under this section.

4E Arrest and detention with a view to determining whether to issue a warrant under section 4A

(1) The Secretary of State or the Scottish Ministers may issue a certificate stating that the issuing authority—

(a) considers that a person in the United Kingdom is a person falling within section 4A(3), and

(b) has received written confirmation from a representative of the country or territory concerned of the details of that person's case;

and it is immaterial for the purposes of this section whether or not the person concerned has been previously arrested or detained under section 4D.

(2) The issuing authority may send the certificate (with a copy of the written confirmation mentioned in subsection (1)(b) and any other documents appearing to that authority to be relevant) to the appropriate judge with a view to obtaining the issue of a warrant under subsection (3).

(3) The appropriate judge may, on receiving the certificate, issue a warrant for the arrest of the person concerned if the judge is satisfied that there are reasonable grounds for believing that the person falls within section 4A(3).

(4) The warrant may be executed anywhere in the United Kingdom by any designated person (and it is immaterial whether or not that person is in possession of the warrant or a copy of it).

(5) A person arrested under this section shall, as soon as is practicable—

(a) be given a copy of the warrant for his arrest; and

(b) be brought before the appropriate judge.

(6) The appropriate judge may, on the application of the Secretary of State or the Scottish Ministers, order that a person before the judge who—

(a) is the subject of a certificate under this section, and

(b) the judge is satisfied is a person falling within section 4A(3),

shall be detained from the time the order is made until the end of the period of fourteen days beginning with the day after that on which the order is made.

(7) The purpose of an order under subsection (6) is to secure the detention of the person concerned until—

(a) it is determined whether to issue a warrant under section 4A; and

(b) if so determined, such a warrant is issued.

(8) Subject to subsection (9), a person detained under such an order may be released at any time during the period mentioned in subsection (6) and shall be released at the end of that period (if not released sooner).

(9) Subsection (8) ceases to apply to the detained person if, during that period, a warrant under section 4A is issued in respect of him.

(10) It is immaterial for the purposes of subsection (6) whether or not the person concerned has previously been arrested or detained under section 4D or arrested under this section.

4F Sections 4D and 4E: supplementary provisions

(1) This section has effect for the purposes of sections 4D and 4E.

(2) A "designated person" is a person designated by the Secretary of State or the Scottish Ministers.

(3) The appropriate judge is—

(a) in England and Wales, any District Judge (Magistrates' Courts) who is designated for those purposes by the Lord Chief Justice after consulting the Lord Chancellor;

(b) in Scotland, the sheriff of Lothian and Borders; and

(c) in Northern Ireland, any county court judge or resident magistrate who is designated for those purposes by the Lord Chief Justice of Northern Ireland after consulting the Lord Chancellor.

(4) A designation under subsection (2) or (3)(a) or (c) may be made—

(a) for the purposes of section 4D or 4E (or both); and

(b) for all cases or only for cases (or cases of a description) specified in the designation.

(5) A designated person shall have all the powers, authority, protection and privileges of a constable in any part of the United Kingdom in which a person who may be arrested under section 4D or 4E is for the time being."

96 Amendments relating to Scotland

(1) The amendments of section 1 of the Repatriation of Prisoners Act 1984 (c. 47) made by section 44(2) and (3) of the Police and Justice Act 2006 (c. 48) (which amend the requirement for the prisoner's consent to any transfer to or from the United Kingdom) apply in relation to cases in which the relevant Minister for the purposes of section 1 is the Scottish Ministers as they apply in other cases.

(2) In section 2(6) of the Repatriation of Prisoners Act 1984 (transfer out of the United Kingdom) in the definition of "hospital order", after "1986" insert "or a compulsion order under section 57A of the Criminal Procedure (Scotland) Act 1995".

(3) In section 8(1) (interpretation etc.), before the definition of "international arrangements" insert—

> ""enactment" includes an enactment comprised in, or in an instrument under, an Act of the Scottish Parliament;".

Mutual legal assistance in revenue matters

97 Power to transfer functions under Crime (International Co-operation) Act 2003 in relation to direct taxation

(1) In section 27(1) of the Crime (International Co-operation) Act 2003 (c. 32) (exercise of powers by others)—

(a) in paragraph (a), for "Commissioners of Customs and Excise" substitute "Commissioners for Revenue and Customs"; and

(b) in paragraph (b), for "a customs officer" substitute "an officer of Revenue and Customs".

(2) Paragraph 14 of Schedule 2 to the Commissioners for Revenue and Customs Act 2005 (c. 11) (power under section 27(1) not applicable to former inland revenue matters etc.) ceases to have effect.

PART 7

VIOLENT OFFENDER ORDERS

Violent offender orders

98 Violent offender orders

(1) A violent offender order is an order made in respect of a qualifying offender which—

(a) contains such prohibitions, restrictions or conditions authorised by section 102 as the court making the order considers necessary for the purpose

of protecting the public from the risk of serious violent harm caused by the offender, and

(b) has effect for such period of not less than 2, nor more than 5, years as is specified in the order (unless renewed or discharged under section 103).

(2) For the purposes of this Part any reference to protecting the public from the risk of serious violent harm caused by a person is a reference to protecting—

(a) the public in the United Kingdom, or

(b) any particular members of the public in the United Kingdom,

from a current risk of serious physical or psychological harm caused by that person committing one or more specified offences.

(3) In this Part "specified offence" means—

(a) manslaughter;

(b) an offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder);

(c) an offence under section 18 of that Act (wounding with intent to cause grievous bodily harm);

(d) an offence under section 20 of that Act (malicious wounding);

(e) attempting to commit murder or conspiracy to commit murder; or

(f) a relevant service offence.

(4) The following are relevant service offences—

(a) any offence under—

(i) section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18),

(ii) section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), or

(iii) section 42 of the Naval Discipline Act 1957 (c. 53),

of which the corresponding civil offence (within the meaning of the section in question) is an offence within any of paragraphs (a) to (e) of subsection (3) above; and

(b) any offence under section 42 of the Armed Forces Act 2006 (c. 52) as respects which the corresponding offence under the law of England and Wales (within the meaning of that section) is an offence within any of those paragraphs.

(5) Section 48 of the Armed Forces Act 2006 (c. 52) (attempts, conspiracy etc.) applies for the purposes of subsection (4)(b) as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to subsection (4)(b).

99 Qualifying offenders

(1) In this Part "qualifying offender" means a person aged 18 or over who is within subsection (2) or (4).

(2) A person is within this subsection if (whether before or after the commencement of this Part)—

(a) the person has been convicted of a specified offence and either—

(i) a custodial sentence of at least 12 months was imposed for the offence, or

(ii) a hospital order was made in respect of it (with or without a restriction order),

(b) the person has been found not guilty of a specified offence by reason of insanity and subsection (3) applies, or

(c) the person has been found to be under a disability and to have done the act charged in respect of a specified offence and subsection (3) applies.

(3) This subsection applies in the case of a person within (2)(b) or (2)(c) if the court made in respect of the offence—

(a) a hospital order (with or without a restriction order), or

(b) a supervision order.

(4) A person is within this subsection if, under the law in force in a country outside England and Wales (and whether before or after the commencement of this Part)—

(a) the person has been convicted of a relevant offence and either—

(i) a sentence of imprisonment or other detention for at least 12 months was imposed for the offence, or

(ii) an order equivalent to that mentioned in subsection (3)(a) was made in respect of it,

(b) a court exercising jurisdiction under that law has made in respect of a relevant offence a finding equivalent to a finding that the person was not guilty by reason of insanity, and has made in respect of the offence an order equivalent to one mentioned in subsection (3), or

(c) such a court has, in respect of a relevant offence, made a finding equivalent to a finding that the person was under a disability and did the act charged in respect of the offence, and has made in respect of the offence an order equivalent to one mentioned in subsection (3).

(5) In subsection (4) "relevant offence" means an act which—

(a) constituted an offence under the law in force in the country concerned, and

(b) would have constituted a specified offence if it had been done in England and Wales.

(6) An act punishable under the law in force in a country outside England and Wales constitutes an offence under that law for the purposes of subsection (5) however it is described in that law.

(7) Subject to subsection (8), on an application under section 100 the condition in subsection (5)(b) (where relevant) is to be taken as met in relation to the person to whom the application relates ("P") unless, not later than rules of court may provide, P serves on the applicant a notice—

(a) denying that, on the facts as alleged with respect to the act in question, the condition is met,

(b) giving the reasons for denying that it is met, and

(c) requiring the applicant to prove that it is met.

(8) If the court thinks fit, it may permit P to require the applicant to prove that the condition is met even though no notice has been served under subsection (7).

100 Applications for violent offender orders

(1) A chief officer of police may by complaint to a magistrates' court apply for a violent offender order to be made in respect of a person—

(a) who resides in the chief officer's police area, or

(b) who the chief officer believes is in, or is intending to come to, that area,

if it appears to the chief officer that the conditions in subsection (2) are met.

(2) The conditions are—

(a) that the person is a qualifying offender, and

(b) that the person has, since the appropriate date, acted in such a way as to give reasonable cause to believe that it is necessary for a violent offender order to be made in respect of the person.

(3) An application under this section may be made to any magistrates' court whose commission area includes—

(a) any part of the applicant's police area, or

(b) any place where it is alleged that the person acted in such a way as is mentioned in subsection (2)(b).

(4) The Secretary of State may by order make provision—

(a) for applications under this section to be made by such persons or bodies as are specified or described in the order;

(b) specifying cases or circumstances in which applications may be so made;

(c) for provisions of this Part to apply, in relation to the making of applications (or cases where applications are made) by any such persons or bodies, with such modifications as are specified in relation to them in the order.

(5) In this Part "the appropriate date" means the date (or, as the case may be, the first date) on which the person became a person within any of paragraphs (a) to (c) of section 99(2) or (4), whether that date fell before or after the commencement of this Part.

101 Making of violent offender orders

(1) This section applies where an application is made to a magistrates' court under section 100 in respect of a person ("P").

(2) After hearing—

(a) the applicant, and

(b) P, if P wishes to be heard,

the court may make a violent offender order in respect of P if it is satisfied that the conditions in subsection (3) are met.

(3) The conditions are—

(a) that P is a qualifying offender, and

(b) that P has, since the appropriate date, acted in such a way as to make it necessary to make a violent offender order for the purpose of protecting the public from the risk of serious violent harm caused by P.

(4) When deciding whether it is necessary to make such an order for that purpose, the court must have regard to whether P would, at any time when such an order would be in force, be subject under any other enactment to any measures that would operate to protect the public from the risk of such harm.

(5) A violent offender order may not be made so as to come into force at any time when P—

(a) is subject to a custodial sentence imposed in respect of any offence,

(b) is on licence for part of the term of such a sentence, or

(c) is subject to a hospital order or a supervision order made in respect of any offence.

(6) But such an order may be applied for, and made, at such a time.

102 Provisions that orders may contain

(1) A violent offender order may contain prohibitions, restrictions or conditions preventing the offender—

(a) from going to any specified premises or any other specified place (whether at all, or at or between any specified time or times);

(b) from attending any specified event;

(c) from having any, or any specified description of, contact with any specified individual.

(2) Any of the prohibitions, restrictions or conditions contained in a violent offender order may relate to conduct in Scotland or Northern Ireland (as well as to conduct in England or Wales).

(3) The Secretary of State may by order amend subsection (1).

(4) In this section "specified" means specified in the violent offender order concerned.

103 Variation, renewal or discharge of violent offender orders

(1) A person within subsection (2) may by complaint apply to the appropriate magistrates' court—

(a) for an order varying or discharging a violent offender order;

(b) for an order (a "renewal order") renewing a violent offender order for such period of not more than 5 years as is specified in the renewal order.

(2) The persons are—

(a) the offender,

(b) the chief officer of police who applied for the order,

(c) (if different) the chief officer of police for the area in which the offender resides, and

(d) (if different) a chief officer of police who believes that the offender is in, or is intending to come to, his police area.

(3) The "appropriate magistrates' court" means the magistrates' court that made the order or (if different)—

(a) a magistrates' court for the area in which the offender resides, or

(b) where the application under this section is made by a chief officer of police, any magistrates' court whose commission area includes any part of the chief officer's police area.

(4) On an application under this section the appropriate magistrates' court may, after hearing—

(a) the applicant, and

(b) any other persons mentioned in subsection (2) who wish to be heard,

make such order varying, renewing or discharging the violent offender order as the court considers appropriate.

But this is subject to subsections (5) to (7).

(5) A violent offender order may only be—

(a) renewed, or

(b) varied so as to impose additional prohibitions, restrictions or conditions on the offender,

if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by the offender (and any renewed or varied order may contain only such prohibitions, restrictions or conditions as the court considers necessary for this purpose).

(6) References in subsection (5) to prohibitions, restrictions or conditions are to prohibitions, restrictions or conditions authorised by section 102.

(7) The court may not discharge the violent offender order before the end of the period of 2 years beginning with the date on which it comes into force under section 101 unless consent to its discharge is given by the offender and—

(a) where the application under this section is made by a chief officer of police, by that chief officer, or

(b) where the application is made by the offender, by the chief officer of police for the area in which the offender resides.

104 Interim violent offender orders

(1) This section applies where an application under section 100 ("the main application") has not yet been determined.

(2) An application for an order under this section ("an interim violent offender order") may be made—

(a) by the complaint by which the main application is made, or

(b) if the main application has already been made to a court, by means of a further complaint made to that court by the person making the main application.

(3) If it appears to the court—

(a) that the person to whom the main application relates ("P") is a qualifying offender,

(b) that, if the court were determining that application, it would be likely to make a violent offender order in respect of P, and

(c) that it is desirable to act before that application is determined, with a view to securing the immediate protection of the public from the risk of serious violent harm caused by P,

the court may make an interim violent offender order in respect of P that contains such prohibitions, restrictions or conditions as it considers necessary for the purpose of protecting the public from the risk of such harm.

(4) The reference in subsection (3) to prohibitions, restrictions or conditions is to prohibitions, restrictions or conditions authorised by section 102 in the case of a violent offender order.

(5) But an interim violent offender order may not be made so as to come into force at any time when the person—

(a) is subject to a custodial sentence for any offence,

(b) is on licence for part of the term of such a sentence, or

(c) is subject to a hospital order or a supervision order made in respect of any offence.

(6) An interim violent offender order—

(a) has effect only for such period as is specified in the order, and

(b) ceases to have effect (if it has not already done so) at the appropriate time.

(7) "The appropriate time" means—

(a) if the court grants the main application, the time when a violent offender order made in pursuance of it comes into force;

(b) if the court decides not to grant the main application or it is withdrawn, the time when the court so decides or the application is withdrawn.

(8) Section 103 applies in relation to the variation or discharge of an interim violent offender order as it applies in relation to the variation or discharge of a violent offender order, but with the omission of subsection (7).

105 Notice of applications

(1) This section applies to—

(a) any application under section 100 for a violent offender order,

(b) any application under section 104 for an interim violent offender order, and

(c) any application under section 103 for the variation, discharge or renewal of a violent offender order, or for the variation or discharge of an interim violent offender order.

(2) A magistrates' court may not begin hearing such an application unless it is satisfied that the relevant person has been given notice of—

(a) the application, and

(b) the time and place of the hearing,

a reasonable time before the hearing.

(3) In this section "the relevant person" means—

(a) the person to whom the application mentioned in subsection (1)(a) or (b) relates, or

(b) the person in respect of whom the order mentioned in subsection (1)(c) has been made,

as the case may be.

106 Appeals

(1) A person in respect of whom—

(a) a violent offender order, or

(b) an interim violent offender order,

has been made may appeal to the Crown Court against the making of the order.

(2) Such a person may also appeal to the Crown Court against—

(a) the making of an order under section 103, or

(b) any refusal to make such an order.

(3) On an appeal under this section, the Crown Court—

(a) may make such orders as may be necessary to give effect to its determination of the appeal; and

(b) may also make such incidental or consequential orders as appear to it to be just.

(4) For the purposes of section 103(3) an order made by the Crown Court on an appeal made by virtue of subsection (1) or (2) is to be treated as if made by the court from which the appeal was brought.

Notification requirements

107 Offenders subject to notification requirements

(1) References in this Part to an offender subject to notification requirements are references to an offender who is for the time being subject to—

(a) a violent offender order, or

(b) an interim violent offender order,

which is in force under this Part.

(2) Subsection (1) has effect subject to section 110(7) (which excludes from section 110 an offender subject to an interim violent offender order).

108 Notification requirements: initial notification

(1) An offender subject to notification requirements must notify the required information to the police within the period of 3 days beginning with the date on which—

(a) the violent offender order, or

(b) the interim violent offender order,

comes into force in relation to the offender ("the relevant date").

(2) The "required information" is the following information about the offender—

(a) date of birth;

(b) national insurance number;

(c) name on the relevant date or, if the offender used two or more names on that date, each of those names;

(d) home address on the relevant date;

(e) name on the date on which the notification is given or, if the offender used two or more names on that date, each of those names;

(f) home address on the date on which the notification is given;

(g) the address of any other premises in the United Kingdom at which on that date the offender regularly resides or stays;

(h) any prescribed information.

(3) In subsection (2)(h) "prescribed" means prescribed by regulations made by the Secretary of State.

(4) When determining the period of 3 days mentioned in subsection (1), there is to be disregarded any time when the offender is—

(a) remanded in or committed to custody by an order of a court or kept in service custody;

(b) serving a sentence of imprisonment or a term of service detention;

(c) detained in a hospital; or

(d) outside the United Kingdom.

(5) In this Part "home address" means in relation to the offender—

(a) the address of the offender's sole or main residence in the United Kingdom, or

(b) if the offender has no such residence, the address or location of a place in the United Kingdom where the offender can regularly be found or, if there is more than one such place, such one of them as the offender selects.

109 Notification requirements: changes

(1) An offender subject to notification requirements must notify to the police—

(a) the required new information, and

(b) the information mentioned in section 108(2),

within the period of 3 days beginning with the date on which any notifiable event occurs.

(2) A "notifiable event" means—

(a) the use by the offender of a name which has not been notified to the police under section 108 or this section;

(b) any change of the offender's home address;

(c) the expiry of any qualifying period during which the offender has resided or stayed at any premises in the United Kingdom the address of which has not been notified to the police under section 108 or this section,

(d) any prescribed change of circumstances, or

(e) the release of the offender from custody pursuant to an order of a court or from imprisonment, service detention or detention in a hospital.

(3) The "required new information" is—

(a) the name referred to in subsection (2)(a),

(b) the new home address (see subsection (2)(b)),

(c) the address of the premises referred to in subsection (2)(c),

(d) the prescribed details, or

(e) the fact that the offender has been released as mentioned in subsection (2)(e),

as the case may be.

(4) A notification under subsection (1) may be given before the notifiable event occurs, but in that case the offender must also specify the date when the event is expected to occur.

(5) If a notification is given in accordance with subsection (4) and the event to which it relates occurs more than 2 days before the date specified, the notification does not affect the duty imposed by subsection (1).

(6) If a notification is given in accordance with subsection (4) and the event to which it relates has not occurred by the end of the period of 3 days beginning with the date specified—

(a) the notification does not affect the duty imposed by subsection (1), and

(b) the offender must, within the period of 6 days beginning with the date specified, notify to the police the fact that the event did not occur within the period of 3 days beginning with the date specified.

(7) Section 108(4) applies to the determination of—

(a) any period of 3 days for the purposes of subsection (1), or

(b) any period of 6 days for the purposes of subsection (6),

as it applies to the determination of the period of 3 days mentioned in section 108(1).

(8) In this section—

(a) "prescribed change of circumstances" means any change—

(i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 108(2)(h), and

(ii) of a description prescribed by regulations made by the Secretary of State;

(b) "the prescribed details", in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed.

(9) In this section "qualifying period" means—

(a) a period of 7 days, or

(b) two or more periods, in any period of 12 months, which taken together amount to 7 days.

110 Notification requirements: periodic notification

(1) An offender subject to notification requirements must, within the applicable period after each notification date, notify to the police the information mentioned in section 108(2), unless the offender has already given a notification under section 109(1) within that period.

(2) A "notification date" means, in relation to the offender, the date of any notification given by the offender under section 108(1) or 109(1) or subsection (1) above.

(3) Where the applicable period would (apart from this subsection) end while subsection (4) applies, that period is to be treated as continuing until the end of the period of 3 days beginning with the date on which subsection (4) first ceases to apply.

(4) This subsection applies if the offender is—

(a) remanded in or committed to custody by an order of a court or kept in service custody,

(b) serving a sentence of imprisonment or a term of service detention,

(c) detained in a hospital, or

(d) outside the United Kingdom.

(5) In this section "the applicable period" means—

(a) in any case where subsection (6) applies, such period as may be prescribed by regulations made by the Secretary of State, and

(b) in any other case, the period of one year.

(6) This subsection applies if the last home address notified by the offender under section 108(1) or 109(1) or subsection (1) above was the address or location of such a place as is mentioned in section 108(5)(b).

(7) Nothing in this section applies to an offender who is subject to an interim violent offender order.

111 Notification requirements: travel outside United Kingdom

(1) The Secretary of State may by regulations make provision with respect to offenders subject to notification requirements, or any description of such offenders—

(a) requiring such persons, before they leave the United Kingdom, to give in accordance with the regulations a notification under subsection (2);

(b) requiring such persons, if they subsequently return to the United Kingdom, to give in accordance with the regulations a notification under subsection (3).

(2) A notification under this subsection must disclose—

(a) the date on which the offender proposes to leave the United Kingdom;

(b) the country (or, if there is more than one, the first country) to which the offender proposes to travel and the proposed point of arrival (determined in accordance with the regulations) in that country;

(c) any other information prescribed by the regulations which the offender holds about the offender's departure from or return to the United Kingdom, or about the offender's movements while outside the United Kingdom.

(3) A notification under this subsection must disclose any information prescribed by the regulations about the offender's return to the United Kingdom.

112 Method of notification and related matters

(1) An offender gives a notification to the police under section 108(1), 109(1) or 110(1) by—

(a) attending at any police station in the offender's local police area, and

(b) giving an oral notification to any police officer, or to any person authorised for the purpose by the officer in charge of the station.

(2) An offender giving a notification under section 109(1)—

(a) in relation to a prospective change of home address, or

(b) in relation to such premises as are mentioned in section 109(2)(c),

may also give the notification at a police station that would fall within subsection (1)(a) above if the change of home address had already occurred or (as the case may be) the premises in question were the offender's home address.

(3) Any notification given in accordance with this section must be acknowledged; and the acknowledgement must be—

(a) in writing, and

(b) in such form as the Secretary of State may direct.

(4) Where a notification is given under section 108(1), 109(1) or 110(1), the offender must, if requested to do so by the police officer or other person mentioned in subsection (1)(b) above, allow that officer or person to—

(a) take the offender's fingerprints,
(b) photograph any part of the offender, or
(c) do both of those things,

in order to verify the offender's identity.

(5) In this section—

"local police area", in relation to the offender, means—

(a) the police area in England and Wales in which the home address is situated,
(b) in the absence of a home address in England and Wales, the police area in England and Wales in which the home address last notified is situated, or
(c) in the absence of such a home address and any such notification, the police area in which the court that made the violent offender order (or, as the case may be, the interim violent offender order) is situated;

"photograph" includes any process by means of which an image may be produced.

Supplementary

113 Offences

(1) If a person fails, without reasonable excuse, to comply with any prohibition, restriction or condition contained in—

(a) a violent offender order, or
(b) an interim violent offender order,

the person commits an offence.

(2) If a person fails, without reasonable excuse, to comply with—

(a) section 108(1), 109(1) or (6)(b), 110(1) or 112(4), or
(b) any requirement imposed by regulations made under section 111(1),

the person commits an offence.

(3) If a person notifies to the police, in purported compliance with—

(a) section 108(1), 109(1) or 110(1), or
(b) any requirement imposed by regulations made under section 111(1),

any information which the person knows to be false, the person commits an offence.

(4) As regards an offence under subsection (2), so far as it relates to non-compliance with—

(a) section 108(1), 109(1) or 110(1), or
(b) any requirement imposed by regulations made under section 111(1),

a person commits such an offence on the first day on which the person first fails, without reasonable excuse, to comply with the provision mentioned in paragraph (a) or (as the case may be) the requirement mentioned in paragraph (b), and continues to commit it throughout any period during which the failure continues.

(5) But a person must not be prosecuted under subsection (2) more than once in respect of the same failure.

(6) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

(7) In subsection (6)(a) "the relevant period" means—

(a) in relation to England and Wales and Scotland, 12 months;

(b) in relation to Northern Ireland, 6 months.

(8) Proceedings for an offence under this section may be commenced in any court having jurisdiction in any place where the person charged with the offence resides or is found.

114 Supply of information to Secretary of State etc.

(1) This section applies to information notified to the police under section 108(1), 109(1) or 110(1).

(2) A chief officer of police may, for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, supply information to which this section applies to—

(a) the Secretary of State, or

(b) a person providing services to the Secretary of State in connection with a relevant function,

for use for the purpose of verifying the information.

(3) In relation to information supplied to any person under subsection (2), the reference to verifying the information is a reference to—

(a) checking its accuracy by comparing it with information held—

(i) where the person is the Secretary of State, by that person in connection with the exercise of a relevant function, or

(ii) where the person is within subsection (2)(b), by that person in connection with the provision of services as mentioned there, and

(b) compiling a report of that comparison.

(4) Subject to subsection (5), the supply of information under this section is to be taken not to breach any restriction on the disclosure of information (however arising).

(5) This section does not authorise the doing of anything that contravenes the Data Protection Act 1998 (c. 29).

(6) This section does not affect any power to supply information that exists apart from this section.

(7) In this section "relevant function" means—

(a) a function relating to social security, child support, employment or training,

(b) a function relating to passports, or

(c) a function under Part 3 of the Road Traffic Act 1988 (c. 52).

115 Supply of information by Secretary of State etc.

(1) A report compiled under section 114 may be supplied to a chief officer of police by—

(a) the Secretary of State, or

(b) a person within section 114(2)(b).

(2) Such a report may contain any information held—

(a) by the Secretary of State in connection with the exercise of a relevant function, or

(b) by a person within section 114(2)(b) in connection with the provision of services as mentioned there.

(3) Where such a report contains information within subsection (2), the chief officer to whom it is supplied—

(a) may retain the information, whether or not used for the purposes of the prevention, detection, investigation or prosecution of offences under this Part, and

(b) may use the information for any purpose related to the prevention, detection, investigation or prosecution of offences (whether or not under this Part), but for no other purpose.

(4) Subsections (4) to (7) of section 114 apply in relation to this section as they apply in relation to section 114.

116 Information about release or transfer

(1) This section applies to an offender subject to notification requirements who is—

(a) serving a sentence of imprisonment or a term of service detention, or

(b) detained in a hospital.

(2) The Secretary of State may by regulations make provision requiring the person who is responsible for such an offender to give notice to specified persons—

(a) of the fact that that person has become responsible for the offender; and

(b) of any occasion when—

(i) the offender is released, or

(ii) a different person is to become responsible for the offender.

(3) In subsection (2) "specified persons" means persons specified, or of a description specified, in the regulations.

(4) The regulations may make provision for determining who is to be taken for the purposes of this section as being responsible for an offender.

117 Interpretation of Part 7

(1) In this Part—

"the appropriate date" has the meaning given by section 100(5);

"country" includes territory;

"custodial sentence" means—

(a) a sentence of imprisonment, any other sentence or order mentioned in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (as in force at any time after the passing of this Act) or any corresponding sentence or order imposed or made under any earlier enactment, or

(b) a relevant service sentence (see subsection (2) below);

"home address" has the meaning given by section 108(5);

"hospital order" means—

(a) an order under section 37 of the Mental Health Act 1983 (c. 20) or section 60 of the Mental Health Act 1959 (c. 72), or

(b) any other order providing for the admission of a person to hospital following a finding of the kind mentioned in section 99(2)(b) or (c) of this Act;

"interim violent offender order" means an order made under section 104;

"kept in service custody" means kept in service custody by virtue of an order under section 105(2) of the Armed Forces Act 2006 (c. 52);

"the offender", in relation to a violent offender order or an interim violent offender order, means the person in respect of whom the order is made;

"qualifying offender" has the meaning given by section 99(1);

"restriction order" means an order under section 41 of the Mental Health Act 1983 or section 65 of the Mental Health Act 1959;

"service detention" has the meaning given by section 374 of the Armed Forces Act 2006;

"specified offence" has the meaning given by section 98(3);

"supervision order" means—

(a) a supervision order within the meaning of Schedule 1A to the Criminal Procedure (Insanity) Act 1964 (c. 84), or

(b) a supervision and treatment order within the meaning of Schedule 2 to that Act;

"violent offender order" has the meaning given by section 98(1).

(2) The following are relevant service sentences—

(a) a sentence of imprisonment passed 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 sentence of custody for life, or detention, under section 71A of either of those Acts of 1955 or section 43A of that Act of 1957;

(c) a sentence under a custodial order within the meaning of—

(i) section 71AA of, or paragraph 10 of Schedule 5A to, either of those Acts of 1955, or

(ii) section 43AA of, or paragraph 10 of Schedule 4A to, that Act of 1957;

(d) a custodial sentence within the meaning of the Armed Forces Act 2006 (c. 52) (see section 374 of that Act).

(3) References in this Part to protecting the public from the risk of serious violent harm caused by a person are to be read in accordance with section 98(2).

(4) References in this Part to a finding of the kind mentioned in section 99(2)(b) or (c) or (4)(b) or (c) include references to a case where a decision on appeal is to the effect that there should have been such a finding in the proceedings concerned.

(5) References in this Part to an offender subject to notification requirements are to be read in accordance with section 107.

(6) The following expressions have the same meanings as in Part 2 of the Sexual Offences Act 2003 (c. 42) (notifications and orders)—

"detained in a hospital" (see sections 133 and 135 of that Act);

"sentence of imprisonment" (see section 131 of that Act);

and references to a person having been found to be under a disability and to have done the act charged are to be read in accordance with section 135 of that Act.

PART 8

ANTI-SOCIAL BEHAVIOUR

Premises closure orders

118 Closure orders: premises associated with persistent disorder or nuisance

Schedule 20 inserts a new Part 1A into the Anti-social Behaviour Act 2003 (c. 38) which makes provision about the issue of closure notices and the making of closure orders in respect of premises associated with persistent disorder or nuisance.

Nuisance or disturbance on hospital premises

119 Offence of causing nuisance or disturbance on NHS premises

(1) A person commits an offence if—

(a) the person causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work,

(b) the person refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and

(c) the person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself.

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this section—

(a) a person ceases to be on NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself once the person has received the advice, treatment or care, and

(b) a person is not on NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself if the person has been refused the advice, treatment or care during the last 8 hours.

(4) In this section—

"English NHS premises" means—

(a) any hospital vested in, or managed by, a relevant English NHS body,

(b) any building or other structure, or vehicle, associated with the hospital and situated on hospital grounds (whether or not vested in, or managed by, a relevant English NHS body), and

(c) the hospital grounds,

"hospital grounds" means land in the vicinity of a hospital and associated with it,

"NHS premises" means English NHS premises or Welsh NHS premises,

"NHS staff member" means a person employed by a relevant English NHS body, or a relevant Welsh NHS body, or otherwise working for such a body (whether as or on behalf of a contractor, as a volunteer or otherwise),

"relevant English NHS body" means—

(a) a National Health Service trust (see section 25 of the National Health Service Act 2006 (c. 41)), all or most of whose hospitals, establishments and facilities are situated in England,

(b) a Primary Care Trust (see section 18 of that Act), or

(c) an NHS foundation trust (see section 30 of that Act),

"relevant Welsh NHS body" means—

(a) a National Health Service trust (see section 18 of the National Health Service (Wales) Act 2006 (c. 42)), all or most of whose hospitals, establishments and facilities are situated in Wales, or

(b) a Local Health Board (see section 11 of that Act),

"vehicle" includes an air ambulance,

"Welsh NHS premises" means—

(a) any hospital vested in, or managed by, a relevant Welsh NHS body,

(b) any building or other structure, or vehicle, associated with the hospital and situated on hospital grounds (whether or not vested in, or managed by, a relevant Welsh NHS body), and

(c) the hospital grounds.

120 Power to remove person causing nuisance or disturbance

(1) If a constable reasonably suspects that a person is committing or has committed an offence under section 119, the constable may remove the person from the NHS premises concerned.

(2) If an authorised officer reasonably suspects that a person is committing or has committed an offence under section 119, the authorised officer may—

(a) remove the person from the NHS premises concerned, or

(b) authorise an appropriate NHS staff member to do so.

(3) Any person removing another person from NHS premises under this section may use reasonable force (if necessary).

(4) An authorised officer cannot remove a person under this section or authorise another person to do so if the authorised officer has reason to believe that—

(a) the person to be removed requires medical advice, treatment or care for himself or herself, or

(b) the removal of the person would endanger the person's physical or mental health.

(5) In this section—

"appropriate NHS staff member"—

(a) in relation to English NHS premises, means an English NHS staff member, and

(b) in relation to Welsh NHS premises, means a Welsh NHS staff member,

"authorised officer"—

(a) in relation to English NHS premises, means any English NHS staff member authorised by a relevant English NHS body to exercise the powers which are conferred by this section on an authorised officer in respect of English NHS premises, and

(b) in relation to Welsh NHS premises, means any Welsh NHS staff member authorised by a relevant Welsh NHS body to exercise the powers which are conferred by this section on an authorised officer in respect of Welsh NHS premises,

"English NHS staff member" means a person employed by a relevant English NHS body or otherwise working for it (whether as or on behalf of a contractor, as a volunteer or otherwise),

"Welsh NHS staff member" means a person employed by a relevant Welsh NHS body or otherwise working for it (whether as or on behalf of a contractor, as a volunteer or otherwise).

(6) Terms defined in section 119 have the same meaning in this section as in that section.

121 Guidance about the power to remove etc.

(1) The appropriate national authority may from time to time prepare and publish guidance to relevant NHS bodies and authorised officers about the powers in section 120.

(2) Such guidance may, in particular, relate to—

(a) the authorisation by relevant NHS bodies of authorised officers,

(b) the authorisation by authorised officers of appropriate NHS staff members to remove persons under section 120,

(c) training requirements for authorised officers and persons authorised by them to remove persons under section 120,

(d) matters that may be relevant to a consideration by authorised officers for the purposes of section 120 of whether offences are being, or have been, committed under section 119,

(e) matters to be taken into account by authorised officers in deciding whether there is reason to believe that a person requires medical advice, treatment or care for himself or herself or that the removal of a person would endanger the person's physical or mental health,

(f) the procedure to be followed by authorised officers or persons authorised by them before using the power of removal in section 120,

(g) the degree of force that it may be appropriate for authorised officers or persons authorised by them to use in particular circumstances,

(h) arrangements for ensuring that persons on NHS premises are aware of the offence in section 119 and the powers of removal in section 120, or

(i) the keeping of records.

(3) Before publishing guidance under this section, the appropriate national authority must consult such persons as the authority considers appropriate.

(4) A relevant NHS body and an authorised officer must, when exercising functions under, or in connection with, section 120, have regard to any guidance published by the appropriate national authority under this section.

(5) In this section—

"appropriate national authority"—

(a) in relation to a relevant English NHS body and authorised officers in respect of English NHS premises, means the Secretary of State, and

(b) in relation to a relevant Welsh NHS body and authorised officers in respect of Welsh NHS premises, means the Welsh Ministers,

"appropriate NHS staff member" and "authorised officer" have the same meaning as in section 120,

"relevant NHS body" means a relevant English NHS body or a relevant Welsh NHS body.

(6) Terms defined in section 119 have the same meaning in this section as in that section.

122 Nuisance or disturbance on HSS premises

Schedule 21 makes provision for Northern Ireland corresponding to the provision made for England and Wales by sections 119 to 121.

Anti-social behaviour orders etc. in respect of children and young persons

123 Review of anti-social behaviour orders etc.

(1) In Part 1 of the Crime and Disorder Act 1998 (c. 37) (prevention of crime and disorder) after section 1I insert—

"**1J Review of orders under sections 1, 1B and 1C**

(1) This section applies where—

(a) an anti-social behaviour order,

(b) an order under section 1B, or

(c) an order under section 1C,

has been made in respect of a person under the age of 17.

(2) If—

(a) the person subject to the order will be under the age of 18 at the end of a period specified in subsection (3) (a "review period"), and

(b) the term of the order runs until the end of that period or beyond,

then before the end of that period a review of the operation of the order shall be carried out.

(3) The review periods are—

(a) the period of 12 months beginning with—

(i) the day on which the order was made, or

(ii) if during that period there is a supplemental order (or more than one), the date of the supplemental order (or the last of them);

(b) a period of 12 months beginning with—

(i) the day after the end of the previous review period, or

(ii) if during that period there is a supplemental order (or more than one), the date of the supplemental order (or the last of them).

(4) In subsection (3) "supplemental order" means—

(a) a further order varying the order in question;

(b) an individual support order made in relation to the order in question on an application under section 1AA(1A).

(5) Subsection (2) does not apply in relation to any review period if the order is discharged before the end of that period.

(6) A review under this section shall include consideration of—

(a) the extent to which the person subject to the order has complied with it;

(b) the adequacy of any support available to the person to help him comply with it;

(c) any matters relevant to the question whether an application should be made for the order to be varied or discharged.

(7) Those carrying out or participating in a review under this section shall have regard to any guidance issued by the Secretary of State when considering—

(a) how the review should be carried out;

(b) what particular matters should be dealt with by the review;

(c) what action (if any) it would be appropriate to take in consequence of the findings of the review.

1K Responsibility for, and participation in, reviews under section 1J

(1) A review under section 1J of an anti-social behaviour order or an order under section 1B shall be carried out by the relevant authority that applied for the order.

(2) A review under section 1J of an order under section 1C shall be carried out—

(a) (except where paragraph (b) applies) by the appropriate chief officer of police;

(b) where a relevant authority is specified under section 1C(9ZA), by that authority.

(3) A local authority, in carrying out a review under section 1J, shall act in co-operation with the appropriate chief officer of police; and it shall be the duty of that chief officer to co-operate in the carrying out of the review.

(4) The chief officer of police of a police force, in carrying out a review under section 1J, shall act in co-operation with the appropriate local authority; and it shall be the duty of that local authority to co-operate in the carrying out of the review.

(5) A relevant authority other than a local authority or chief officer of police, in carrying out a review under section 1J, shall act in co-operation with—

(a) the appropriate local authority, and

(b) the appropriate chief officer of police;

and it shall be the duty of that local authority and that chief officer to co-operate in the carrying out of the review.

(6) A chief officer of police or other relevant authority carrying out a review under section 1J may invite the participation in the review of a person or body not required by subsection (3), (4) or (5) to co-operate in the carrying out of the review.

(7) In this section—

"the appropriate chief officer of police" means the chief officer of police of the police force maintained for the police area in which the person subject to the order resides or appears to reside;

"the appropriate local authority" means the council for the local government area (within the meaning given in section 1(12)) in which the person subject to the order resides or appears to reside."

(2) In section 1(1A) of that Act (meaning of "relevant authority") for "1CA, 1E and 1F" substitute "1C, 1CA, 1E, IF and 1K".

(3) In section 1C of that Act (orders on conviction in criminal proceedings) after section (9) insert—

"(9ZA) An order under this section made in respect of a person under the age of 17, or an order varying such an order, may specify a relevant authority (other than the chief officer of police mentioned in section 1K(2)(a)) as being responsible for carrying out a review under section 1J of the operation of the order."

124 Individual support orders

(1) In section 1AA of the Crime and Disorder Act 1998 (c. 37) (individual support orders) for subsection (1) and the words in subsection (2) before paragraph (a) substitute—

"(1) This section applies 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.

(1A) This section also applies where—

(a) an anti-social behaviour order has previously been made in respect of such a defendant;

(b) an application is made by complaint to the court which made that order, by the relevant authority which applied for it, for an order under this section; and

(c) at the time of the hearing of the application—

(i) the defendant is still a child or young person, and

(ii) the anti-social behaviour order is still in force.

(1B) The court must consider whether the individual support conditions are fulfilled and, if satisfied that they are, must make an individual support order.

(2) An individual support order is an order which—".

(2) In subsection (3)(a) of that section, for the words after "the kind of behaviour which led to" substitute "the making of—

(i) the anti-social behaviour order, or

(ii) an order varying that order (in a case where the variation is made as a result of further anti-social behaviour by the defendant);".

(3) In subsection (5) of that section, for "which led to the making of the anti-social behaviour order" substitute "mentioned in subsection (3)(a) above".

(4) In section 1(1A) of that Act (meaning of "relevant authority") after "and sections" insert "1AA,".

(5) In section 1AB of that Act (which makes further provision about individual support orders) after subsection (5) insert—

"(5A) The period specified as the term of an individual support order made on an application under section 1AA(1A) above must not be longer than the remaining part of the term of the anti-social behaviour order as a result of which it is made."

(6) In section 1B of that Act (orders in county court proceedings) after subsection (7) insert—

"(8) Sections 1AA and 1AB apply in relation to orders under this section, with any necessary modifications, as they apply in relation to anti-social behaviour orders.

(9) In their application by virtue of subsection (8), sections 1AA(1A)(b) and 1AB(6) have effect as if the words "by complaint" were omitted."

(7) In section 1C of that Act (orders on conviction in criminal proceedings) after subsection (9A) insert—

"(9AA) Sections 1AA and 1AB apply in relation to orders under this section, with any necessary modifications, as they apply in relation to anti-social behaviour orders.

(9AB) In their application by virtue of subsection (9AA), sections 1AA(1A)(b) and 1AB(6) have effect as if the words "by complaint" were omitted.

(9AC) In its application by virtue of subsection (9AA), section 1AA(1A)(b) has effect as if the reference to the relevant authority which applied for the anti-social behaviour order were a reference to the chief officer of police, or other relevant authority, responsible under section 1K(2)(a) or (b) for carrying out a review of the order under this section."

Parenting contracts and parenting orders

125 Parenting contracts and parenting orders: local authorities

(1) Part 3 of the Anti-social Behaviour Act 2003 (c. 38) (parental responsibilities) is amended as follows.

(2) In section 29(1) (interpretation) in the definition of "local authority" for paragraphs (b) and (c) substitute—

"(aa) a district council in England;".

(3) In section 26B (parenting orders: registered social landlords)—

(a) in subsection (8), after "the local authority" insert "(or, if subsection (8A) applies, each local authority)";

(b) after that subsection insert—

"(8A) This subsection applies if the place where the child or young person resides or appears to reside is within the area of a county council and within the area of a district council.";

(c) in subsection (10)(a), after "the local authority" insert "(or authorities)".

(4) In section 27 (parenting orders: supplemental) for subsection (3A) substitute—

"(3A) Proceedings for an offence under section 9(7) of the 1998 Act (parenting orders: breach of requirement etc.) as applied by subsection (3)(b) above may be brought by any of the following local authorities—

(a) the local authority that applied for the order, if the child or young person, or the person alleged to be in breach, resides or appears to reside in that authority's area;

(b) the local authority of the child or young person, if that child or young person does not reside or appear to reside in the area of the local authority that applied for the order;

(c) the local authority of the person alleged to be in breach, if that person does not reside or appear to reside in the area of the local authority that applied for the order.

(3B) For the purposes of subsection (3A)(b) and (c)—

(a) an individual's local authority is the local authority in whose area the individual resides or appears to reside; but

(b) if the place where an individual resides or appears to reside is within the area of a county council and within the area of a district council, a reference to that individual's local authority is to be read as a reference to either of those authorities."

PART 9

POLICING

Misconduct procedures etc.

126 Police misconduct and performance procedures

(1) Part 1 of Schedule 22—

(a) amends the Police Act 1996 (c. 16) to make provision for or in connection with disciplinary and other proceedings in respect of the conduct and performance of members of police forces and special constables, and

(b) makes other minor amendments to that Act.

(2) Part 2 of that Schedule makes equivalent amendments to the Ministry of Defence Police Act 1987 (c. 4) for the purposes of the Ministry of Defence Police.

(3) Part 3 of that Schedule makes equivalent amendments to the Railways and Transport Safety Act 2003 (c. 20) for the purposes of the British Transport Police.

127 Investigation of complaints of police misconduct etc.

Schedule 23 amends the Police Reform Act 2002 (c. 30) to make further provision about the investigation of complaints of police misconduct and other matters.

Financial assistance

128 Financial assistance under section 57 of Police Act 1996

(1) After section 57(1) of the Police Act 1996 (common services: power for Secretary of State to provide and maintain etc. organisations, facilities and services which promote the efficiency or effectiveness of police) insert—

"(1A) The power conferred by subsection (1) includes power to give financial assistance to any person in connection with the provision or maintenance of such organisations, facilities and services as are mentioned in that subsection.

(1B) Financial assistance under subsection (1)—

(a) may, in particular, be given in the form of a grant, loan or guarantee or investment in a body corporate; and

(b) may be given subject to terms and conditions determined by the Secretary of State;

but any financial assistance under that subsection other than a grant requires the consent of the Treasury.

(1C) Terms and conditions imposed under subsection (1B)(b) may include terms and conditions as to repayment with or without interest.

(1D) Any sums received by the Secretary of State by virtue of terms and conditions imposed under that subsection are to be paid into the Consolidated Fund."

(2) Any loan made by the Secretary of State by virtue of section 57 of the Police Act 1996 (c. 16) and outstanding on the day on which this Act is passed is to be treated as if it were a loan made in accordance with that section as amended by subsection (1) above.

Inspection

129 Inspection of police authorities

In section 54 of the Police Act 1996 (c. 16) (appointment and functions of inspectors of constabulary) for subsection (2A) substitute—

"(2A) The inspectors of constabulary may carry out an inspection of, and report to the Secretary of State on, a police authority's performance of its functions or of any particular function or functions (including in particular its compliance with the requirements of Part 1 of the Local Government Act 1999 (best value))."

PART 10

SPECIAL IMMIGRATION STATUS

130 Designation

(1) The Secretary of State may designate a person who satisfies Condition 1 or 2 (subject to subsections (4) and (5)).

(2) Condition 1 is that the person—

(a) is a foreign criminal within the meaning of section 131, and

(b) is liable to deportation, but cannot be removed from the United Kingdom because of section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to Convention).

(3) Condition 2 is that the person is a member of the family of a person who satisfies Condition 1.

(4) A person who has the right of abode in the United Kingdom may not be designated.

(5) The Secretary of State may not designate a person if the Secretary of State thinks that an effect of designation would breach—

(a) the United Kingdom's obligations under the Refugee Convention, or

(b) the person's rights under the Community treaties.

131 "Foreign criminal"

(1) For the purposes of section 130 "foreign criminal" means a person who—

(a) is not a British citizen, and

(b) satisfies any of the following Conditions.

(2) Condition 1 is that section 72(2)(a) and (b) or (3)(a) to (c) of the Nationality, Immigration and Asylum Act 2002 (c. 41) applies to the person (Article 33(2) of the Refugee Convention: imprisonment for at least two years).

(3) Condition 2 is that—

(a) section 72(4)(a) or (b) of that Act applies to the person (person convicted of specified offence), and

(b) the person has been sentenced to a period of imprisonment.

(4) Condition 3 is that Article 1F of the Refugee Convention applies to the person (exclusions for criminals etc.).

(5) Section 72(6) of that Act (rebuttal of presumption under section 72(2) to (4)) has no effect in relation to Condition 1 or 2.

(6) Section 72(7) of that Act (non-application pending appeal) has no effect in relation to Condition 1 or 2.

132 Effect of designation

(1) A designated person does not have leave to enter or remain in the United Kingdom.

(2) For the purposes of a provision of the Immigration Acts and any other enactment which concerns or refers to immigration or nationality (including any provision which applies or refers to a provision of the Immigration Acts or any other enactment about immigration or nationality) a designated person—

(a) is a person subject to immigration control,

(b) is not to be treated as an asylum-seeker or a former asylum-seeker, and

(c) is not in the United Kingdom in breach of the immigration laws.

(3) Despite subsection (2)(c), time spent in the United Kingdom as a designated person may not be relied on by a person for the purpose of an enactment about nationality.

(4) A designated person—

(a) shall not be deemed to have been given leave in accordance with paragraph 6 of Schedule 2 to the Immigration Act 1971 (c. 77) (notice of leave or refusal), and

(b) may not be granted temporary admission to the United Kingdom under paragraph 21 of that Schedule.

(5) Sections 134 and 135 make provision about support for designated persons and their dependants.

133 Conditions

(1) The Secretary of State or an immigration officer may by notice in writing impose a condition on a designated person.

(2) A condition may relate to—

(a) residence,

(b) employment or occupation, or

(c) reporting to the police, the Secretary of State or an immigration officer.

(3) Section 36 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19) (electronic monitoring) shall apply in relation to conditions imposed under this section as it applies to restrictions imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971 (with a reference to the Immigration Acts being treated as including a reference to this section).

(4) Section 69 of the Nationality, Immigration and Asylum Act 2002 (c. 41) (reporting restrictions: travel expenses) shall apply in relation to conditions imposed under subsection (2)(c) above as it applies to restrictions imposed under paragraph 21 of Schedule 2 to the Immigration Act 1971.

(5) A person who without reasonable excuse fails to comply with a condition imposed under this section commits an offence.

(6) A person who is guilty of an offence under subsection (5) shall be liable on summary conviction to—

(a) a fine not exceeding level 5 on the standard scale,

(b) imprisonment for a period not exceeding 51 weeks, or

(c) both.

(7) A provision of the Immigration Act 1971 (c. 77) which applies in relation to an offence under any provision of section 24(1) of that Act (illegal entry etc.) shall also apply in relation to the offence under subsection (5) above.

(8) In the application of this section to Scotland or Northern Ireland the reference in subsection (6)(b) to 51 weeks shall be treated as a reference to six months.

134 Support

(1) Part VI of the Immigration and Asylum Act 1999 (c. 33) (support for asylum-seekers) shall apply in relation to designated persons and their dependants as it applies in relation to asylum-seekers and their dependants.

(2) But the following provisions of that Part shall not apply—

(a) section 96 (kinds of support),

(b) section 97(1)(b) (desirability of providing accommodation in well-supplied area),

(c) section 100 (duty to co-operate in providing accommodation),

(d) section 101 (reception zones),

(e) section 108 (failure of sponsor to maintain),

(f) section 111 (grants to voluntary organisations), and

(g) section 113 (recovery of expenditure from sponsor).

(3) Support may be provided under section 95 of the 1999 Act as applied by this section—

(a) by providing accommodation appearing to the Secretary of State to be adequate for a person's needs;

(b) by providing what appear to the Secretary of State to be essential living needs;

(c) in other ways which the Secretary of State thinks necessary to reflect exceptional circumstances of a particular case.

(4) Support by virtue of subsection (3) may not be provided wholly or mainly by way of cash unless the Secretary of State thinks it appropriate because of exceptional circumstances.

(5) Section 4 of the 1999 Act (accommodation) shall not apply in relation to designated persons.

(6) A designated person shall not be treated—

(a) as a person subject to immigration control, for the purposes of section 119(1)(b) of the 1999 Act (homelessness: Scotland and Northern Ireland), or

(b) as a person from abroad who is not eligible for housing assistance, for the purposes of section 185(4) of the Housing Act 1996 (c. 52) (housing assistance).

135 Support: supplemental

(1) A reference in an enactment to Part VI of the 1999 Act or to a provision of that Part includes a reference to that Part or provision as applied by section 134 above; and for that purpose—

(a) a reference to section 96 shall be treated as including a reference to section 134(3) above,

(b) a reference to a provision of section 96 shall be treated as including a reference to the corresponding provision of section 134(3), and

(c) a reference to asylum-seekers shall be treated as including a reference to designated persons.

(2) A provision of Part VI of the 1999 Act which requires or permits the Secretary of State to have regard to the temporary nature of support shall be treated, in the application of Part VI by virtue of section 134 above, as requiring the Secretary of State to have regard to the nature and circumstances of support by virtue of that section.

(3) Rules under section 104 of the 1999 Act (appeals) shall have effect for the purposes of Part VI of that Act as it applies by virtue of section 134 above.

(4) Any other instrument under Part VI of the 1999 Act—

(a) may make provision in respect of that Part as it applies by virtue of section 134 above, as it applies otherwise than by virtue of that section, or both, and

(b) may make different provision for that Part as it applies by virtue of section 134 above and as it applies otherwise than by virtue of that section.

(5) In the application of paragraph 9 of Schedule 8 to the 1999 Act (regulations: notice to quit accommodation) the reference in paragraph (2)(b) to the determination of a claim for asylum shall be treated as a reference to ceasing to be a designated person.

(6) The Secretary of State may by order repeal, modify or disapply (to any extent) section 134(4).

(7) An order under section 10 of the Human Rights Act 1998 (c. 42) (power to remedy incompatibility) which amends a provision mentioned in subsection (6) of section 134 above may amend or repeal that subsection.

136 End of designation

(1) Designation lapses if the designated person—

(a) is granted leave to enter or remain in the United Kingdom,

(b) is notified by the Secretary of State or an immigration officer of a right of residence in the United Kingdom by virtue of the Community treaties,

(c) leaves the United Kingdom, or

(d) is made the subject of a deportation order under section 5 of the Immigration Act 1971 (c. 77).

(2) After designation lapses support may not be provided by virtue of section 134, subject to the following exceptions.

(3) Exception 1 is that, if designation lapses under subsection (1)(a) or (b), support may be provided in respect of a period which—

(a) begins when the designation lapses, and

(b) ends on a date determined in accordance with an order of the Secretary of State.

(4) Exception 2 is that, if designation lapses under subsection (1)(d), support may be provided in respect of—

(a) any period during which an appeal against the deportation order may be brought (ignoring any possibility of an appeal out of time with permission),

(b) any period during which an appeal against the deportation order is pending, and

(c) after an appeal ceases to be pending, such period as the Secretary of State may specify by order.

137 Interpretation: general

(1) This section applies to sections 130 to 136.

(2) A reference to a designated person is a reference to a person designated under section 130.

(3) "Family" shall be construed in accordance with section 5(4) of the Immigration Act 1971 (c. 77) (deportation: definition of "family").

(4) "Right of abode in the United Kingdom" has the meaning given by section 2 of that Act.

(5) "The Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol.

(6) "Period of imprisonment" shall be construed in accordance with section 72(11)(b)(i) and (ii) of the Nationality, Immigration and Asylum Act 2002 (c. 41).

(7) A voucher is not cash.

(8) A reference to a pending appeal has the meaning given by section 104(1) of that Act.

(9) A reference in an enactment to the Immigration Acts includes a reference to sections 130 to 136.

PART 11

MISCELLANEOUS

Industrial action by prison officers

138 Amendment of section 127 of Criminal Justice and Public Order Act 1994

(1) Section 127 of the Criminal Justice and Public Order Act 1994 (c. 33) (inducements to prison officers to withhold services or breach discipline) is amended as follows.

(2) In subsection (1), for paragraph (a) substitute—

"(a) to take (or continue to take) any industrial action;".

(3) After subsection (1) insert—

"(1A) In subsection (1) "industrial action" means—

(a) the withholding of services as a prison officer; or

(b) any action that would be likely to put at risk the safety of any person (whether a prisoner, a person working at or visiting a prison, a person working with prisoners or a member of the public)."

(4) In subsection (4), after paragraph (a) insert—

"(aa) holds any post, other than as a chaplain or assistant chaplain, to which he has been appointed for the purposes of section 7 of the Prison Act 1952 (appointment of prison staff),".

(5) In subsection (4), after paragraph (aa) (inserted by subsection (4) above) insert—

"(b) holds any post, otherwise than as a medical officer, to which he has been appointed for the purposes of section 3(1A) of the Prisons (Scotland) Act 1989;".

139 Power to suspend the operation of section 127 of Criminal Justice and Public Order Act 1994

After section 127 of the Criminal Justice and Public Order Act 1994 (c. 33) insert—

"**127A Power to suspend the operation of section 127**

(1) The Secretary of State may make orders suspending, or later reviving, the operation of section 127.

(2) An order under this section may make different provision in relation to different descriptions of prison officer.

(3) The power to make orders under this section is exercisable by statutory instrument.

(4) A statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament."

Sex offenders

140 Disclosure of information about convictions etc. of child sex offenders to members of the public

(1) After section 327 of the Criminal Justice Act 2003 (c. 44) insert—

"**327A Disclosure of information about convictions etc. of child sex offenders to members of the public**

(1) The responsible authority for each area must, in the course of discharging its functions under arrangements established by it under section 325, consider whether to disclose information in its possession about the relevant previous convictions of any child sex offender managed by it to any particular member of the public.

(2) In the case mentioned in subsection (3) there is a presumption that the responsible authority should disclose information in its possession about the relevant previous convictions of the offender to the particular member of the public.

(3) The case is where the responsible authority for the area has reasonable cause to believe that—

(a) a child sex offender managed by it poses a risk in that or any other area of causing serious harm to any particular child or children or to children of any particular description, and

(b) the disclosure of information about the relevant previous convictions of the offender to the particular member of the public is necessary for the purpose of protecting the particular child or children, or the children of that description, from serious harm caused by the offender.

(4) The presumption under subsection (2) arises whether or not the person to whom the information is disclosed requests the disclosure.

(5) Where the responsible authority makes a disclosure under this section—

(a) it may disclose such information about the relevant previous convictions of the offender as it considers appropriate to disclose to the member of the public concerned, and

(b) it may impose conditions for preventing the member of the public concerned from disclosing the information to any other person.

(6) Any disclosure under this section must be made as soon as is reasonably practicable having regard to all the circumstances.

(7) The responsible authority for each area must compile and maintain a record about the decisions it makes in relation to the discharge of its functions under this section.

(8) The record must include the following information—

(a) the reasons for making a decision to disclose information under this section,

(b) the reasons for making a decision not to disclose information under this section, and

(c) the information which is disclosed under this section, any conditions imposed in relation to its further disclosure and the name and address of the person to whom it is disclosed.

(9) Nothing in this section requires or authorises the making of a disclosure which contravenes the Data Protection Act 1998.

(10) This section is not to be taken as affecting any power of any person to disclose any information about a child sex offender.

327B Section 327A: interpretation

(1) This section applies for the purposes of section 327A.

(2) "Child" means a person under 18.

(3) "Child sex offence" means an offence listed in Schedule 34A, whenever committed.

(4) "Child sex offender" means any person who—

(a) has been convicted of such an offence,

(b) has been found not guilty of such an offence by reason of insanity,

(c) has been found to be under a disability and to have done the act charged against the person in respect of such an offence, or

(d) has been cautioned in respect of such an offence.

(5) In relation to a responsible authority, references to information about the relevant previous convictions of a child sex offender are references to information about—

(a) convictions, findings and cautions mentioned in subsection (4)(a) to (d) which relate to the offender, and

(b) anything under the law of any country or territory outside England and Wales which in the opinion of the responsible authority corresponds to any conviction, finding or caution within paragraph (a) (however described).

(6) References to serious harm caused by a child sex offender are references to serious physical or psychological harm caused by the offender committing any offence listed in any paragraph of Schedule 34A other than paragraphs 1 to 6 (offences under provisions repealed by Sexual Offences Act 2003).

(7) A responsible authority for any area manages a child sex offender if the offender is a person who poses risks in that area which fall to be managed by the authority under the arrangements established by it under section 325.

(8) For the purposes of this section the provisions of section 4 of, and paragraph 3 of Schedule 2 to, the Rehabilitation of Offenders Act 1974 (protection for spent convictions and cautions) are to be disregarded.

(9) In this section "cautioned", in relation to any person and any offence, means—

(a) cautioned after the person has admitted the offence, or

(b) reprimanded or warned within the meaning given by section 65 of the Crime and Disorder Act 1998.

(10) Section 135(1), (2)(a) and (c) and (3) of the Sexual Offences Act 2003 (mentally disordered offenders) apply for the purposes of this section as they apply for the purposes of Part 2 of that Act."

(2) After Schedule 34 to that Act insert the Schedule 34A set out in Schedule 24 to this Act.

141 Sexual offences prevention orders: relevant sexual offences

(1) In section 106 of the Sexual Offences Act 2003 (c. 42) (supplemental provisions about sexual offences prevention orders), at the end insert—

"(13) Subsection (14) applies for the purposes of section 104 and this section in their application in relation to England and Wales or Northern Ireland.

(14) In construing any reference to an offence listed in Schedule 3, any condition subject to which an offence is so listed that relates—

(a) to the way in which the defendant is dealt with in respect of an offence so listed or a relevant finding (as defined by section 132(9)), or

(b) to the age of any person,

is to be disregarded."

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

142 Notification requirements: prescribed information

(1) In section 83 of the Sexual Offences Act 2003 (c. 42) (notification requirements: initial notification)—

(a) at the end of subsection (5) insert—

"(h) any prescribed information."; and

(b) after that subsection insert—

"(5A) In subsection (5)(h) "prescribed" means prescribed by regulations made by the Secretary of State."

(2) Section 84 of that Act (notification requirements: changes) is amended as follows.

(3) In subsection (1)—

(a) after "1997," in paragraph (c) insert—

"(ca) any prescribed change of circumstances,"; and

(b) after "the address of those premises" insert ", the prescribed details".

(4) In subsection (2) after "home address" insert "or the prescribed change of circumstances".

(5) After subsection (5) insert—

"(5A) In this section—

(a) "prescribed change of circumstances" means any change—

(i) occurring in relation to any matter in respect of which information is required to be notified by virtue of section 83(5)(h), and

(ii) of a description prescribed by regulations made by the Secretary of State;

(b) "the prescribed details", in relation to a prescribed change of circumstances, means such details of the change as may be so prescribed."

(6) Section 85 of that Act (notification requirements: periodic notification) is amended as follows.

(7) In subsection (1), for "the period of one year" substitute "the applicable period".

(8) In subsection (3), for "the period referred to in subsection (1)" substitute "the applicable period".

(9) After subsection (4) insert—

"(5) In this section, "the applicable period" means—

(a) in any case where subsection (6) applies to the relevant offender, such period as may be prescribed by regulations made by the Secretary of State, and

(b) in any other case, the period of one year.

(6) This subsection applies to the relevant offender if the last home address notified by him under section 83(1) or 84(1) or subsection (1) was the address or location of such a place as is mentioned in section 83(7)(b)."

(10) In section 138(2) of that Act (orders and regulations subject to the affirmative resolution procedure), for "86 or 130" substitute "any of sections 83 to 86 or section 130".

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

Persistent sales of tobacco to persons under 18

143 Persistent sales of tobacco to persons under 18

(1) The Children and Young Persons Act 1933 (c. 12) is amended as follows.

(2) After section 12 insert—

"Persistent sales of tobacco to persons under 18

12A Restricted premises orders

(1) This section applies where a person ("the offender") is convicted of a tobacco offence ("the relevant offence").

(2) The person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted premises order to be made in respect of the premises in relation to which that offence was committed ("the relevant premises").

(3) A restricted premises order is an order prohibiting the sale on the premises to which it relates of any tobacco or cigarette papers to any person.

(4) The prohibition applies to sales whether made—

(a) by the offender or any other person, or

(b) by means of any machine kept on the premises or any other means.

(5) The order has effect for the period specified in the order, but that period may not exceed one year.

(6) The applicant must, after making reasonable enquiries, give notice of the application to every person appearing to the applicant to be a person affected by it.

(7) The court may make the order if (and only if) it is satisfied that—

(a) on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco offences in relation to the relevant premises, and

(b) the applicant has complied with subsection (6).

(8) Persons affected by the application may make representations to the court as to why the order should not be made.

(9) If—

(a) a person affected by an application for a restricted premises order was not given notice under subsection (6), and

(b) consequently the person had no opportunity to make representations to the court as to why the order should not be made,

the person may by complaint apply to the court for an order varying or discharging it.

(10) On an application under subsection (9) the court may, after hearing—

(a) that person, and

(b) the applicant for the restricted premises order,

make such order varying or discharging the restricted premises order as it considers appropriate.

(11) For the purposes of this section the persons affected by an application for a restricted premises order in respect of any premises are—

(a) the occupier of the premises, and

(b) any other person who has an interest in the premises.

12B Restricted sale orders

(1) This section applies where a person ("the offender") is convicted of a tobacco offence ("the relevant offence").

(2) The person who brought the proceedings for the relevant offence may by complaint to a magistrates' court apply for a restricted sale order to be made in respect of the offender.

(3) A restricted sale order is an order prohibiting the person to whom it relates—

(a) from selling any tobacco or cigarette papers to any person,

(b) from having any management functions in respect of any premises in so far as those functions relate to the sale on the premises of tobacco or cigarette papers to any person,

(c) from keeping any cigarette machine on any premises for the purpose of selling tobacco or permitting any cigarette machine to be kept on any premises by any other person for that purpose, and

(d) from having any management functions in respect of any premises in so far as those functions relate to any cigarette machine kept on the premises for the purpose of selling tobacco.

(4) The order has effect for the period specified in the order, but that period may not exceed one year.

(5) The court may make the order if (and only if) it is satisfied that, on at least 2 occasions within the period of 2 years ending with the date on which the relevant offence was committed, the offender has committed other tobacco offences.

(6) In this section any reference to a cigarette machine is a reference to an automatic machine for the sale of tobacco.

12C Enforcement

(1) If—

(a) a person sells on any premises any tobacco or cigarette papers in contravention of a restricted premises order, and

(b) the person knew, or ought reasonably to have known, that the sale was in contravention of the order,

the person commits an offence.

(2) If a person fails to comply with a restricted sale order, the person commits an offence.

(3) It is a defence for a person charged with an offence under subsection (2) to prove that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding £20,000.

(5) A restricted premises order is a local land charge and in respect of that charge the applicant for the order is the originating authority for the purposes of the Local Land Charges Act 1975.

12D Interpretation

(1) In sections 12A and 12B a "tobacco offence" means—

(a) an offence committed under section 7(1) on any premises (which are accordingly "the premises in relation to which the offence is committed"), or

(b) an offence committed under section 7(2) in respect of an order relating to any machine kept on any premises (which are accordingly "the premises in relation to which the offence is committed").

(2) In sections 12A to 12C the expressions "tobacco" and "cigarette" have the same meaning as in section 7.

(3) In sections 12A and 12B "notice" means notice in writing."

(3) In section 102(1) (appeals to the Crown Court), after paragraph (e) insert—

"(f) in the case of a restricted premises order under section 12A or a restricted sale order under section 12B, by any person aggrieved."

Penalties for serious contraventions of data protection principles

144 Power to require data controllers to pay monetary penalty

(1) After section 55 of the Data Protection Act 1998 (c. 29) insert—

"Monetary penalties

55A Power of Commissioner to impose monetary penalty

(1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—

(a) there has been a serious contravention of section 4(4) by the data controller,

(b) the contravention was of a kind likely to cause substantial damage or substantial distress, and

(c) subsection (2) or (3) applies.

(2) This subsection applies if the contravention was deliberate.

(3) This subsection applies if the data controller—

(a) knew or ought to have known —

(i) that there was a risk that the contravention would occur, and

(ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but

(b) failed to take reasonable steps to prevent the contravention.

(4) A monetary penalty notice is a notice requiring the data controller to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.

(5) The amount determined by the Commissioner must not exceed the prescribed amount.

(6) The monetary penalty must be paid to the Commissioner within the period specified in the notice.

(7) The notice must contain such information as may be prescribed.

(8) Any sum received by the Commissioner by virtue of this section must be paid into the Consolidated Fund.

(9) In this section—

"data controller" does not include the Crown Estate Commissioners or a person who is a data controller by virtue of section 63(3);

"prescribed" means prescribed by regulations made by the Secretary of State.

55B Monetary penalty notices: procedural rights

(1) Before serving a monetary penalty notice, the Commissioner must serve the data controller with a notice of intent.

(2) A notice of intent is a notice that the Commissioner proposes to serve a monetary penalty notice.

(3) A notice of intent must—

(a) inform the data controller that he may make written representations in relation to the Commissioner's proposal within a period specified in the notice, and

(b) contain such other information as may be prescribed.

(4) The Commissioner may not serve a monetary penalty notice until the time within which the data controller may make representations has expired.

(5) A person on whom a monetary penalty notice is served may appeal to the Tribunal against—

(a) the issue of the monetary penalty notice;

(b) the amount of the penalty specified in the notice.

(6) In this section, "prescribed" means prescribed by regulations made by the Secretary of State.

55C Guidance about monetary penalty notices

(1) The Commissioner must prepare and issue guidance on how he proposes to exercise his functions under sections 55A and 55B.

(2) The guidance must, in particular, deal with—

(a) the circumstances in which he would consider it appropriate to issue a monetary penalty notice, and

(b) how he will determine the amount of the penalty.

(3) The Commissioner may alter or replace the guidance.

(4) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.

(5) The Commissioner may not issue guidance under this section without the approval of the Secretary of State.

(6) The Commissioner must lay any guidance issued under this section before each House of Parliament.

(7) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.

(8) In subsections (5) to (7), "guidance" includes altered or replacement guidance.

55D Monetary penalty notices: enforcement

(1) This section applies in relation to any penalty payable to the Commissioner by virtue of section 55A.

(2) In England and Wales, the penalty is recoverable—

(a) if a county court so orders, as if it were payable under an order of that court;

(b) if the High Court so orders, as if it were payable under an order of that court.

(3) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(4) In Northern Ireland, the penalty is recoverable—

(a) if a county court so orders, as if it were payable under an order of that court;

(b) if the High Court so orders, as if it were payable under an order of that court.

55E Notices under sections 55A and 55B: supplemental

(1) The Secretary of State may by order make further provision in connection with monetary penalty notices and notices of intent.

(2) An order under this section may in particular—

(a) provide that a monetary penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;

(b) make provision for the cancellation or variation of monetary penalty notices;

(c) confer rights of appeal to the Tribunal against decisions of the Commissioner in relation to the cancellation or variation of such notices;

(d) make provision for the proceedings of the Tribunal in respect of appeals under section 55B(5) or appeals made by virtue of paragraph (c);

(e) make provision for the determination of such appeals;

(f) confer rights of appeal against any decision of the Tribunal in relation to monetary penalty notices or their cancellation or variation.

(3) An order under this section may apply any provision of this Act with such modifications as may be specified in the order.

(4) An order under this section may amend this Act."

(2) In section 67 of that Act (orders, regulations, rules)—

(a) in subsection (4) insert at the appropriate place—

"section 55E(1),"; and

(b) in subsection (5) after paragraph (c) insert—

"(ca) regulations under section 55A(5) or (7) or 55B(3)(b),".

Armed forces legislation

145 Amendments to armed forces legislation

Schedule 25 contains—

(a) amendments to armed forces legislation (which make provision for service courts etc. corresponding to other provisions of this Act); and

(b) transitional provision relating to certain of those amendments.

Automatic deportation of criminals

146 Convention against human trafficking

After section 33(6) of the UK Borders Act 2007 (automatic deportation: exceptions) insert—

"(6A) Exception 6 is where the Secretary of State thinks that the application of section 32(4) and (5) would contravene the United Kingdom's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16th May 2005)."

PART 12

GENERAL

147 Orders, rules and regulations

(1) Orders, rules or regulations made by the Secretary of State or the Lord Chancellor under this Act are to be made by statutory instrument.

(2) Any such orders or regulations—

(a) may make provision generally or only for specified cases or circumstances;

(b) may make different provision for different cases, circumstances or areas;

(c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

(3) Subject to subsection (4), a statutory instrument containing any order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Subsection (3) does not apply to—

(a) a statutory instrument containing an order under section 153,

(b) a statutory instrument containing an order under paragraph 26(5) of Schedule 1,

(c) a statutory instrument containing an Order in Council under paragraph 9 of Schedule 17, or

(d) a statutory instrument to which subsection (5) applies.

(5) A statutory instrument containing (whether alone or with other provision)—

(a) an order under section 4(3),

(b) an order under section 48(2),

(c) an order under section 77,

(d) an order under section 81(4), 83(4) or 91(3) which amends or repeals any provision of an Act,

(e) an order under section 102,

(f) regulations under any of sections 108 to 111,

(g) an order under section 135(6),

(h) an order under section 148(3) which amends or repeals any provision of an Act,

(i) an order under paragraph 27 or 35 of Schedule 1,

(j) an order under paragraph 25 of Schedule 2,

(k) rules under paragraph 2(4)(a) of Schedule 6, or

(l) an order under paragraph 6 of Schedule 7,

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) An order under section 153(5)(b) is to be made by statutory instrument.

(7) An order under section 153(6) is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

148 Consequential etc. amendments and transitional and saving provision

(1) Schedule 26 contains minor and consequential amendments.

(2) Schedule 27 contains transitory, transitional and saving provisions.

(3) The Secretary of State may by order make—

(a) such supplementary, incidental or consequential provision, or

(b) such transitory, transitional or saving provision,

as the Secretary of State considers appropriate for the general purposes, or any particular purposes, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act.

(4) An order under subsection (3) may, in particular—

(a) provide for any amendment or other provision made by this Act which comes into force before any other provision (whether made by this or any other Act or by any subordinate legislation) has come into force to have effect, until that other provision has come into force, with specified modifications, and

(b) amend, repeal or revoke any provision of—

(i) any Act (including this Act and any Act passed in the same Session as this Act);

(ii) subordinate legislation made before the passing of this Act;

(iii) Northern Ireland legislation passed, or made, before the passing of this Act; and

(iv) any instrument made, before the passing of this Act, under Northern Ireland legislation.

(5) Nothing in this section limits the power under section 153(8) to include provision for transitory, transitional or saving purposes in an order under that section.

(6) The amendments that may be made by virtue of subsection (4)(b) are in addition to those made by or which may be made under any other provision of this Act.

(7) In this section "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30).

(8) Her Majesty may by Order in Council extend any provision made by virtue of subsection (4)(b), with such modifications as may appear to Her Majesty to be appropriate, to the Isle of Man or any British overseas territory.

(9) The power under subsection (8) includes power to make supplementary, incidental, consequential, transitory, transitional or saving provision.

(10) Subsection (8) does not apply in relation to amendments of the Armed Forces Act 2006 (c. 52).

149 Repeals and revocations

Schedule 28 contains repeals and revocations, including repeals of spent enactments.

150 Financial provisions

There is to be paid out of money provided by Parliament—

(a) any expenditure incurred by virtue of this Act by a Minister of the Crown; and

(b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

151 Effect of amendments to criminal justice provisions applied for purposes of service law

(1) In this section "relevant criminal justice provisions" means provisions of, or made under, an Act which—

(a) relate to criminal justice; and

(b) have been applied (with or without modifications) for any purposes of service law by any provision of, or made under, any Act.

(2) Unless the contrary intention appears, any amendment by this Act of relevant criminal justice provisions also amends those provisions as so applied.

(3) Subsection (2) does not apply to any amendments made by Part 1.

(4) In this section "service law" means—

(a) the system of service law established by the Armed Forces Act 2006 (c. 52); or

(b) any of the systems of service law superseded by that Act (namely, military law, air force law and the Naval Discipline Act 1957 (c. 53)).

152 Extent

(1) Subject as follows and to any other provision of this Act, this Act extends to England and Wales only.

(2) The following provisions of this Act extend to England and Wales, Scotland and Northern Ireland—

(a) section 77;

(b) section 96;

(c) section 113 (together with such of the other provisions of Part 7 as relate to the commission of offences under that section);

(d) Part 10;

(e) this Part (subject to subsection (5)).

(3) The following provisions of this Act extend to England and Wales and Northern Ireland—

(a) section 3 and Schedule 3;

(b) section 39(3) and (6)(d) and paragraph 7 of Schedule 7;

(c) sections 63 to 68 and Schedule 14;

(d) section 76;

(e) section 85(6) and (7) (so far as relating to any provision of Part 3 of the Magistrates' Courts Act 1980 which extends to Northern Ireland);

(f) sections 86 and 90 to 92 and Schedules 18 and 19.

(4) The following provisions of this Act extend to Northern Ireland only—

(a) sections 82 and 83;

(b) sections 87 to 89;
(c) section 122 and Schedule 21.

(5) Except as otherwise provided by this Act, an amendment, repeal or revocation of any enactment by any provision of this Act extends to the part or parts of the United Kingdom to which the enactment extends.

(6) The following amendments and repeals also extend to the Channel Islands and the Isle of Man—
(a) the amendments of sections 26 and 70(1) of the Children and Young Persons Act 1969 (c. 54) (transfers between England or Wales and the Channel Islands or Isle of Man) made by Schedule 4, and
(b) the repeals in Part 1 of Schedule 28 relating to those amendments.

(7) In section 7(2) of the Nuclear Material (Offences) Act 1983 (c. 18) (application to Channel Islands, Isle of Man, etc.) the reference to that Act includes a reference to that Act as amended by Schedule 17.

(8) In section 9(4) of the Repatriation of Prisoners Act 1984 (c. 47) (power to extend provisions of that Act to the Channel Islands etc.) the reference to that Act includes a reference to that Act as amended by any provision of this Act.

(9) In section 384 of the Armed Forces Act 2006 (c. 52) (extent to Channel Islands, Isle of Man, etc.) any reference to that Act includes a reference to—
(a) that Act as amended by or under any provision of this Act,
(b) section 151, and
(c) paragraph 34 of Schedule 25.

(10) Nothing in this section restricts the operation of section 76 and paragraph 27 of Schedule 27 in their application in relation to service offences (within the meaning of that paragraph).

153 Commencement

(1) The following provisions of this Act come into force on the day on which this Act is passed—
(a) section 53, Schedule 13, paragraph 77 of Schedule 26 and the repeals in Part 4 of Schedule 28 relating to—
(i) paragraphs 13 and 22 of Schedule 3 to the Criminal Justice Act 2003 (c. 44), and
(ii) Part 4 of Schedule 37 to that Act;
(b) section 77;
(c) section 128;
(d) sections 138(1) to (4) and 139;
(e) section 147;
(f) section 148(3) to (7);
(g) sections 150 and 152;
(h) this section;
(i) section 154;
(j) paragraphs 6(3) and 12 to 16 of Schedule 16 and the repeals in Part 5 of Schedule 28 relating to Part 3A of the Public Order Act 1986 (c. 64);

(k) paragraphs 35 to 39 of Schedule 26.

(2) The following provisions of this Act come into force at the end of the period of 2 months beginning with the day on which it is passed—

(a) section 62 and the related repeal in Part 4 of Schedule 28;
(b) section 69 and paragraph 24 of Schedule 26;
(c) section 70 and paragraph 25 of Schedule 26;
(d) section 79 and the related repeals in Part 5 of Schedule 28;
(e) paragraphs 2 to 7 of Schedule 15;
(f) paragraph 24 of Schedule 27.

(3) Where any particular provision or provisions of a Schedule come into force in accordance with subsection (1) or (2), the section introducing the Schedule also comes into force in accordance with that subsection so far as relating to the particular provision or provisions.

(4) The following provisions come into force on such day as the Lord Chancellor may by order appoint—

(a) section 19;
(b) section 41;
(c) sections 56 to 58;
(d) sections 80 to 92 and Schedules 18 and 19;
(e) paragraph 29 of Schedule 27.

(5) Sections 119 to 121 come into force—

(a) in relation to English NHS premises, on such day as the Secretary of State may by order appoint, and
(b) in relation to Welsh NHS premises, on such day as the Welsh Ministers may by order appoint.

(6) Section 122 and Schedule 21 come into force on such day as the Department of Health, Social Services and Public Safety may by order appoint.

(7) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.

(8) An order under any of subsections (4) to (7) may—

(a) appoint different days for different purposes and in relation to different areas;
(b) make such provision as the person making the order considers necessary or expedient for transitory, transitional or saving purposes in connection with the coming into force of any provision falling within that subsection.

154 Short title

This Act may be cited as the Criminal Justice and Immigration Act 2008.