



# Legal Aid, Sentencing and Punishment of Offenders Act 2012

## 2012 CHAPTER 10

### PART 1

#### LEGAL AID

##### *Provision of legal aid*

#### **1 Lord Chancellor's functions**

- (1) The Lord Chancellor must secure that legal aid is made available in accordance with this Part.
- (2) In this Part “legal aid” means—
  - (a) civil legal services required to be made available under section 9 or 10 or paragraph 3 of Schedule 3 (civil legal aid), and
  - (b) services consisting of advice, assistance and representation required to be made available under section 13, 15 or 16 or paragraph 4 or 5 of Schedule 3 (criminal legal aid).
- (3) The Lord Chancellor may secure the provision of—
  - (a) general information about the law and the legal system, and
  - (b) information about the availability of advice about, and assistance in connection with, the law and the legal system.
- (4) The Lord Chancellor may do anything which is calculated to facilitate, or is incidental or conducive to, the carrying out of the Lord Chancellor's functions under this Part.
- (5) Nothing in this Part affects the powers that the Lord Chancellor has otherwise than under this Part.

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## **2 Arrangements**

- (1) The Lord Chancellor may make such arrangements as the Lord Chancellor considers appropriate for the purposes of carrying out the Lord Chancellor's functions under this Part.
- (2) The Lord Chancellor may, in particular, make arrangements by—
  - (a) making grants or loans to enable persons to provide services or facilitate the provision of services,
  - (b) making grants or loans to individuals to enable them to obtain services, and
  - (c) establishing and maintaining a body to provide services or facilitate the provision of services.
- (3) The Lord Chancellor may by regulations make provision about the payment of remuneration by the Lord Chancellor to persons who provide services under arrangements made for the purposes of this Part.
- (4) If the Lord Chancellor makes arrangements for the purposes of this Part that provide for a court, tribunal or other person to assess remuneration payable by the Lord Chancellor, the court, tribunal or person must assess the remuneration in accordance with the arrangements and, if relevant, with regulations under subsection (3).
- (5) The Lord Chancellor may make different arrangements, in particular, in relation to—
  - (a) different areas in England and Wales,
  - (b) different descriptions of case, and
  - (c) different classes of person.

## **3 Standards of service**

- (1) The Lord Chancellor may set and monitor standards in relation to services made available under this Part.
- (2) The Lord Chancellor may, in particular, make arrangements for the accreditation of persons providing, or wishing to provide, such services by—
  - (a) the Lord Chancellor, or
  - (b) persons authorised by the Lord Chancellor.
- (3) Arrangements for accreditation must include—
  - (a) arrangements for monitoring services provided by accredited persons, and
  - (b) arrangements for withdrawing accreditation where the services provided are unsatisfactory.
- (4) The Lord Chancellor may impose charges in connection with—
  - (a) accreditation,
  - (b) monitoring services provided by accredited persons, and
  - (c) authorising accreditation by others.
- (5) Persons authorised by the Lord Chancellor may, in accordance with the terms of their authorisation, impose charges in connection with—
  - (a) accreditation, and
  - (b) monitoring services provided by accredited persons.

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#### **4 Director of Legal Aid Casework**

- (1) The Lord Chancellor must designate a civil servant as the Director of Legal Aid Casework (“the Director”).
- (2) The Lord Chancellor must make arrangements for the provision to the Director by civil servants or other persons (or both) of such assistance as the Lord Chancellor considers appropriate.
- (3) The Director must—
  - (a) comply with directions given by the Lord Chancellor about the carrying out of the Director's functions under this Part, and
  - (b) have regard to guidance given by the Lord Chancellor about the carrying out of those functions.
- (4) But the Lord Chancellor—
  - (a) must not give a direction or guidance about the carrying out of those functions in relation to an individual case, and
  - (b) must ensure that the Director acts independently of the Lord Chancellor when applying a direction or guidance under subsection (3) in relation to an individual case.
- (5) The Lord Chancellor must publish any directions and guidance given under this section.
- (6) Directions and guidance under this section may be revised or withdrawn from time to time.

#### **5 Delegation**

- (1) The following functions of the Lord Chancellor may be exercised by, or by employees of, a person authorised by the Lord Chancellor for that purpose—
  - (a) securing the provision of information under section 1(3), and
  - (b) setting and monitoring standards under section 3.
- (2) Regulations may provide for a function of the Lord Chancellor under regulations made under this Part to be exercisable by, or by employees of, a person authorised by the Lord Chancellor for that purpose.
- (3) The functions conferred on the Director by this Part may be exercised by, or by employees of, a person authorised by the Director for that purpose.
- (4) Regulations may provide for a function of the Director under regulations made under this Part to be exercisable by, or by employees of, a person authorised by the Director for that purpose.
- (5) A direction given by the Lord Chancellor under section 4 about the carrying out of the Director's functions may, in particular, require the Director—
  - (a) to authorise, or not to authorise, a person to carry out a function specified in the direction, or
  - (b) to authorise, or not to authorise, a person specified, or of a description specified, in the direction to carry out such a function.
- (6) Regulations under subsection (2) or (4) may provide that a function may be exercised—

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- (a) wholly or to a limited extent;
  - (b) generally or in particular cases or areas;
  - (c) unconditionally or subject to conditions.
- (7) An authorisation given for the purposes of this section or regulations under this section may provide that a function may be exercised—
- (a) wholly or to a limited extent;
  - (b) generally or in particular cases or areas;
  - (c) unconditionally or subject to conditions.
- (8) In the case of an authorisation given for the purposes of regulations under this section, subsection (7) is subject to the provisions of the regulations.

## 6 Authorisations

- (1) An authorisation given for the purposes of section 5 or regulations under that section—
- (a) may specify its duration,
  - (b) may specify or describe the authorised person,
  - (c) may be varied or revoked at any time by the person who gave it, and
  - (d) does not prevent the Lord Chancellor, the Director or another person from exercising the function to which the authorisation relates.
- (2) Anything done or omitted to be done by or in relation to a person authorised under section 5(1) or regulations under section 5(2) (or an employee of such a person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by the Lord Chancellor.
- (3) Anything done or omitted to be done by or in relation to a person authorised under section 5(3) or regulations under section 5(4) (or an employee of such a person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by the Director.
- (4) Subsections (2) and (3)—
- (a) do not affect the rights and liabilities of the authorised person or the Lord Chancellor under any arrangements made between them,
  - (b) do not prevent any civil proceedings which could otherwise be brought by or against the authorised person (or an employee of that person) from being brought,
  - (c) do not apply for the purposes of criminal proceedings brought in respect of anything done or omitted to be done by the authorised person (or an employee of that person), and
  - (d) do not make the Lord Chancellor or the Director liable under section 6 of the Human Rights Act 1998 in respect of any act or omission of an authorised person if the act or omission is of a private nature.
- (5) Where—
- (a) an authorisation given for the purposes of section 5 or regulations under that section is revoked, and
  - (b) at the time of the revocation so much of any contract made between the authorised person and the Lord Chancellor as relates to the exercise of the function is subsisting,

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the authorised person is entitled to treat the contract as repudiated by the Lord Chancellor (and not as frustrated by reason of the revocation).

- (6) In this section “authorised person” means a person authorised for the purposes of section 5 or regulations under that section.

## 7 Annual report

- (1) As soon as reasonably practicable after the end of each financial year, the Director must prepare an annual report for the financial year.
- (2) The annual report must state how the Director has carried out the functions of the office in the financial year.
- (3) The Director must send a copy of the report to the Lord Chancellor.
- (4) The Lord Chancellor must—
- lay the copy of the report before Parliament, and
  - arrange for it to be published.
- (5) In this section “financial year” means—
- the period beginning on the day on which section 4 comes into force and ending on the following 31 March, and
  - each successive period of 12 months.

### *Civil legal aid*

## 8 Civil legal services

- (1) In this Part “legal services” means the following types of services—
- providing advice as to how the law applies in particular circumstances,
  - providing advice and assistance in relation to legal proceedings,
  - providing other advice and assistance in relation to the prevention of disputes about legal rights or duties (“legal disputes”) or the settlement or other resolution of legal disputes, and
  - providing advice and assistance in relation to the enforcement of decisions in legal proceedings or other decisions by which legal disputes are resolved.
- (2) The services described in subsection (1) include, in particular, advice and assistance in the form of—
- representation, and
  - mediation and other forms of dispute resolution.
- (3) In this Part “civil legal services” means any legal services other than the types of advice, assistance and representation that are required to be made available under sections 13, 15 and 16 (criminal legal aid).

## 9 General cases

- (1) Civil legal services are to be available to an individual under this Part if—
- they are civil legal services described in Part 1 of Schedule 1, and

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- (b) the Director has determined that the individual qualifies for the services in accordance with this Part (and has not withdrawn the determination).
- (2) The Lord Chancellor may by order—
- (a) add services to Part 1 of Schedule 1, or
  - (b) vary or omit services described in that Part,
- (whether by modifying that Part or Part 2, 3 or 4 of the Schedule).

## 10 Exceptional cases

- (1) Civil legal services other than services described in Part 1 of Schedule 1 are to be available to an individual under this Part if subsection (2) or (4) is satisfied.
- (2) This subsection is satisfied where the Director—
- (a) has made an exceptional case determination in relation to the individual and the services, and
  - (b) has determined that the individual qualifies for the services in accordance with this Part,
- (and has not withdrawn either determination).
- (3) For the purposes of subsection (2), an exceptional case determination is a determination—
- (a) that it is necessary to make the services available to the individual under this Part because failure to do so would be a breach of—
    - (i) the individual's Convention rights (within the meaning of the Human Rights Act 1998), or
    - (ii) any rights of the individual to the provision of legal services that are enforceable EU rights, or
  - (b) that it is appropriate to do so, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.
- (4) This subsection is satisfied where—
- (a) the services consist of advocacy in proceedings at an inquest under the Coroners Act 1988 into the death of a member of the individual's family,
  - (b) the Director has made a wider public interest determination in relation to the individual and the inquest, and
  - (c) the Director has determined that the individual qualifies for the services in accordance with this Part,
- (and neither determination has been withdrawn).
- (5) For the purposes of subsection (4), a wider public interest determination is a determination that, in the particular circumstances of the case, the provision of advocacy under this Part for the individual for the purposes of the inquest is likely to produce significant benefits for a class of person, other than the individual and the members of the individual's family.
- (6) For the purposes of this section an individual is a member of another individual's family if—
- (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
  - (b) they are cohabitants (as defined in Part 4 of the Family Law Act 1996), or

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- (c) one has parental responsibility for the other.

## 11 Qualifying for civil legal aid

- (1) The Director must determine whether an individual qualifies under this Part for civil legal services in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) criteria set out in regulations made under this paragraph.
- (2) In setting the criteria, the Lord Chancellor—
  - (a) must consider the circumstances in which it is appropriate to make civil legal services available under this Part, and
  - (b) must, in particular, consider the extent to which the criteria ought to reflect the factors in subsection (3).
- (3) Those factors are—
  - (a) the likely cost of providing the services and the benefit which may be obtained by the services being provided,
  - (b) the availability of resources to provide the services,
  - (c) the appropriateness of applying those resources to provide the services, having regard to present and likely future demands for the provision of civil legal services under this Part,
  - (d) the importance for the individual of the matters in relation to which the services would be provided,
  - (e) the nature and seriousness of the act, omission, circumstances or other matter in relation to which the services are sought,
  - (f) the availability to the individual of services provided other than under this Part and the likelihood of the individual being able to make use of such services,
  - (g) if the services are sought by the individual in relation to a dispute, the individual's prospects of success in the dispute,
  - (h) the conduct of the individual in connection with services made available under this Part or an application for such services,
  - (i) the conduct of the individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties, and
  - (j) the public interest.
- (4) In setting the criteria, the Lord Chancellor must seek to secure that, in cases in which more than one form of civil legal service could be provided for an individual, the individual qualifies under this Part for the form of service which in all the circumstances is the most appropriate having regard to the criteria.
- (5) The criteria must reflect the principle that, in many disputes, mediation and other forms of dispute resolution are more appropriate than legal proceedings.
- (6) Regulations under subsection (1)(b) may provide that no criteria apply in relation to a prescribed description of individual or services.

## 12 Determinations

- (1) A determination by the Director that an individual qualifies under this Part for civil legal services must specify—

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- (a) the type of services, and
  - (b) the matters in relation to which the services are to be available.
- (2) Regulations may make provision about the making and withdrawal of determinations under sections 9 and 10.
- (3) Regulations under subsection (2) may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided,
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (i) provision for giving information to individuals who do not qualify for civil legal services under this Part about alternative ways of obtaining or funding civil legal services.
- (4) The circumstances prescribed under subsection (3)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (5) Regulations under subsection (2) must make provision establishing procedures for the review of determinations under sections 9 and 10 and of the withdrawal of such determinations.
- (6) Regulations under subsection (2) may make provision for appeals to a court, tribunal or other person against such determinations and against the withdrawal of such determinations.

### *Criminal legal aid*

## **13 Advice and assistance for individuals in custody**

- (1) Initial advice and initial assistance are to be available under this Part to an individual who is arrested and held in custody at a police station or other premises if the Director has determined that the individual qualifies for such advice and assistance in accordance with this Part (and has not withdrawn the determination).
- (2) The Director must make a determination under this section having regard, in particular, to the interests of justice.
- (3) A determination under this section must specify the type of advice or assistance (or both) to be available under this Part.



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- (4) Regulations may make provision about the making and withdrawal of determinations under this section.
- (5) Regulations under subsection (4) may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided, and
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination.
- (6) The circumstances prescribed under subsection (5)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (7) For the purposes of this section, in relation to an individual who is in custody—
- “initial advice” means advice as to how the law in relation to a matter relevant to the individual's arrest applies in particular circumstances and as to the steps that might be taken having regard to how it applies;
  - “initial assistance” means assistance in taking any of those steps which the individual might reasonably take while in custody, including assistance in the form of advocacy.
- (8) The Lord Chancellor may by regulations provide that prescribed advice or assistance is not initial advice or initial assistance for the purposes of this section.

## 14 Criminal proceedings

In this Part “criminal proceedings” means—

- (a) proceedings before a court for dealing with an individual accused of an offence,
- (b) proceedings before a court for dealing with an individual convicted of an offence, including proceedings in respect of a sentence or order,
- (c) proceedings for dealing with an individual under the Extradition Act 2003,
- (d) proceedings for binding an individual over to keep the peace or to be of good behaviour under section 115 of the Magistrates' Courts Act 1980 and for dealing with an individual who fails to comply with an order under that section,
- (e) proceedings on an appeal brought by an individual under section 44A of the Criminal Appeal Act 1968 (appeal in case of death of appellant),
- (f) proceedings on a reference under section 36 of the Criminal Justice Act 1972 on a point of law following the acquittal of an individual on indictment,

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- (g) proceedings for contempt committed, or alleged to have been committed, by an individual in the face of a court, and
- (h) such other proceedings, before any court, tribunal or other person, as may be prescribed.

## **15 Advice and assistance for criminal proceedings**

- (1) Regulations may provide that prescribed advice and assistance is to be available under this Part to an individual described in subsection (2) if—
  - (a) prescribed conditions are met, and
  - (b) the Director has determined that the individual qualifies for such advice and assistance in accordance with the regulations (and has not withdrawn the determination).
- (2) Those individuals are—
  - (a) individuals who are involved in investigations which may lead to criminal proceedings (other than individuals arrested and held in custody at a police station or other premises),
  - (b) individuals who are before a court, tribunal or other person in criminal proceedings, and
  - (c) individuals who have been the subject of criminal proceedings.
- (3) When making the regulations, the Lord Chancellor must have regard, in particular, to the interests of justice.
- (4) The regulations must require the Director to make determinations under the regulations having regard, in particular, to the interests of justice.
- (5) The regulations may require the Director to make such determinations in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) criteria set out in the regulations.
- (6) The regulations may make provision about the making and withdrawal of determinations under the regulations.
- (7) The regulations may, in particular, include—
  - (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided, and
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination.

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- (8) The circumstances prescribed under subsection (7)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (9) The regulations may provide for the review of, or appeals to a court, tribunal or other person against, a decision by the Director—
  - (a) that the interests of justice do not require advice or assistance to be made available to an individual under the regulations, or
  - (b) that criteria prescribed under subsection (5)(b) are not met.
- (10) In this section “assistance” includes, in particular, assistance in the form of advocacy.

## 16 Representation for criminal proceedings

- (1) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—
  - (a) the individual is a specified individual in relation to the proceedings, and
  - (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).
- (2) Representation for the purposes of criminal proceedings is to be available under this Part to an individual if—
  - (a) the proceedings involve the individual resisting an appeal to the Crown Court otherwise than in an official capacity, and
  - (b) the relevant authority has determined (provisionally or otherwise) that the individual qualifies for such representation in accordance with this Part (and has not withdrawn the determination).
- (3) Where an individual qualifies under this Part for representation for the purposes of criminal proceedings (“the principal proceedings”), representation is also to be available to the individual for the purposes of—
  - (a) any related bail proceedings, and
  - (b) any preliminary or incidental proceedings.
- (4) Regulations may—
  - (a) make provision specifying whether proceedings are or are not to be regarded as preliminary or incidental for the purposes of subsection (3), and
  - (b) make provision for exceptions from subsection (3).
- (5) Regulations under subsection (4)(b) may, in particular, make exceptions for proceedings taking place more than a prescribed period of time before or after the principal proceedings.
- (6) In this section—
  - “the relevant authority”, in relation to a specified individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings;
  - “specified individual” means—

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- (a) in relation to criminal proceedings mentioned in any of paragraphs (a) to (g) of section 14, an individual mentioned in that paragraph in relation to those proceedings, and
- (b) in relation to criminal proceedings prescribed by regulations under section 14(h), a description of individual specified in the regulations in relation to those proceedings.

## 17 Qualifying for representation

- (1) The relevant authority must determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings (whether provisionally or otherwise) in accordance with—
  - (a) section 21 (financial resources) and regulations under that section, and
  - (b) the interests of justice.
- (2) In deciding what the interests of justice consist of for the purposes of such a determination, the following factors must be taken into account—
  - (a) whether, if any matter arising in the proceedings is decided against the individual, the individual would be likely to lose his or her liberty or livelihood or to suffer serious damage to his or her reputation,
  - (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
  - (c) whether the individual may be unable to understand the proceedings or to state his or her own case,
  - (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and
  - (e) whether it is in the interests of another person that the individual be represented.
- (3) The Lord Chancellor may by order amend subsection (2) by adding or varying a factor.
- (4) Regulations may prescribe circumstances in which making representation available to an individual for the purposes of criminal proceedings is to be taken to be in the interests of justice for the purposes of a determination under section 16.
- (5) In this section “the relevant authority”, in relation to an individual and criminal proceedings, means the person who is authorised by or under section 18, 19 or 20 to determine (provisionally or otherwise) whether the individual qualifies under this Part for representation for the purposes of the proceedings.

## 18 Determinations by Director

- (1) The Director is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings, except in circumstances in which a court is authorised to make the determination under regulations under section 19.
- (2) A determination by the Director under section 16 must specify the criminal proceedings.
- (3) Regulations may make provision about the making and withdrawal of determinations by the Director under that section.

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- (4) Regulations under subsection (3) may, in particular, include—
- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision for a determination to be disregarded for the purposes of this Part if made in response to an application that is made otherwise than in accordance with the regulations,
  - (e) provision about conditions which must be satisfied by an applicant before a determination is made,
  - (f) provision about the circumstances in which a determination may or must be withdrawn,
  - (g) provision requiring information and documents to be provided,
  - (h) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (i) provision for the review of a decision by the Director that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings.
- (5) The circumstances prescribed under subsection (4)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (6) An appeal lies to such court, tribunal or other person as may be prescribed against a decision by the Director that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings, subject to subsection (7).
- (7) Regulations may provide for exceptions from subsection (6).
- (8) This section does not authorise the Director to make a provisional determination and accordingly—
- (a) references in this section to a determination do not include a provisional determination, and
  - (b) references in this section to a decision do not include a decision made as part of such a determination.

## 19 Determinations by court

- (1) Regulations may—
- (a) provide that a court before which criminal proceedings take place, or are to take place, is authorised to determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings of a prescribed description, and
  - (b) make provision about the making and withdrawal of such determinations by a court.
- (2) The regulations may, in particular, include—

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- (a) provision about the form and content of determinations and applications for determinations,
  - (b) provision permitting or requiring applications and determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for applications and determinations,
  - (d) provision enabling a court to determine that an individual qualifies under this Part for representation for the purposes of criminal proceedings before another court,
  - (e) provision for the powers of a magistrates' court of any area under the regulations to be exercised by a single justice of the peace for the area, and
  - (f) provision about the circumstances in which a determination may or must be withdrawn.
- (3) The circumstances prescribed under subsection (2)(f) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.
- (4) The regulations must provide that, subject to prescribed exceptions, an appeal lies to such court, tribunal or other person as may be prescribed against a decision by a court that the interests of justice do not require representation to be made available, or to continue to be made available, to an individual under this Part for the purposes of criminal proceedings.
- (5) The regulations may include consequential provision modifying an Act or instrument.
- (6) Regulations under this section may not authorise a court to make a provisional determination and accordingly—
- (a) references in this section to a determination do not include a provisional determination, and
  - (b) references in this section to a decision do not include a decision made as part of such a determination.

## **20 Provisional determinations**

- (1) Regulations may provide that the Director or a court may make a provisional determination that an individual qualifies under this Part for representation for the purposes of criminal proceedings where—
- (a) the individual is involved in an investigation which may result in criminal proceedings,
  - (b) the determination is made for the purposes of criminal proceedings that may result from the investigation, and
  - (c) any prescribed conditions are met.
- (2) The regulations may, in particular, include—
- (a) provision about the stage in an investigation at which a provisional determination may be made,
  - (b) provision about the making and withdrawal of provisional determinations, including provision equivalent to that described in section 18(4)(a) to (i) and (5),
  - (c) provision about the circumstances in which a provisional determination is to cease to be provisional, and

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- (d) provision about the circumstances in which a provisional determination is to be treated as if it were a determination made by the Director or a court in reliance on section 18 or 19.
- (3) In this Part, as it applies in connection with a provisional determination made under regulations under this section as to whether an individual qualifies for representation for the purposes of criminal proceedings, references to proceedings include criminal proceedings that may result from the investigation concerned.

### *Financial resources*

## **21 Financial resources**

- (1) A person may not make a relevant determination that an individual qualifies under this Part for services unless the person has determined that the individual's financial resources are such that the individual is eligible for the services (and has not withdrawn the determination).
- (2) Regulations may—
- (a) make provision about when an individual's financial resources are such that the individual is eligible under this Part for services, and
  - (b) make provision for exceptions from subsection (1).
- (3) Regulations may provide that an individual is to be treated, for the purposes of regulations under subsection (2), as having or not having financial resources of a prescribed description.
- (4) Regulations under subsection (3) may, in particular, provide that the individual is to be treated as having prescribed financial resources of a person of a prescribed description.
- (5) Regulations may make provision about the making and withdrawal of determinations under this section.
- (6) Regulations under subsection (5) may, in particular, include—
- (a) provision about the form and content of determinations,
  - (b) provision permitting or requiring determinations to be made and withdrawn in writing, by telephone or by other prescribed means,
  - (c) provision setting time limits for determinations,
  - (d) provision about conditions which must be satisfied before a determination is made,
  - (e) provision about the circumstances in which a determination may or must be withdrawn,
  - (f) provision requiring information and documents to be provided,
  - (g) provision requiring individuals who are the subject of a determination to be informed of the reasons for making or withdrawing the determination, and
  - (h) provision for the review of a determination in respect of an individual's financial resources.
- (7) The circumstances prescribed under subsection (6)(e) may, in particular, relate to whether the individual who is the subject of the determination has complied with requirements imposed by or under this Part.

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- (8) In this section “relevant determination” means a determination that is required to be carried out in accordance with this section by—
- (a) section 11 or 17, or
  - (b) regulations under section 15 or paragraph 4 of Schedule 3.

## **22 Information about financial resources**

- (1) The relevant authority may make an information request to—
- (a) the Secretary of State,
  - (b) a relevant Northern Ireland Department, or
  - (c) the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”).
- (2) An information request may be made only for the purposes of facilitating a determination about an individual's financial resources for the purposes of this Part.
- (3) An information request made to the Secretary of State or a relevant Northern Ireland Department under this section may request the disclosure of some or all of the following information—
- (a) a relevant individual's full name and any previous names;
  - (b) a relevant individual's address and any previous addresses;
  - (c) a relevant individual's date of birth;
  - (d) a relevant individual's national insurance number;
  - (e) a relevant individual's benefit status at a time specified in the request;
  - (f) information of a prescribed description.
- (4) An information request made to the Commissioners under this section may request the disclosure of some or all of the following information—
- (a) whether or not a relevant individual is employed or was employed at a time specified in the request;
  - (b) the name and address of the employer;
  - (c) whether or not a relevant individual is carrying on a business, trade or profession or was doing so at a time specified in the request;
  - (d) the name under which it is or was carried on;
  - (e) the address of any premises used for the purposes of carrying it on;
  - (f) a relevant individual's national insurance number;
  - (g) a relevant individual's benefit status at a time specified in the request;
  - (h) information of a prescribed description.
- (5) The information that may be prescribed under subsections (3)(f) and (4)(h) includes, in particular, information relating to—
- (a) prescribed income of a relevant individual for a prescribed period, and
  - (b) prescribed capital of a relevant individual.
- (6) Information may not be prescribed under subsection (4)(h) without the Commissioners' consent.
- (7) The Secretary of State, the relevant Northern Ireland Departments and the Commissioners may disclose to the relevant authority information specified in an information request made under this section.



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(8) In this section—

“benefit status”, in relation to an individual, means whether or not the individual is in receipt of a prescribed benefit or benefits and, if so—

- (a) which benefit or benefits the individual is receiving,
- (b) whether the individual is entitled to the benefit or benefits alone or jointly,
- (c) in prescribed cases, the amount the individual is receiving by way of the benefit (or each of the benefits) (“the benefit amount”), and
- (d) in prescribed cases, where the benefit consists of a number of elements, what those elements are and the amount included in respect of each element in calculating the benefit amount;

“the relevant authority” means—

- (a) a prescribed person, or
- (b) in relation to circumstances for which no person is prescribed, the Director;

“a relevant individual”, in relation to an information request for the purposes of a determination about an individual's financial resources, means—

- (a) that individual, and
- (b) any other individual whose financial resources are or may be relevant for the purposes of the determination;

“relevant Northern Ireland Department” means the Department for Social Development in Northern Ireland or the Department of Finance and Personnel in Northern Ireland.

### *Contributions and costs*

## **23 Payment for services**

- (1) An individual to whom services are made available under this Part is not to be required to make a payment in connection with the provision of the services, except where regulations provide otherwise.
- (2) The regulations may, in particular, provide that in prescribed circumstances an individual must do one or more of the following—
  - (a) pay the cost of the services;
  - (b) pay a contribution in respect of the cost of the services of a prescribed amount;
  - (c) pay a prescribed amount in respect of administration costs.
- (3) The regulations may, in particular, provide that where—
  - (a) civil legal services are provided to an individual under this Part in relation to a dispute, and
  - (b) prescribed conditions are met,
 the individual must pay a prescribed amount which may exceed the cost of the civil legal services provided.
- (4) The regulations may, in particular, make provision about the determination of the cost of services for the purposes of the regulations.
- (5) The regulations may, in particular—

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- (a) provide for an individual's liability under the regulations to make a payment to change or cease in prescribed circumstances,
  - (b) provide for an individual's liability under the regulations to arise on a determination by a prescribed person,
  - (c) provide for such a determination to be varied or withdrawn by a prescribed person, and
  - (d) provide for the review of such a determination in respect of an individual's liability to make a payment.
- (6) The regulations may, in particular, provide that an individual is to be treated, for the purposes of the regulations, as having or not having financial resources of a prescribed description.
- (7) Regulations under subsection (6) may, in particular, provide that the individual is to be treated as having prescribed financial resources of a person of a prescribed description.
- (8) The regulations may, in particular, include provision for an amount to be payable entirely or partly—
- (a) by periodical payments;
  - (b) by one or more lump sums;
  - (c) out of income;
  - (d) out of capital.
- (9) The regulations may, in particular, include—
- (a) provision requiring information and documents to be provided,
  - (b) provision about the time and manner in which payments must be made,
  - (c) provision about the person to whom payments must be made, and
  - (d) provision about what that person must do with the payments.
- (10) The regulations may, in particular, make provision for the payment by an individual of interest, on such terms as may be prescribed, in respect of—
- (a) a loan made to the individual under this Part,
  - (b) a payment in connection with the provision of services which is not required by the regulations to be made by the individual until after the time when the services are provided, and
  - (c) so much of a payment as remains unpaid after the time when it is required by the regulations to be made by the individual.
- (11) The regulations—
- (a) must make provision for the repayment to an individual of any amount in excess of the individual's liability under the regulations or under section 24, and
  - (b) may make provision for the payment of interest on the excess.
- (12) In this section—
- “administration costs” means costs in connection with the administration of legal aid, including the administration of charges arising under section 25;
  - “prescribed amount” includes an amount calculated in a prescribed manner.

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## 24 Enforcement

- (1) Regulations may make provision about the enforcement of an obligation to make a payment imposed under section 23.
- (2) The regulations may, in particular, make provision for costs incurred in connection with the enforcement of an individual's obligation to make a payment to be recovered from the individual.
- (3) Regulations under this section may, in particular—
  - (a) provide that overdue amounts are recoverable summarily as a civil debt;
  - (b) provide that overdue amounts are recoverable as if they were payable under an order of the High Court or a county court, if the court in question so orders on the application of the person to whom the amounts are due.
- (4) Regulations under this section may include provision requiring information and documents to be provided.
- (5) Schedule 2 (criminal legal aid: motor vehicle orders) has effect.

## 25 Charges on property in connection with civil legal services

- (1) Where civil legal services are made available to an individual under this Part, the amounts described in subsection (2) are to constitute a first charge on—
  - (a) any property recovered or preserved by the individual in proceedings, or in any compromise or settlement of a dispute, in connection with which the services were provided (whether the property is recovered or preserved for the individual or another person), and
  - (b) any costs payable to the individual by another person in connection with such proceedings or such a dispute.
- (2) Those amounts are—
  - (a) amounts expended by the Lord Chancellor in securing the provision of the services (except to the extent that they are recovered by other means), and
  - (b) other amounts payable by the individual in connection with the services under section 23 or 24.
- (3) Regulations may make provision for exceptions from subsection (1).
- (4) Regulations may make provision about the charge under subsection (1) including, in particular—
  - (a) provision as to whether the charge is in favour of the Lord Chancellor or a person by whom the services were made available,
  - (b) provision modifying the charge for the purposes of its application in prescribed cases or circumstances, and
  - (c) provision about the enforcement of the charge.
- (5) Regulations under subsection (4)(c) may, in particular, include—
  - (a) provision requiring amounts recovered by the individual in proceedings or as part of a compromise or settlement of a dispute, and costs payable to the individual, to be paid to the Lord Chancellor or a person by whom the services were made available,
  - (b) provision about the time and manner in which the amounts must be paid,

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- (c) provision about what the Lord Chancellor or the person by whom the services were made available must do with the amounts,
  - (d) provision for the payment of interest on all or part of the amounts,
  - (e) provision for the payment to the individual concerned of any amount in excess of the amounts described in subsection (2), and
  - (f) provision for the enforcement of requirements described in paragraph (a).
- (6) Regulations under this section may include provision requiring information and documents to be provided.

## 26 Costs in civil proceedings

- (1) Costs ordered against an individual in relevant civil proceedings must not exceed the amount (if any) which it is reasonable for the individual to pay having regard to all the circumstances, including—
- (a) the financial resources of all of the parties to the proceedings, and
  - (b) their conduct in connection with the dispute to which the proceedings relate.
- (2) In subsection (1) “relevant civil proceedings”, in relation to an individual, means—
- (a) proceedings for the purposes of which civil legal services are made available to the individual under this Part, or
  - (b) if such services are made available to the individual under this Part for the purposes of only part of proceedings, that part of the proceedings.
- (3) Regulations may make provision for exceptions from subsection (1).
- (4) In assessing for the purposes of subsection (1) the financial resources of an individual to whom civil legal services are made available, the following must not be taken into account, except so far as prescribed—
- (a) the individual's clothes and household furniture, and
  - (b) the implements of the individual's trade.
- (5) Subject to subsections (1) to (4), regulations may make provision about costs in relation to proceedings for the purposes of which civil legal services are made available under this Part.
- (6) Regulations under subsection (5) may, in particular, make provision—
- (a) specifying the principles to be applied in determining the amount of any costs which may be awarded against a party to whom civil legal services are made available under this Part,
  - (b) limiting the circumstances in which, or the extent to which, an order for costs may be enforced against such a party,
  - (c) as to the cases in which, and the extent to which, such a party may be required to give security for costs and the manner in which it is to be given,
  - (d) requiring the payment by the Lord Chancellor of the whole or part of any costs incurred by a party to whom civil legal services are not made available under this Part,
  - (e) specifying the principles to be applied in determining the amount of costs which may be awarded to a party to whom civil legal services are made available under this Part,
  - (f) as to the court, tribunal or other person by whom the amount of any costs is to be determined, and

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- (g) as to the extent to which any determination of that amount is to be final.
- (7) Regulations may provide that an individual is to be treated, for the purposes of subsection (1) or regulations under subsection (3) or (5), as having or not having financial resources of a prescribed description (but such regulations have effect subject to subsection (4)).
- (8) Regulations under subsection (7) may, in particular, provide that the individual is to be treated as having prescribed financial resources of a person of a prescribed description.
- (9) Regulations under this section may include provision requiring information and documents to be provided.

#### *Providers of services etc*

### **27 Choice of provider of services etc**

- (1) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by the means selected by the individual.
- (2) The Lord Chancellor may discharge that duty, in particular, by arranging for the services to be provided by telephone or by other electronic means.
- (3) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by a person selected by the individual, subject to subsections (4) to (10).
- (4) An individual who qualifies under this Part for representation for the purposes of criminal proceedings by virtue of a determination under section 16 may select any representative or representatives willing to act for the individual, subject to regulations under subsection (6).
- (5) Where an individual exercises that right, representation by the selected representative or representatives is to be available under this Part for the purposes of the proceedings.
- (6) Regulations may provide that in prescribed circumstances—
- (a) the right conferred by subsection (4) is not to apply in cases of prescribed descriptions,
  - (b) an individual who has been provided with advice or assistance in accordance with section 13 or regulations under section 15 by a person selected by the individual is to be taken to have selected that person under subsection (4),
  - (c) the right conferred by subsection (4) is not to include a right to select a representative of a prescribed description,
  - (d) that right is to select only a representative located in a prescribed area or of a prescribed description,
  - (e) that right is to select not more than a prescribed number of representatives to act at any one time, and
  - (f) that right is not to include a right to select a representative in place of a representative previously selected.
- (7) Regulations under subsection (6)(b) may prescribe circumstances in which an individual is to be taken to have selected a person to provide advice or assistance.

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- (8) Regulations may provide that in prescribed circumstances the Lord Chancellor is not required to make available representation for an individual by a prescribed representative.
- (9) Provision made under subsection (8) does not prejudice any right of the individual to select another representative.
- (10) The circumstances which may be prescribed under this section include that a determination has been made by a prescribed person.

## **28 Position of providers of services**

- (1) The fact that services provided for an individual are or could be provided under arrangements made for the purposes of this Part does not affect—
  - (a) the relationship between the individual and the person by whom the services are provided,
  - (b) any privilege arising out of that relationship, or
  - (c) any right which the individual may have to be indemnified by another person in respect of expenses incurred by the individual,except to the extent that regulations provide otherwise.
- (2) A person who provides services under arrangements made for the purposes of this Part must not take any payment in respect of the services apart from—
  - (a) payment made in accordance with the arrangements, and
  - (b) payment authorised by the Lord Chancellor to be taken.
- (3) Regulations may provide that the withdrawal of a determination that an individual qualifies for prescribed services under this Part does not affect the right of any person who has provided such services to the individual under arrangements made for the purposes of this Part to remuneration for work done before the date of the withdrawal.

## **29 Code of conduct**

- (1) The Lord Chancellor must publish a code of conduct to be observed by the following persons when providing services to an individual under arrangements made for the purposes of this Part—
  - (a) civil servants, and
  - (b) employees of a body established and maintained by the Lord Chancellor.
- (2) The code must include—
  - (a) duties to avoid discrimination,
  - (b) duties to protect the interests of the individuals for whom services are provided,
  - (c) duties to courts and tribunals,
  - (d) duties to avoid conflicts of interest,
  - (e) duties of confidentiality, and
  - (f) duties on persons who are members of a professional body to comply with the rules of the body.
- (3) The Lord Chancellor must lay the code, and any revision of the code, before Parliament.

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- (4) The persons described in subsection (1)(a) and (b) are not subject to the direction of the Lord Chancellor when providing services to an individual under arrangements made for the purposes of this Part.

### **30 Position of other parties, courts and tribunals**

- (1) Except as expressly provided by regulations, any rights conferred by or under this Part on an individual for whom services are provided under this Part for the purposes of proceedings do not affect—
- (a) the rights or liabilities of other parties to the proceedings, or
  - (b) the principles on which the discretion of a court or tribunal is normally exercised.
- (2) Regulations may make provision about the procedure of a court or tribunal in relation to services made available under this Part.
- (3) Regulations under subsection (2) may, in particular, authorise the exercise of the functions of a court or tribunal by—
- (a) a member or officer of that court or tribunal, or
  - (b) another court or tribunal.

### *Supplementary*

### **31 Legal aid for legal persons**

Schedule 3 (legal aid for legal persons) has effect.

### **32 Foreign law**

- (1) The civil legal services described in Part 1 of Schedule 1 do not include services relating to any law other than the law of England and Wales, except—
- (a) where express provision to the contrary is made by or under Part 1 of Schedule 1;
  - (b) where such law is relevant for determining any issue relating to the law of England and Wales;
  - (c) in other circumstances specified by the Lord Chancellor by order.
- (2) A determination by the Director or a court under section 13, 15 or 16 that an individual qualifies for advice, assistance or representation under this Part does not impose a duty on the Lord Chancellor to secure that services relating to any law other than the law of England and Wales are made available, except—
- (a) where such law is relevant for determining any issue relating to the law of England and Wales;
  - (b) in other circumstances specified by the Lord Chancellor by order.
- (3) The Lord Chancellor may not make an order under subsection (1) or (2) unless the Lord Chancellor considers—
- (a) that it is necessary to make the order because failure to do so would result in a breach of—
    - (i) an individual's Convention rights (within the meaning of the Human Rights Act 1998), or

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- (ii) any rights of an individual to the provision of legal services that are enforceable EU rights, or
- (b) that it is appropriate to make the order having regard to any risk that failure to do so would result in such a breach.

### 33 Restriction on disclosure of information about financial resources

- (1) A person to whom information is disclosed under section 22 or this subsection may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating a determination in respect of an individual's financial resources that is required under section 21.
- (2) A person to whom such information is disclosed must not—
  - (a) disclose the information other than in accordance with subsection (1), or
  - (b) use the information other than for the purpose of facilitating a determination described in subsection (1).
- (3) Subsection (2) does not prevent—
  - (a) the disclosure of information in accordance with an enactment or an order of a court,
  - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or Northern Ireland or any other jurisdiction, except where regulations otherwise provide,
  - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court, or
  - (d) the disclosure of information which has previously been lawfully disclosed to the public.
- (4) A person who discloses or uses information in contravention of this section is guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- (5) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that the disclosure or use was lawful.
- (6) In this section “enactment” includes—
  - (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation.
- (7) In relation to an offence under this section committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4)(b)(i) to 12 months has effect as if it were a reference to 6 months.



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### **34 Restriction on disclosure of other information**

- (1) This section applies to information that is provided—
  - (a) to the Lord Chancellor, the Director, a court, a tribunal or any other person on whom functions are imposed or conferred by or under this Part, and
  - (b) in connection with the case of an individual seeking or receiving services provided under arrangements made for the purposes of this Part.
- (2) Such information must not be disclosed, subject to the exceptions in section 35.
- (3) A person who discloses information in contravention of this section is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that the disclosure was lawful.
- (5) Proceedings for an offence under this section may not be brought without the consent of the Director of Public Prosecutions.
- (6) Nothing in this section applies to information if—
  - (a) it is provided to a person providing services under arrangements made for the purposes of this Part, and
  - (b) it is provided by or on behalf of an individual seeking or receiving the services.
- (7) Nothing in this section applies to information to which section 33 applies.

### **35 Exceptions from restriction under section 34**

- (1) Section 34(2) does not prevent the disclosure of information—
  - (a) for the purpose of enabling or assisting the Lord Chancellor or the Secretary of State for Justice to carry out their functions (whether conferred or imposed by an Act or otherwise),
  - (b) for the purpose of enabling or assisting the Director to carry out functions imposed or conferred on the Director by or under this Part, or
  - (c) for the purpose of enabling or assisting a court, tribunal or other person on whom functions are imposed or conferred by or under this Part to carry out those functions.
- (2) Section 34(2) does not prevent—
  - (a) the disclosure of information in accordance with the law of England and Wales or an order of a court,
  - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or any other jurisdiction, except where regulations otherwise provide,
  - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court,
  - (d) the disclosure of information which has previously been lawfully disclosed to the public, or
  - (e) the disclosure of information for the purpose of facilitating the proper performance by a tribunal of disciplinary functions.
- (3) Section 34(2) does not prevent the disclosure of—

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- (a) information in the form of a summary or collection of information that is framed so that information relating to an individual cannot be ascertained from it, or
  - (b) information about the amount of any grant, loan or other payment made to a person by the Lord Chancellor under arrangements made for the purposes of this Part.
- (4) Section 34(2) does not prevent the disclosure of information for any purpose—
- (a) with the consent of the individual in connection with whose case it was provided, and
  - (b) if the information was provided other than by that individual, with the consent of the person who provided the information.
- (5) Section 34(2) does not prevent the disclosure of information after the end of the restricted period if—
- (a) the disclosure is by a person who is a public authority for the purposes of the Freedom of Information Act 2000 or who is acting on behalf of such a person, and
  - (b) the information is not held by the public authority on behalf of another person.
- (6) The restricted period is the period of 100 years beginning with the end of the calendar year in which a record containing the information was first created by a person to whom the information was provided in connection with a case described in section 34(1)(b).

### **36 Misrepresentation**

- (1) This section applies where a person—
- (a) intentionally fails to comply with a requirement imposed by or under this Part to provide documents or information, or
  - (b) in providing documents or information in accordance with such a requirement, makes a statement or representation knowing or believing it to be false.
- (2) The person is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) Proceedings in respect of an offence under this section may (despite anything in the Magistrates' Courts Act 1980) be brought at any time within the period of 6 months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify a prosecution comes to the prosecutor's knowledge.
- (4) Subsection (3) does not authorise the commencement of proceedings for an offence more than 2 years after the date on which the offence was committed.
- (5) A county court is to have jurisdiction to hear and determine an action brought by the Lord Chancellor to recover loss sustained by reason of—
- (a) the failure by a person to comply with a requirement imposed by or under this Part to provide documents or information, or
  - (b) a false statement or false representation made by a person in providing documents or information in accordance with such a requirement.

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### **37 Status of Director and Lord Chancellor**

- (1) The Director is to carry out the functions of the office on behalf of the Crown.
- (2) Service as the Director is service in the civil service of the State.
- (3) The Lord Chancellor is to be treated as a corporation sole—
  - (a) for all purposes relating to the acquisition, holding, management and disposal of property and interests in property under this Part, and
  - (b) for all other purposes relating to the Lord Chancellor's functions in connection with legal aid and other functions under this Part.
- (4) An instrument in connection with the acquisition, holding, management or disposal by the Lord Chancellor of property or an interest in property under this Part or for a purpose mentioned in subsection (3)(b) may be executed on the Lord Chancellor's behalf by a person authorised by the Lord Chancellor for that purpose.
- (5) Any such instrument purporting to have been executed by the Lord Chancellor or on the Lord Chancellor's behalf is to be received in evidence and, unless the contrary is proved, to be treated as having been so executed.

### **38 Abolition of Legal Services Commission**

- (1) The Legal Services Commission ceases to exist.
- (2) Schedule 4 (transfer of employees and property etc of Legal Services Commission) has effect.
- (3) The Lord Chancellor must, as soon as practicable after subsection (1) comes into force—
  - (a) prepare a report on how the Legal Services Commission has carried out its functions in the final period,
  - (b) lay a copy of the report before Parliament, and
  - (c) once it has been laid, publish the report.
- (4) The Lord Chancellor must, as soon as practicable after subsection (1) comes into force—
  - (a) prepare a statement of accounts for the Legal Services Commission for the final period, and
  - (b) send a copy of the statement to the Comptroller and Auditor General.
- (5) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the statement, and
  - (b) arrange for a copy of the statement and the report to be laid before Parliament.
- (6) In this section—
  - “the final period” means the period—
    - (a) beginning with end of the last financial year for which the Legal Services Commission produced a report and accounts in accordance with paragraphs 14 and 16 of Schedule 1 to the Access to Justice Act 1999, and
    - (b) ending immediately before the day on which subsection (1) comes into force;
  - “financial year” means a period of 12 months ending with 31 March.

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### Commencement Information

- II** S. 38 wholly in force at 1.4.2013; s. 38 not in force at Royal Assent, see s, 151(1); s. 38(2) in force at 4.3.2013 and s. 38(1)(3)-(6) in force at 1.4.2013 by S.I. 2013/453, arts. 2(a), 3(a)

## 39 Consequential and transitional provision

- (1) Schedule 5 (legal aid: consequential amendments) has effect.
- (2) Where the Lord Chancellor considers it appropriate as part of the arrangements for effecting the transition from the operation of Part 1 of the Access to Justice Act 1999 to the operation of this Part of this Act, the Lord Chancellor may by regulations make provision requiring or enabling prescribed 1999 Act services to be made available to individuals or other persons under this Part for a period specified or described in the regulations.
- (3) In subsection (2) “1999 Act services” means services which, immediately before the day on which the first regulations under that subsection come into force, may be funded under Part 1 of the Access to Justice Act 1999.
- (4) Where the Lord Chancellor considers it appropriate for the Legal Services Commission to cease to exist before this Part is brought fully into force, the Lord Chancellor may by regulations make provision for the purpose of requiring or enabling the Lord Chancellor and the Director, or persons authorised by the Lord Chancellor or the Director, to carry out LSC functions for a period specified or described in the regulations.
- (5) In subsection (4) “LSC functions” means functions conferred or imposed on the Legal Services Commission by or under Part 1 of the Access to Justice Act 1999.
- (6) Regulations under subsection (4) may not include provision requiring or enabling the Lord Chancellor—
  - (a) to take decisions about whether services should be funded in individual cases, or
  - (b) to give directions or guidance about the carrying out of functions under Part 1 of the Access to Justice Act 1999 in relation to individual cases.
- (7) Regulations under this section—
  - (a) may amend, repeal, revoke or otherwise modify Part 1 of the Access to Justice Act 1999, this Part of this Act, any other Act and any instrument made under an Act;
  - (b) may describe a period, in particular, by reference to the coming into force of a provision of this Part of this Act or the repeal of a provision of Part 1 of the Access to Justice Act 1999.
- (8) The requirement for regulations under this section to specify or describe a period does not prevent the making of further regulations under this section.
- (9) The powers to make regulations under this section are without prejudice to the generality of the powers to make regulations under the other provisions of this Part and under section 149.
- (10) In this section “Act” includes an Act or Measure of the National Assembly for Wales.

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#### **40 Northern Ireland: information about financial resources**

Schedule 6 (Northern Ireland: information about financial resources) has effect.

#### **41 Orders, regulations and directions**

- (1) Orders, regulations and directions under this Part—
  - (a) may make different provision for different cases, circumstances or areas,
  - (b) may make provision generally or only for specified cases, circumstances or areas, and
  - (c) may make provision having effect for a period specified or described in the order, regulations or direction.
- (2) They may, in particular, make provision by reference to—
  - (a) services provided for the purposes of proceedings before a particular court, tribunal or other person,
  - (b) services provided for a particular class of individual, or
  - (c) services provided for individuals selected by reference to particular criteria or on a sampling basis.
- (3) Orders and regulations under this Part—
  - (a) may provide for a person to exercise a discretion in dealing with any matter,
  - (b) may make provision by reference to a document produced by any person, and
  - (c) may make consequential, supplementary, incidental, transitional or saving provision.
- (4) Orders and regulations under this Part are to be made by statutory instrument.
- (5) A statutory instrument containing an order or regulations under this Part is subject to annulment in pursuance of a resolution of either House of Parliament, unless it is an instrument described in subsection (6) or (9).
- (6) A statutory instrument containing an order or regulations listed in subsection (7) (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Those orders and regulations are—
  - (a) orders under section 9;
  - (b) regulations under section 11(1)(b), other than regulations in respect of which the Lord Chancellor has made an urgency statement;
  - (c) regulations under section 13(8);
  - (d) orders under section 17(3);
  - (e) regulations under section 18(7);
  - (f) regulations under section 19;
  - (g) regulations under section 20;
  - (h) regulations under section 22;
  - (i) regulations under section 26(3) or (6)(b) or (d);
  - (j) regulations under section 27(6)(a) or (8);
  - (k) regulations under section 39 that amend or repeal a provision of an Act (as defined in that section), other than regulations revoking such regulations

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- or inserting or repealing provision previously repealed or inserted by such regulations;
- (l) regulations under paragraph 5(9) of Schedule 3;
  - (m) regulations under paragraph 11 of Schedule 4 that amend or repeal a provision of an Act (as defined in that Schedule).
- (8) An urgency statement is a statement that the Lord Chancellor considers that it is desirable for the regulations to come into force without delay for the reasons given in the statement.
- (9) Where a statutory instrument contains regulations under section 11(1)(b) in respect of which the Lord Chancellor has made an urgency statement—
- (a) the regulations may not come into force before the instrument and the statement are laid before Parliament, and
  - (b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made unless the instrument is approved by a resolution of each House of Parliament before the end of that period.
- (10) In reckoning the period of 120 days no account is to be taken of any time—
- (a) during which Parliament is dissolved or prorogued, or
  - (b) during which both Houses are adjourned for more than 4 days.
- (11) Where regulations cease to have effect under subsection (9) that does not affect—
- (a) anything previously done in reliance on the regulations, or
  - (b) the making of further regulations.

## 42 Interpretation

### (1) In this Part—

“advocacy” means the exercise of a right of audience before a court, tribunal or other person;

“civil legal services” has the meaning given in section 8;

“civil servant” means an individual employed in the civil service of the State;

“criminal proceedings” has the meaning given in section 14;

“the Director” means the Director of Legal Aid Casework;

“functions” includes powers and duties;

“legal aid” has the meaning given in section 1;

“legal proceedings” means proceedings before a court or tribunal;

“legal services” has the meaning given in section 8;

“modify”, in relation to an Act or instrument, includes amend, repeal or revoke and related terms are to be interpreted accordingly;

“prescribed” means prescribed by regulations (except in Schedule 6) and related terms are to be interpreted accordingly;

“regulations” means regulations made by the Lord Chancellor (except in Schedule 6);

“remuneration” includes disbursements;

“representation” means representation for the purposes of proceedings and includes—

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- (a) the advice and assistance which is usually given by a representative in the steps preliminary or incidental to proceedings, and
  - (b) subject to any time limits which may be prescribed, advice and assistance as to any appeal.
- (2) In this Part references to proceedings are to be interpreted in accordance with section 20(3).

#### **43 Crown application**

This Part binds the Crown.

### **PART 2**

#### LITIGATION FUNDING AND COSTS

##### *Payments for legal services in civil cases*

#### **44 Conditional fee agreements: success fees**

- (1) In section 58 of the Courts and Legal Services Act 1990 (conditional fee agreements), in subsection (2)—
- (a) omit “and” after paragraph (a), and
  - (b) after paragraph (b) insert “and
  - (c) references to a success fee, in relation to a conditional fee agreement, are to the amount of the increase.”
- (2) After subsection (4) of that section insert—
- “(4A) The additional conditions are applicable to a conditional fee agreement which—
- (a) provides for a success fee, and
  - (b) relates to proceedings of a description specified by order made by the Lord Chancellor for the purposes of this subsection.
- (4B) The additional conditions are that—
- (a) the agreement must provide that the success fee is subject to a maximum limit,
  - (b) the maximum limit must be expressed as a percentage of the descriptions of damages awarded in the proceedings that are specified in the agreement,
  - (c) that percentage must not exceed the percentage specified by order made by the Lord Chancellor in relation to the proceedings or calculated in a manner so specified, and
  - (d) those descriptions of damages may only include descriptions of damages specified by order made by the Lord Chancellor in relation to the proceedings.”
- (3) In section 58A of that Act (conditional fee agreements: supplementary), in subsection (5) after “section 58(4)” insert “, (4A) or (4B) ”.

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(4) For subsection (6) of that section substitute—

“(6) A costs order made in proceedings may not include provision requiring the payment by one party of all or part of a success fee payable by another party under a conditional fee agreement.”

(5) In section 120(4) of that Act (regulations and orders subject to parliamentary approval) after “58(4),” insert “ (4A) or (4B), ”.

(6) The amendment made by subsection (4) does not prevent a costs order including provision in relation to a success fee payable by a person (“P”) under a conditional fee agreement entered into before the day on which that subsection comes into force (“the commencement day”) if—

- (a) the agreement was entered into specifically for the purposes of the provision to P of advocacy or litigation services in connection with the matter that is the subject of the proceedings in which the costs order is made, or
- (b) advocacy or litigation services were provided to P under the agreement in connection with that matter before the commencement day.

#### Commencement Information

- I2** S. 44 partly in force; s. 44 not in force at Royal Assent, see s. 151(1); s. 44 in force at 19.1.2013 for specified purposes and at 1.4.2013 except in relation to specified proceedings by [S.I. 2013/77](#), [arts. 2\(1\)\(a\), 3\(a\)](#) (with [art. 4](#))

## 45 Damages-based agreements

(1) Section 58AA of the Courts and Legal Services Act 1990 (damages-based agreements) is amended as follows.

(2) In subsection (1) omit “relates to an employment matter and”.

(3) In subsection (2)—

- (a) after “But” insert “ (subject to subsection (9)) ”, and
- (b) omit “relates to an employment matter and”.

(4) Omit subsection (3)(b).

(5) After subsection (4)(a) insert—

“(aa) must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of a description prescribed by the Lord Chancellor;”.

(6) In subsection (4)(b), at the beginning insert “ if regulations so provide, ”.

(7) In subsection (4)(d) for “has provided prescribed information” substitute “ has complied with such requirements (if any) as may be prescribed as to the provision of information ”.

(8) After subsection (6) insert—



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“(6A) Rules of court may make provision with respect to the assessment of costs in proceedings where a party in whose favour a costs order is made has entered into a damages-based agreement in connection with the proceedings.”

(9) After subsection (7) insert—

“(7A) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for the purposes of this section) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.”

(10) After subsection (8) insert—

“(9) Where section 57 of the Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies to a damages-based agreement other than one relating to an employment matter, subsections (1) and (2) of this section do not make it unenforceable.

(10) For the purposes of subsection (9) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.”

(11) In the heading of that section omit “relating to employment matters”.

(12) In section 120(4) of that Act (regulations and orders subject to parliamentary approval) for “58AA” substitute “ 58AA(4) ”.

(13) The amendments made by subsections (1) to (11) do not apply in relation to an agreement entered into before this section comes into force.

#### **Commencement Information**

**I3** S. 45 wholly in force at 1.4.2013; s. 45 not in force at Royal Assent, see s. 151(1); s. 45(1)(8) in force at 1.10.2012 by S.I. 2012/2412, art. 2(a); s. 45(2)-(7)(9)-(13) in force for specified purposes at 19.1.2013 and otherwise in force at 1.4.2013 by S.I. 2013/77, arts. 2(1)(b), 3(b)

## **46 Recovery of insurance premiums by way of costs**

(1) In the Courts and Legal Services Act 1990, after section 58B insert—

### **“58C Recovery of insurance premiums by way of costs**

(1) A costs order made in favour of a party to proceedings who has taken out a costs insurance policy may not include provision requiring the payment of an amount in respect of all or part of the premium of the policy, unless such provision is permitted by regulations under subsection (2).

(2) The Lord Chancellor may by regulations provide that a costs order may include provision requiring the payment of such an amount where—

- (a) the order is made in favour of a party to clinical negligence proceedings of a prescribed description,
- (b) the party has taken out a costs insurance policy insuring against the risk of incurring a liability to pay for one or more expert reports in

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- respect of clinical negligence in connection with the proceedings (or against that risk and other risks),
- (c) the policy is of a prescribed description,
  - (d) the policy states how much of the premium relates to the liability to pay for an expert report or reports in respect of clinical negligence (“the relevant part of the premium”), and
  - (e) the amount is to be paid in respect of the relevant part of the premium.
- (3) Regulations under subsection (2) may include provision about the amount that may be required to be paid by the costs order, including provision that the amount must not exceed a prescribed maximum amount.
- (4) The regulations may prescribe a maximum amount, in particular, by specifying—
- (a) a percentage of the relevant part of the premium;
  - (b) an amount calculated in a prescribed manner.
- (5) In this section—
- “clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);
- “clinical negligence proceedings” means proceedings which include a claim for damages in respect of clinical negligence;
- “costs insurance policy”, in relation to a party to proceedings, means a policy insuring against the risk of the party incurring a liability in those proceedings;
- “expert report” means a report by a person qualified to give expert advice on all or most of the matters that are the subject of the report;
- “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in court), whether commenced or contemplated.”
- (2) In the Access to Justice Act 1999, omit section 29 (recovery of insurance premiums by way of costs).
- (3) The amendments made by this section do not apply in relation to a costs order made in favour of a party to proceedings who took out a costs insurance policy in relation to the proceedings before the day on which this section comes into force.

#### Commencement Information

- I4** S. 46 partly in force; s. 46 not in force at Royal Assent, see s. 151(1); s. 46 in force at 19.1.2013 for specified purposes and at 1.4.2013 except in relation to specified proceedings by [S.I. 2013/77](#), [arts. 2\(1\)\(c\)](#), [3\(c\)](#) (with [art. 4](#))

#### 47 Recovery where body undertakes to meet costs liabilities

- (1) In the Access to Justice Act 1999, omit section 30 (recovery where body undertakes to meet costs liabilities).
- (2) The repeal made by subsection (1) does not apply in relation to a costs order made in favour of a person to whom a body gave an undertaking before the day on which

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this section comes into force if the undertaking was given specifically in respect of the costs of other parties to proceedings relating to the matter which is the subject of the proceedings in which the costs order is made.

#### **48 Sections 44 and 46 and diffuse mesothelioma proceedings**

- (1) Sections 44 and 46 may not be brought into force in relation to proceedings relating to a claim for damages in respect of diffuse mesothelioma until the Lord Chancellor has—
  - (a) carried out a review of the likely effect of those sections in relation to such proceedings, and
  - (b) published a report of the conclusions of the review.
- (2) In this section “diffuse mesothelioma” has the same meaning as in the Pneumoconiosis etc (Workers' Compensation) Act 1979.

#### **49 Divorce etc proceedings: orders for payment in respect of legal services**

- (1) In section 22 of the Matrimonial Causes Act 1973 (maintenance pending suit)—
  - (a) number the existing provision subsection (1), and
  - (b) after that subsection insert—
    - “(2) An order under this section may not require a party to a marriage to pay to the other party any amount in respect of legal services for the purposes of the proceedings.
    - (3) In subsection (2) “legal services” has the same meaning as in section 22ZA.”
- (2) After that section insert—

##### **“22ZA Orders for payment in respect of legal services**

- (1) In proceedings for divorce, nullity of marriage or judicial separation, the court may make an order or orders requiring one party to the marriage to pay to the other (“the applicant”) an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings.
- (2) The court may also make such an order or orders in proceedings under this Part for financial relief in connection with proceedings for divorce, nullity of marriage or judicial separation.
- (3) The court must not make an order under this section unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.
- (4) For the purposes of subsection (3), the court must be satisfied, in particular, that—
  - (a) the applicant is not reasonably able to secure a loan to pay for the services, and
  - (b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.

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- (5) An order under this section may be made for the purpose of enabling the applicant to obtain legal services of a specified description, including legal services provided in a specified period or for the purposes of a specified part of the proceedings.
- (6) An order under this section may—
  - (a) provide for the payment of all or part of the amount by instalments of specified amounts, and
  - (b) require the instalments to be secured to the satisfaction of the court.
- (7) An order under this section may direct that payment of all or part of the amount is to be deferred.
- (8) The court may at any time in the proceedings vary an order made under this section if it considers that there has been a material change of circumstances since the order was made.
- (9) For the purposes of the assessment of costs in the proceedings, the applicant's costs are to be treated as reduced by any amount paid to the applicant pursuant to an order under this section for the purposes of those proceedings.
- (10) In this section “legal services”, in relation to proceedings, means the following types of services—
  - (a) providing advice as to how the law applies in the particular circumstances,
  - (b) providing advice and assistance in relation to the proceedings,
  - (c) providing other advice and assistance in relation to the settlement or other resolution of the dispute that is the subject of the proceedings, and
  - (d) providing advice and assistance in relation to the enforcement of decisions in the proceedings or as part of the settlement or resolution of the dispute,
 and they include, in particular, advice and assistance in the form of representation and any form of dispute resolution, including mediation.
- (11) In subsections (5) and (6) “specified” means specified in the order concerned.”

## **50 Divorce etc proceedings: matters to be considered by court making legal services order**

After section 22ZA of the Matrimonial Causes Act 1973 insert—

### **“22ZB Matters to which court is to have regard in deciding how to exercise power under section 22ZA**

- (1) When considering whether to make or vary an order under section 22ZA, the court must have regard to—
  - (a) the income, earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future,

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- (b) the financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future,
  - (c) the subject matter of the proceedings, including the matters in issue in them,
  - (d) whether the paying party is legally represented in the proceedings,
  - (e) any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise,
  - (f) the applicant's conduct in relation to the proceedings,
  - (g) any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party, and
  - (h) the effect of the order or variation on the paying party.
- (2) In subsection (1)(a) “earning capacity”, in relation to the applicant or the paying party, includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the paying party to take steps to acquire.
- (3) For the purposes of subsection (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to—
- (a) cause undue hardship to the paying party, or
  - (b) prevent the paying party from obtaining legal services for the purposes of the proceedings.
- (4) The Lord Chancellor may by order amend this section by adding to, omitting or varying the matters mentioned in subsections (1) to (3).
- (5) An order under subsection (4) must be made by statutory instrument.
- (6) A statutory instrument containing an order under subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this section “legal services” has the same meaning as in section 22ZA.”

## **51 Divorce etc proceedings: orders for sale of property**

In section 24A(1) of the Matrimonial Causes Act 1973 (orders for sale of property), after “makes” insert “ an order under section 22ZA or makes ”.

## **52 Dissolution etc proceedings: orders for payment in respect of legal services**

- (1) Part 8 of Schedule 5 to the Civil Partnership Act 2004 (maintenance pending outcome of dissolution etc proceedings) is amended as follows.
- (2) In the heading of that Part after “Maintenance” insert “ and other payments ”.
- (3) Before paragraph 38 insert— “ Maintenance orders ”.
- (4) In that paragraph—
- (a) number the existing provision sub-paragraph (1), and
  - (b) after that sub-paragraph insert—

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“(2) An order under this paragraph may not require one civil partner to pay to the other any amount in respect of legal services for the purposes of the proceedings.

(3) In sub-paragraph (2) “legal services” has the same meaning as in paragraph 38A.”

(5) After that paragraph insert—

### 38A “Orders in respect of legal services

- (1) In proceedings for a dissolution, nullity or separation order, the court may make an order or orders requiring one civil partner to pay to the other (“the applicant”) an amount for the purpose of enabling the applicant to obtain legal services for the purposes of the proceedings.
- (2) The court may also make such an order or orders in proceedings under this Schedule for financial relief in connection with proceedings for a dissolution, nullity or separation order.
- (3) The court must not make an order under this paragraph unless it is satisfied that, without the amount, the applicant would not reasonably be able to obtain appropriate legal services for the purposes of the proceedings or any part of the proceedings.
- (4) For the purposes of sub-paragraph (3), the court must be satisfied, in particular, that—
  - (a) the applicant is not reasonably able to secure a loan to pay for the services, and
  - (b) the applicant is unlikely to be able to obtain the services by granting a charge over any assets recovered in the proceedings.
- (5) An order under this paragraph may be made for the purpose of enabling the applicant to obtain legal services of a specified description, including legal services provided in a specified period or for the purposes of a specified part of the proceedings.
- (6) An order under this paragraph may—
  - (a) provide for the payment of all or part of the amount by instalments of specified amounts, and
  - (b) require the instalments to be secured to the satisfaction of the court.
- (7) An order under this paragraph may direct that payment of all or part of the amount is to be deferred.
- (8) The court may at any time in the proceedings vary an order made under this paragraph if it considers that there has been a material change of circumstances since the order was made.
- (9) For the purposes of the assessment of costs in the proceedings, the applicant's costs are to be treated as reduced by any amount paid to the applicant pursuant to an order under this section for the purposes of those proceedings.
- (10) In this paragraph “legal services”, in relation to proceedings, means the following types of services—

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- (a) providing advice as to how the law applies in the particular circumstances,
- (b) providing advice and assistance in relation to the proceedings,
- (c) providing other advice and assistance in relation to the settlement or other resolution of the dispute that is the subject of the proceedings, and
- (d) providing advice and assistance in relation to the enforcement of decisions in the proceedings or as part of the settlement or resolution of the dispute,

and they include, in particular, advice and assistance in the form of representation and any form of dispute resolution, including mediation.

- (11) In sub-paragraphs (5) and (6) “specified” means specified in the order concerned.”

### **53 Dissolution etc proceedings: matters to be considered by court making legal services order**

After paragraph 38A of Schedule 5 to the Civil Partnership Act 2004 insert—

“38B (1) When considering whether to make or vary an order under paragraph 38A, the court must have regard to—

- (a) the income, earning capacity, property and other financial resources which each of the applicant and the paying party has or is likely to have in the foreseeable future,
- (b) the financial needs, obligations and responsibilities which each of the applicant and the paying party has or is likely to have in the foreseeable future,
- (c) the subject matter of the proceedings, including the matters in issue in them,
- (d) whether the paying party is legally represented in the proceedings,
- (e) any steps taken by the applicant to avoid all or part of the proceedings, whether by proposing or considering mediation or otherwise,
- (f) the applicant's conduct in relation to the proceedings,
- (g) any amount owed by the applicant to the paying party in respect of costs in the proceedings or other proceedings to which both the applicant and the paying party are or were party, and
- (h) the effect of the order or variation on the paying party.

(2) In sub-paragraph (1)(a) “earning capacity”, in relation to the applicant or the paying party, includes any increase in earning capacity which, in the opinion of the court, it would be reasonable to expect the applicant or the paying party to take steps to acquire.

(3) For the purposes of sub-paragraph (1)(h), the court must have regard, in particular, to whether the making or variation of the order is likely to—

- (a) cause undue hardship to the paying party, or
- (b) prevent the paying party from obtaining legal services for the purposes of the proceedings.

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- (4) The Lord Chancellor may by order amend this paragraph by adding to, omitting or varying the matters mentioned in sub-paragraphs (1) to (3).
- (5) An order under sub-paragraph (4) must be made by statutory instrument.
- (6) A statutory instrument containing an order under sub-paragraph (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) In this paragraph “legal services” has the same meaning as in paragraph 38A.”

#### **54 Dissolution etc proceedings: orders for sale of property**

- (1) Paragraph 10(1)(a) of Schedule 5 to the Civil Partnership Act 2004 (sale of property orders) is amended as follows.
- (2) Omit the “or” at the end of sub-paragraph (i).
- (3) After sub-paragraph (ii) insert—
  - “(iii) an order under paragraph 38A for a payment in respect of legal services, or”.

#### *Offers to settle*

#### **55 Payment of additional amount to successful claimant**

- (1) Rules of court may make provision for a court to order a defendant in civil proceedings to pay an additional amount to a claimant in those proceedings where—
  - (a) the claim is a claim for (and only for) an amount of money,
  - (b) judgment is given in favour of the claimant,
  - (c) the judgment in respect of the claim is at least as advantageous as an offer to settle the claim which the claimant made in accordance with rules of court and has not withdrawn in accordance with those rules, and
  - (d) any prescribed conditions are satisfied.
- (2) Rules made under subsection (1) may include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle.
- (3) In subsection (1) “additional amount” means an amount not exceeding a prescribed percentage of the amount awarded to the claimant by the court (excluding any amount awarded in respect of the claimant's costs).
- (4) The Lord Chancellor may by order provide that rules of court may make provision for a court to order a defendant in civil proceedings to pay an amount calculated in a prescribed manner to a claimant in those proceedings where—
  - (a) the claim is or includes a non-monetary claim,
  - (b) judgment is given in favour of the claimant,
  - (c) the judgment in respect of the claim is at least as advantageous as an offer to settle the claim which the claimant made in accordance with rules of court and has not withdrawn in accordance with those rules, and
  - (d) any prescribed conditions are satisfied.



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- (5) An order under subsection (4) must provide for the amount to be calculated by reference to one or more of the following—
- (a) any costs ordered by the court to be paid to the claimant by the defendant in the proceedings;
  - (b) any amount awarded to the claimant by the court in respect of so much of the claim as is for an amount of money (excluding any amount awarded in respect of the claimant's costs);
  - (c) the value of any non-monetary benefit awarded to the claimant.
- (6) An order under subsection (4)—
- (a) must provide that rules made under the order may include provision as to the assessment of whether a judgment is at least as advantageous as an offer to settle, and
  - (b) may provide that such rules may make provision as to the calculation of the value of a non-monetary benefit awarded to a claimant.
- (7) Conditions prescribed under subsection (1)(d) or (4)(d) may, in particular, include conditions relating to—
- (a) the nature of the claim;
  - (b) the amount of money awarded to the claimant;
  - (c) the value of the non-monetary benefit awarded to the claimant.
- (8) Orders under this section are to be made by the Lord Chancellor by statutory instrument.
- (9) A statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Rules of court and orders made under this section may make different provision in relation to different cases.
- (11) In this section—
- “civil proceedings” means proceedings to which rules of court made under the Civil Procedure Act 1997 apply;
  - “non-monetary claim” means a claim for a benefit other than an amount of money;
  - “prescribed” means prescribed by order made by the Lord Chancellor.

### *Referral fees*

## **56 Rules against referral fees**

- (1) A regulated person is in breach of this section if—
- (a) the regulated person refers prescribed legal business to another person and is paid or has been paid for the referral, or
  - (b) prescribed legal business is referred to the regulated person, and the regulated person pays or has paid for the referral.
- (2) A regulated person is also in breach of this section if in providing legal services in the course of prescribed legal business the regulated person—
- (a) arranges for another person to provide services to the client, and

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- (b) is paid or has been paid for making the arrangement.
- (3) Section 59 defines “regulated person”.
- (4) “Prescribed legal business” means business that involves the provision of legal services to a client, where—
  - (a) the legal services relate to a claim or potential claim for damages for personal injury or death,
  - (b) the legal services relate to any other claim or potential claim for damages arising out of circumstances involving personal injury or death, or
  - (c) the business is of a description specified in regulations made by the Lord Chancellor.
- (5) There is a referral of prescribed legal business if—
  - (a) a person provides information to another,
  - (b) it is information that a provider of legal services would need to make an offer to the client to provide relevant services, and
  - (c) the person providing the information is not the client;
 and “relevant services” means any of the legal services that the business involves.
- (6) “Legal services” means services provided by a person which consist of or include legal activities (within the meaning of the Legal Services Act 2007) carried on by or on behalf of that person; and a provider of legal services is a person authorised to carry on a reserved legal activity within the meaning of that Act.
- (7) “Client”—
  - (a) where subsection (4)(a) applies, means the person who makes or would make the claim;
  - (b) where subsection (4)(c) applies, has the meaning given by the regulations.
- (8) Payment includes any form of consideration whether any benefit is received by the regulated person or by a third party (but does not include the provision of hospitality that is reasonable in the circumstances).

## **57 Effect of rules against referral fees**

- (1) The relevant regulator must ensure that it has appropriate arrangements for monitoring and enforcing the restrictions imposed on regulated persons by section 56.
- (2) A regulator may make rules for the purposes of subsection (1).
- (3) The rules may in particular provide for the relevant regulator to exercise in relation to anything done in breach of that section any powers (subject to subsections (5) and (6)) that the regulator would have in relation to anything done by the regulated person in breach of another restriction.
- (4) Where the relevant regulator is the [<sup>F1</sup>Financial Conduct Authority], section 58 applies instead of subsections (1) to (3) (and (7) to (9)).
- (5) A breach of section 56—
  - (a) does not make a person guilty of an offence, and
  - (b) does not give rise to a right of action for breach of statutory duty.

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- (6) A breach of section 56 does not make anything void or unenforceable, but a contract to make or pay for a referral or arrangement in breach of that section is unenforceable.
- (7) Subsection (8) applies in a case where—
  - (a) a referral of prescribed legal business has been made by or to a regulated person, or
  - (b) a regulated person has made an arrangement as mentioned in section 56(2)(a), and it appears to the regulator that a payment made to or by the regulated person may be a payment for the referral or for making the arrangement (a “referral fee”).
- (8) Rules under subsection (2) may provide for the payment to be treated as a referral fee unless the regulated person shows that the payment was made—
  - (a) as consideration for the provision of services, or
  - (b) for another reason,and not as a referral fee.
- (9) For the purposes of provision made by virtue of subsection (8) a payment that would otherwise be regarded as consideration for the provision of services of any description may be treated as a referral fee if it exceeds the amount specified in relation to services of that description in regulations made by the Lord Chancellor.

#### Textual Amendments

- F1** Words in s. 57(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. 114(1), 122(3), [Sch. 18 para. 138\(2\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 2](#), [Sch.](#)

## 58 Regulation by [<sup>F2</sup>FCA]

- (1) The Treasury may make regulations to enable the [<sup>F3</sup>Financial Conduct Authority], where it is the relevant regulator, to take action for monitoring and enforcing compliance with the restrictions imposed on regulated persons by section 56.
- (2) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 with or without modification.
- (3) Those provisions include in particular—
  - (a) provisions as to investigations, including powers of entry and search and criminal offences;
  - (b) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
  - (c) provisions giving Ministers or the [<sup>F3</sup>Financial Conduct Authority] powers to make subordinate legislation;
  - (d) provisions for the [<sup>F3</sup>Financial Conduct Authority] to charge fees.
- (4) The regulations may make provision corresponding to the provision that may be made by virtue of section 57(7) to (9) (but as if the reference to the Lord Chancellor were a reference to the Treasury).
- (5) The power to make regulations under this section is subject to section 57(5) and (6).

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### Textual Amendments

- F2** Word in s. 58 heading substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. 114(1), 122(3), [Sch. 18 para. 138\(3\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 2](#), [Sch.](#)
- F3** Words in s. 58(1)(3)(c)(d) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. 114(1), 122(3), [Sch. 18 para. 138\(3\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 2](#), [Sch.](#)

## 59 Regulators and regulated persons

- (1) In relation to a referral of business within section 56(4)(a)—
- a regulator is any person listed in column 1 below;
  - a regulated person is any person listed in column 2;
  - a regulator in column 1 is the relevant regulator in relation to the corresponding person in column 2.

### 1. Regulator

the <sup>[F4]</sup>Financial  
Authority]

the Claims  
Regulator

the General Council of the Bar

the Law Society

a regulatory body specified for  
the purposes of this subsection  
in regulations made by the Lord  
Chancellor

### 2. Regulated person

an authorised person (within the meaning of the  
Financial Services and Markets Act 2000) of a  
description specified in regulations made by the  
Treasury

a person authorised by the Regulator under  
section 5(1)(a) of the Compensation Act 2006 to  
provide regulated claims management services

a person authorised by the Council to carry on a  
reserved legal activity within the meaning of the  
Legal Services Act 2007

a person authorised by the Society to carry on a  
reserved legal activity within the meaning of the  
Legal Services Act 2007

a person of a description specified in the  
regulations in relation to the body

- (2) In relation to a referral of prescribed legal business of any other kind—
- a regulator is any person listed in column 1 below and specified in relation to business of that kind in regulations made by the Lord Chancellor;
  - a regulated person is any person specified in accordance with column 2 in relation to business of that kind;
  - a person specified under paragraph (a) in relation to business of that kind is the relevant regulator in relation to a person specified in accordance with the corresponding entry in column 2 in relation to business of that kind.

### 1. Regulator

the <sup>[F5]</sup>Financial  
Authority]

### 2. Regulated person

an authorised person (within the meaning of the  
Financial Services and Markets Act 2000) of a

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	description specified in regulations made by the Treasury
the Claims Management Regulator	a person who is authorised by the Regulator under section 5(1)(a) of the Compensation Act 2006 to provide regulated claims management services and is of a description specified in regulations made by the Lord Chancellor
an approved regulator for the purposes of Part 3 of the Legal Services Act 2007 (approved legal activities);	a person who is authorised by the regulator to carry on a reserved legal activity and is of a description specified in regulations made by the Lord Chancellor
a licensing authority for the purposes of Part 5 of that Act (alternative business structures)	a person who is licensed by the authority to carry on a reserved legal activity and is of a description specified in regulations made by the Lord Chancellor

#### Textual Amendments

- F4** Words in s. 59(1) table substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. 114(1), 122(3), [Sch. 18 para. 138\(4\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 2](#), Sch.
- F5** Words in s. 59(2) table substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), ss. 114(1), 122(3), [Sch. 18 para. 138\(4\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, [art. 2](#), Sch.

## 60 Referral fees: regulations

- (1) This section applies to any regulations under sections 56 to 59.
- (2) The regulations are to be made by statutory instrument.
- (3) The power to make the regulations includes power to make consequential, supplementary, incidental, transitional, transitory or saving provision.
- (4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

### *Pro bono representation*

## 61 Payments in respect of pro bono representation before the Supreme Court

- (1) In section 194 of the Legal Services Act 2007 (power for certain courts to order losing party to make payment to charity where other party is represented pro bono) in subsection (10) for the definition of “civil court” substitute—

““civil court” means—

- (a) the Supreme Court when it is dealing with a relevant civil appeal,
- (b) the civil division of the Court of Appeal,
- (c) the High Court, or
- (d) any county court;

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“relevant civil appeal” means an appeal to the Supreme Court—

- (a) from the High Court in England and Wales under Part 2 of the Administration of Justice Act 1969,
  - (b) from the Court of Appeal under section 40(2) of the Constitutional Reform Act 2005, or
  - (c) under section 13 of the Administration of Justice Act 1960 (appeal in cases of contempt of court) other than an appeal from an order or decision made in the exercise of jurisdiction to punish for criminal contempt of court;”.
- (2) This section applies in relation to appeals to the Supreme Court only where the decision, order or judgment that is the subject of the appeal is made or given on or after the day on which this section comes into force.

#### *Costs in criminal cases*

### **62 Costs in criminal cases**

- (1) Schedule 7 (costs in criminal cases) has effect.
- (2) Schedule 8 (costs in criminal cases: service courts) has effect.

## **PART 3**

### SENTENCING AND PUNISHMENT OF OFFENDERS

## **CHAPTER 1**

### SENTENCING

#### *General*

### **63 Duty to consider compensation order**

- (1) In section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders against convicted persons), after subsection (2) insert—

“(2A) A court must consider making a compensation order in any case where this section empowers it to do so.”

- (2) In section 175 of the Armed Forces Act 2006 (service compensation orders), after subsection (7) insert—

“(7A) The court must consider making a service compensation order in any case where it has power to do so.”

### **64 Duty to give reasons for and to explain effect of sentence**

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

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(2) For section 174 substitute—

**“174 Duty to give reasons for and to explain effect of sentence**

- (1) A court passing sentence on an offender has the duties in subsections (2) and (3).
- (2) The court must state in open court, in ordinary language and in general terms, the court's reasons for deciding on the sentence.
- (3) The court must explain to the offender in ordinary language—
  - (a) the effect of the sentence,
  - (b) the effects of non-compliance with any order that the offender is required to comply with and that forms part of the sentence,
  - (c) any power of the court to vary or review any order that forms part of the sentence, and
  - (d) the effects of failure to pay a fine, if the sentence consists of or includes a fine.
- (4) Criminal Procedure Rules may—
  - (a) prescribe cases in which either duty does not apply, and
  - (b) make provision about how an explanation under subsection (3) is to be given.
- (5) Subsections (6) to (8) are particular duties of the court in complying with the duty in subsection (2).
- (6) The court must identify any definitive sentencing guidelines relevant to the offender's case and—
  - (a) explain how the court discharged any duty imposed on it by section 125 of the Coroners and Justice Act 2009 (duty to follow guidelines unless satisfied it would be contrary to the interests of justice to do so);
  - (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines, state why.
- (7) Where, as a result of taking into account any matter referred to in section 144(1) (guilty pleas), the court imposes a punishment on the offender which is less severe than the punishment it would otherwise have imposed, the court must state that fact.
- (8) Where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—
  - (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
  - (b) section 152(2) of this Act (discretionary custodial sentence),the court must state why it is of that opinion.
- (9) In this section “definitive sentencing guidelines” means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued.”

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- (3) In section 270 (duty to give reasons)—
- (a) for subsection (1) substitute—
- “(1) Subsection (2) applies where a court makes an order under section 269(2) or (4).”, and
- (b) in subsection (2) for “In stating its reasons” substitute “ In complying with the duty under section 174(2) to state its reasons for deciding on the order made, ”.
- (4) In the Armed Forces Act 2006—
- (a) in section 252 (duty to give reasons and explain sentence), omit subsection (2);
- (b) in section 253 (duties in complying with section 252), omit subsections (1) (a), (c) and (d) and (2)(b) and (d) to (h).
- (5) In consequence of the amendments made by this section omit—
- (a) paragraph 9(6) of Schedule 1 to the Violent Crime Reduction Act 2006;
- (b) paragraph 80 of Schedule 4 to the Criminal Justice and Immigration Act 2008;
- (c) paragraph 24 of Schedule 25 to that Act;
- (d) paragraph 84 of Schedule 21 to the Coroners and Justice Act 2009.

## **65 Sentencing where there is aggravation related to transgender identity**

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) Section 146 (increase in sentence for aggravation related to disability or sexual orientation) is amended as follows.
- (3) In the heading, for “or sexual orientation” substitute “ , sexual orientation or transgender identity ”.
- (4) In subsection (2)(a)—
- (a) after sub-paragraph (i) omit “or”;
- (b) at the end insert—
- “(iii) the victim being (or being presumed to be) transgender, or”.
- (5) In subsection (2)(b)—
- (a) after sub-paragraph (i) omit “or”;
- (b) at the end insert “, or
- (iii) by hostility towards persons who are transgender.”
- (6) After subsection (5) insert—
- “(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”
- (7) Schedule 21 (determination of minimum term in relation to mandatory life sentence) is amended as follows.
- (8) For paragraph 3 substitute—
- “3
- For the purposes of this Schedule—



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- (a) an offence is aggravated by sexual orientation if it is committed in circumstances mentioned in section 146(2)(a)(i) or (b)(i);
  - (b) an offence is aggravated by disability if it is committed in circumstances mentioned in section 146(2)(a)(ii) or (b)(ii);
  - (c) an offence is aggravated by transgender identity if it is committed in circumstances mentioned in section 146(2)(a)(iii) or (b)(iii).”
- (9) In paragraph 5(2)(g) (30 year starting point), after “aggravated by sexual orientation” insert “, disability or transgender identity”.
- (10) Section 241 of the Armed Forces Act 2006 (increase in sentence for aggravation related to disability or sexual orientation) is amended as follows.
- (11) In the heading, for “or sexual orientation” substitute “, sexual orientation or transgender identity”.
- (12) In subsection (2)(a)—
- (a) after sub-paragraph (i) omit “or”;
  - (b) at the end insert—
    - “(iii) the victim being (or being presumed to be) transgender, or”.
- (13) In subsection (2)(b)—
- (a) after sub-paragraph (i) omit “or”;
  - (b) at the end insert “, or
    - (iii) by hostility towards persons who are transgender.”
- (14) After subsection (5) insert—
- “(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.”

#### Commencement Information

**I5** S. 65 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 3)

### Community orders

#### 66 Duration of community order

- (1) In section 177 of the Criminal Justice Act 2003 (general provisions about community orders), in subsection (5) (requirement for order to specify date on which requirements must have been complied with)—
- (a) after the first “date” insert “ (“the end date”)”, and
  - (b) omit the words from “; and” to the end of the subsection.
- (2) After that subsection insert—
- “(5A) If a community order imposes two or more different requirements falling within subsection (1), the order may also specify a date by which each of those

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requirements must have been complied with; and the last of those dates must be the same as the end date.

(5B) Subject to section 200(3) (duration of community order imposing unpaid work requirement), a community order ceases to be in force on the end date.”

(3) In Schedule 8 to that Act (breach, revocation or amendment of community order), in paragraph 9 (powers of magistrates' court in case of breach)—

(a) in sub-paragraph (3), for the words from “but may” to the end of the sub-paragraph substitute “ but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB) ”, and

(b) after that sub-paragraph insert—

“(3ZA) A date substituted under sub-paragraph (3)—

(a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);

(b) subject to that, may fall more than three years after the date of the order.

(3ZB) The power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power in paragraph 10(3) to substitute a date has previously been exercised in relation to that order.

(3ZC) A date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section 177(5).”

(4) In that Schedule, in paragraph 10 (powers of Crown Court in case of breach)—

(a) in sub-paragraph (3), for the words from “but may” to the end of the sub-paragraph substitute “ but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB) ”, and

(b) after that sub-paragraph insert—

“(3ZA) A date substituted under sub-paragraph (3)—

(a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);

(b) subject to that, may fall more than three years after the date of the order.

(3ZB) The power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power under paragraph 9(3) to substitute a date has previously been exercised in relation to that order.

(3ZC) A date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section section 177(5).”

(5) In that Schedule, after paragraph 19 insert—

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### “Extension of order

- 19A (1) The appropriate court may, on the application of the offender or the responsible officer, amend a community order by substituting a later date for that specified under section 177(5).
- (2) A date substituted under sub-paragraph (1)—
- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
  - (b) subject to that, may fall more than three years after the date of the order.
- (3) The power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.
- (4) A date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under section 177(5).
- (5) In this paragraph “the appropriate court” has the same meaning as in paragraph 16.”

#### Commencement Information

**I6** S. 66 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 5(1))

### 67 Breach of community order

- (1) Schedule 8 to the Criminal Justice Act 2003 (breach, revocation or amendment of community order) is amended as follows.
- (2) In paragraph 9 (powers of magistrates' court in case of breach), in sub-paragraph (1)—
- (a) in the opening words, for “must” substitute “ may ”, and
  - (b) after paragraph (a) insert—
    - “(aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;”.
- (3) In that paragraph, after sub-paragraph (3A) insert—
  - “(3B) A fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.”
- (4) In sub-paragraph (6) of that paragraph, for the words from “be required to” to “or (c),” substitute “ have the power to deal with the offender under sub-paragraph (1)(a), (aa), (b) or (c), ”.
- (5) In paragraph 10 (powers of Crown Court in case of breach), in sub-paragraph (1)—
- (a) in the opening words, for “must” substitute “ may ”, and
  - (b) after paragraph (a) insert—
    - “(aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;”.
- (6) In that paragraph, after sub-paragraph (3A) insert—

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“(3B) A fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.”

(7) After paragraph 11 insert—

**11A “Power to amend amounts of fines**

- (1) The Secretary of State may by order amend any sum for the time being specified in paragraph 9(1)(aa) or 10(1)(aa).
- (2) The power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- (3) In sub-paragraph (2), “the relevant date” means—
  - (a) if the sum specified in paragraph 9(1)(aa) or 10(1)(aa) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
  - (b) otherwise, the date on which section 67 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.
- (4) An order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any community order made in respect of an offence committed before the fine amendment order comes into force.”

**Commencement Information**

**I7** S. 67 partly in force; s. 67 not in force at Royal Assent, see s. 151(1); s. 67(1)(2)(b)(3)(4)(5)(b)(6)(7) in force at 3.12.2012 by S.I. 2012/2906, art. 2(a) (with art. 4)

*Suspended sentence orders*

**68 Changes to powers to make suspended sentence order**

(1) In section 189 of the Criminal Justice Act 2003 (suspended sentences of imprisonment), for subsection (1) substitute—

“(1) If a court passes a sentence of imprisonment for a term of least 14 days but not more than 2 years, it may make an order providing that the sentence of imprisonment is not to take effect unless—

- (a) during a period specified in the order for the purposes of this paragraph (“the operational period”) the offender commits another offence in the United Kingdom (whether or not punishable with imprisonment), and
- (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.

(1A) An order under subsection (1) may also provide that the offender must comply during a period specified in the order for the purposes of this subsection (“the supervision period”) with one or more requirements falling within section 190(1) and specified in the order.

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- (1B) Where an order under subsection (1) contains provision under subsection (1A), it must provide that the sentence of imprisonment will also take effect if—
- (a) during the supervision period the offender fails to comply with a requirement imposed under subsection (1A), and
  - (b) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.”
- (2) In subsection (2) of that section (application of subsection (1) where consecutive sentences imposed), for the words from “does not exceed” to the end of the subsection substitute “ does not exceed 2 years ”.
- (3) In subsection (3) of that section (length of supervision period and operational period), after “supervision period” insert “ (if any) ”.
- (4) In subsection (4) of that section (supervision period not to end later than operational period), at the beginning insert “ Where an order under subsection (1) imposes one or more community requirements, ”.
- (5) In subsection (7)(c) of that section (meaning of “community requirement”), for “(1 (a))” substitute “ (1A) ”.
- (6) Schedule 9 (changes to powers to make suspended sentence orders: consequential and transitory provision) has effect.
- (7) The amendments and modifications made by this section and that Schedule apply in relation to offences committed before or after the coming into force of any provision of this section or that Schedule.

## **69 Fine for breach of suspended sentence order**

- (1) Schedule 12 to the Criminal Justice Act 2003 (breach or amendment of suspended sentence order, and effect of further conviction) is amended as follows.
- (2) In paragraph 8 (powers of court in case of breach or conviction)—
- (a) in sub-paragraph (2), after paragraph (b) insert—
    - “(ba) the court may order the offender to pay a fine of an amount not exceeding £2,500,”
  - (b) after sub-paragraph (4) insert—
 

“(4ZA) A fine imposed under sub-paragraph (2)(ba) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.”, and
  - (c) in sub-paragraph (6), after “(b)” insert “ , (ba) ”.
- (3) After paragraph 12 insert—

### **12A “Power to amend amount of fine**

- (1) The Secretary of State may by order amend the sum for the time being specified in paragraph 8(2)(ba).

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- (2) The power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- (3) In sub-paragraph (2), “the relevant date” means—
  - (a) if the sum specified in paragraph 8(2)(ba) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
  - (b) otherwise, the date on which section 69 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.
- (4) An order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any suspended sentence order made in respect of an offence committed before the fine amendment order comes into force.”

#### Commencement Information

**I8** S. 69 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 4)

#### *Requirements under community orders and suspended sentence orders*

### 70 Programme requirement

- (1) In section 177(2) of the Criminal Justice Act 2003 (community orders: restrictions relating to particular requirements) omit paragraph (c) (which refers to section 202(4) and (5) of that Act).
- (2) In section 190(2) of that Act (suspended sentence orders: restrictions relating to particular requirements) omit paragraph (c) (which refers to section 202(4) and (5) of that Act).
- (3) Section 202 of that Act (orders imposing programme requirements) is amended as follows.
- (4) In subsection (1) (meaning of “programme requirement”)—
  - (a) after “participate” insert “ in accordance with this section ”, and
  - (b) for the words from “specified in the order” to the end of the subsection substitute “ on the number of days specified in the order. ”
- (5) Omit subsections (4) and (5) (requirements to be met before court includes a programme requirement in a relevant order).
- (6) In subsection (6) (effect of programme requirement)—
  - (a) in the opening words, for “requirement to attend an accredited programme” substitute “ programme requirement ”, and
  - (b) in paragraph (a), for “at the place specified in the order” substitute “ that is from time to time specified by the responsible officer at the place that is so specified ”.
- (7) In subsection (7) (requirement for place providing programme requirement to be approved) for “in an order” substitute “ by a responsible officer ”.

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- (8) In consequence of subsection (5), omit paragraph 86 of Schedule 4 to the Criminal Justice and Immigration Act 2008.

## 71 Curfew requirement

- (1) Section 204 of the Criminal Justice Act 2003 (orders imposing curfew requirements) is amended as follows.
- (2) In subsection (2) (order may not specify curfew period of more than twelve hours) for “twelve” substitute “sixteen”.
- (3) In subsection (3) (order may not specify curfew periods outside period of six months from making of order) for “six” substitute “twelve”.

### Commencement Information

**19** S. 71 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 3)

## 72 Foreign travel prohibition requirement

- (1) In section 177 of the Criminal Justice Act 2003 (community orders), in subsection (1), after paragraph (g) insert—
- “(ga) a foreign travel prohibition requirement (as defined by section 206A).”.
- (2) In subsection (4) of that section (power to impose electronic monitoring requirement), after “a residence requirement,” insert “a foreign travel prohibition requirement,”.
- (3) In section 190 of that Act (imposition of requirements by suspended sentence order), in subsection (1), after paragraph (g) insert—
- “(ga) a foreign travel prohibition requirement (as defined by section 206A).”.
- (4) In subsection (4) of that section (power to impose electronic monitoring requirement), after “a residence requirement,” insert “a foreign travel prohibition requirement,”.
- (5) After section 206 of that Act insert—

### “206A Foreign travel prohibition requirement

- (1) In this Part “foreign travel prohibition requirement”, in relation to a relevant order, means a requirement prohibiting the offender from travelling, on a day or days specified in the order, or for a period so specified—
- (a) to any country or territory outside the British Islands specified or described in the order,
  - (b) to any country or territory outside the British Islands other than a country or territory specified or described in the order, or
  - (c) to any country or territory outside the British Islands.
- (2) A day specified under subsection (1) may not fall outside the period of 12 months beginning with the day on which the relevant order is made.

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- (3) A period specified under that subsection may not exceed 12 months beginning with the day on which the relevant order is made.”
- (6) In section 305(1) of that Act (interpretation of Part 12), at the appropriate place insert—
- ““foreign travel prohibition requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 206A;”.

#### Commencement Information

**I10** S. 72 wholly in force at 3.12.2012, see s. 151(1) and [S.I. 2012/2906](#), **art. 2(a)** (with **art. 3**)

### 73 Mental health treatment requirement

- (1) Section 207 of the Criminal Justice Act 2003 (mental health treatment requirement) is amended as follows.
- (2) In subsection (3)(a) (requirement for court to be satisfied as to offender's mental condition on evidence of registered medical practitioner)—
- omit the words from “, on the evidence” to “1983;”, and
  - in sub-paragraph (ii), for “that Act” substitute “ the Mental Health Act 1983 ”.
- (3) Omit subsection (5) (application of section 54(2) and (3) of the Mental Health Act 1983 to proof of offender's mental condition).

### 74 Drug rehabilitation requirement

- (1) In section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirements) omit subsection (3) (requirement for treatment and testing period to be at least six months).
- (2) In section 211(2) of that Act (powers of court at review hearing)—
- at the end of paragraph (a) insert “ and ”, and
  - omit paragraph (b) and the “and” at the end of that paragraph.
- (3) In section 223(3) of that Act (power to amend specified periods of time), omit paragraph (c).

### 75 Alcohol treatment requirement

- (1) In section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement) omit subsection (4) (requirement for alcohol treatment requirement to have effect for at least six months).
- (2) In section 223(3) of that Act (power to amend specified periods of time), omit paragraph (d).



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VALID FROM 31/07/2014

## 76 Alcohol abstinence and monitoring requirement

(1) After section 212 of the Criminal Justice Act 2003 insert—

### “212A Alcohol abstinence and monitoring requirement

- (1) In this Part “alcohol abstinence and monitoring requirement”, in relation to a relevant order, means a requirement—
- (a) that, subject to such exceptions (if any) as are specified—
    - (i) the offender must abstain from consuming alcohol throughout a specified period, or
    - (ii) the offender must not consume alcohol so that at any time during a specified period there is more than a specified level of alcohol in the offender's body, and
  - (b) that the offender must, for the purpose of ascertaining whether the offender is complying with provision under paragraph (a), submit during the specified period to monitoring in accordance with specified arrangements.
- (2) A period specified under subsection (1)(a) must not exceed 120 days.
- (3) If the Secretary of State by order prescribes a minimum period for the purposes of subsection (1)(a), a period specified under that provision must be at least as long as the period prescribed.
- (4) The level of alcohol specified under subsection (1)(a)(ii) must be that prescribed by the Secretary of State by order for the purposes of that provision (and a requirement under that provision may not be imposed unless such an order is in force).
- (5) An order under subsection (4) may prescribe a level—
- (a) by reference to the proportion of alcohol in any one or more of an offender's breath, blood, urine or sweat, or
  - (b) by some other means.
- (6) The arrangements for monitoring specified under subsection (1)(b) must be consistent with those prescribed by the Secretary of State by order (and an alcohol abstinence and monitoring requirement may not be imposed unless such an order is in force).
- (7) An order under subsection (6) may in particular prescribe—
- (a) arrangements for monitoring by electronic means;
  - (b) arrangements for monitoring by other means of testing.
- (8) A court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met.
- (9) The first condition is that—
- (a) the consumption of alcohol by the offender is an element of the offence for which the order is to be imposed or an associated offence, or

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- (b) the court is satisfied that the consumption of alcohol by the offender was a factor that contributed to the commission of that offence or an associated offence.
- (10) The second condition is that the court is satisfied that the offender is not dependent on alcohol.
- (11) The third condition is that the court does not include an alcohol treatment requirement in the order.
- (12) The fourth condition is that the court has been notified by the Secretary of State that arrangements for monitoring of the kind to be specified are available in the local justice area to be specified.
- (13) In this section—  
“alcohol” includes anything containing alcohol;  
“specified”, in relation to a relevant order, means specified in the order.”
- (2) In section 177 of that Act (community orders), in subsection (1), after paragraph (j) insert—  
“(ja) an alcohol abstinence and monitoring requirement (as defined by section 212A),”.
- (3) In subsection (2) of that section (limitations on power to impose community order)—  
(a) omit the “and” at the end of paragraph (f), and  
(b) at the end of paragraph (g) insert “, and  
(h) section 212A(8) to (12) (alcohol abstinence and monitoring requirement).”
- (4) In section 190 of that Act (imposition of requirements by suspended sentence order), in subsection (1), after paragraph (j) insert—  
“(ja) an alcohol abstinence and monitoring requirement (as defined by section 212A),”.
- (5) In subsection (2) of that section (limitations on power to impose requirements by suspended sentence order)—  
(a) omit the “and” at the end of paragraph (f), and  
(b) at the end of paragraph (g) insert “, and  
(h) section 212A(8) to (12) (alcohol abstinence and monitoring requirement).”
- (6) In section 215 of that Act (electronic monitoring requirement), after subsection (4) insert—  
“(5) An electronic monitoring requirement may not be included in a relevant order for the purposes of securing the electronic monitoring of the offender’s compliance with an alcohol abstinence and monitoring requirement.  
(6) Subsection (5) does not prevent the inclusion of an electronic monitoring requirement in a relevant order which includes an alcohol abstinence and monitoring requirement where this is for the purpose of securing the electronic monitoring of an offender’s compliance with a requirement other than the alcohol abstinence and monitoring requirement.”

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- (7) In section 223(3) of that Act (provisions to which powers to amend periods of time apply), after paragraph (b) insert—
- “(ba) section 212A(2) (alcohol abstinence and monitoring requirement)”.
- (8) In section 305(1) of that Act (interpretation of Part 12), at the appropriate place insert—
- ““alcohol abstinence and monitoring requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 212A;”.
- (9) In Schedule 9 to that Act (transfer of community orders to Scotland or Northern Ireland)—
- (a) in paragraph 1(5), after “require” insert “ an alcohol abstinence and monitoring requirement or ”, and
- (b) in paragraph 3, after sub-paragraph (4) insert—
- “(4A) The court may not by virtue of sub-paragraph (1) or (3) require an alcohol abstinence and monitoring requirement to be complied with in Northern Ireland.”
- (10) In Schedule 13 to that Act (transfer of suspended sentence orders to Scotland or Northern Ireland)—
- (a) in paragraph 1(5), after “require” insert “ an alcohol abstinence and monitoring requirement or ”, and
- (b) in paragraph 6, after sub-paragraph (4) insert—
- “(4A) The court may not by virtue of sub-paragraph (1) or (3) require an alcohol abstinence and monitoring requirement to be complied with in Northern Ireland.”
- (11) In the Armed Forces Act 2006—
- (a) in section 180 (transfer of service community order to Scotland or Northern Ireland), in subsection (2), after “3(1)” insert “ and (4A) ”, and
- (b) in section 204 (transfer of suspended sentence order to Scotland or Northern Ireland), in subsection (2), for “6(5)” substitute “ 6(4A) and (5) ”.

## 77 Piloting of alcohol abstinence and monitoring requirements

- (1) The Secretary of State may by order provide for the coming into force of section 76.
- (2) The Secretary of State may not make an order under subsection (1) with the effect that section 76 is in force for the whole of England and Wales (a “general commencement order”) without having previously made a piloting order.
- (3) Subsection (2) does not prevent an order under subsection (1) from bringing section 76 into force for the purpose only of making orders under section 212A or 223 of the Criminal Justice Act 2003 or rules under section 222 of that Act (and such an order is not a general commencement order for the purposes of this section).
- (4) A “piloting order” is an order under subsection (1) with the effect that section 76 is force only—
- (a) in relation to the area or areas specified in the order, and

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- (b) for the period specified in the order,  
but otherwise for all purposes, or for all purposes other than application by the Armed Forces Act 2006.
- (5) If, having made one or more piloting orders, the Secretary of State decides to make a general commencement order, the Secretary of State may by order—
  - (a) amend section 76 so as to enable the general commencement order to bring it into force with those amendments;
  - (b) amend or repeal any provision of this Act in consequence of provision made under paragraph (a).
- (6) Amendments under subsection (5)(a)—
  - (a) may confer power on the Secretary of State to make an order or rules;
  - (b) may not enable a court to provide for an alcohol abstinence and monitoring requirement to be complied with in Scotland or Northern Ireland.
- (7) If, having made one or more piloting orders, the Secretary of State decides not to make a general commencement order, the Secretary of State may by order—
  - (a) repeal section 76;
  - (b) amend the Criminal Justice Act 2003 so as to reverse the effect of that section on that Act;
  - (c) make other consequential amendments or repeals.
- (8) An order under this section may make transitional, transitory or saving provision (including, in the case of a piloting order, provision relating to section 76 ceasing to be in force at the end of the period specified in the order).
- (9) An order under this section is to be made by statutory instrument.
- (10) A statutory instrument containing—
  - (a) a general commencement order, or
  - (b) an order under subsection (5) or (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.

#### *Overseas community orders and service community orders*

### **78 Overseas community orders and service community orders**

- (1) Section 182 of the Armed Forces Act 2006 (general provisions about overseas community orders) is amended as follows.
- (2) In subsection (1)(a) (requirements that may be imposed by overseas community orders), after “Act” insert “ (but see subsection (1A) below) ”.
- (3) After subsection (1) insert—
 

“(1A) The order may not include a requirement mentioned in section 177(1)(ga) (a foreign travel prohibition requirement) or (ja) (an alcohol abstinence and monitoring requirement).”
- (4) In subsection (4) (application of section 177(5) and (6) of the Criminal Justice Act 2003 to overseas community orders), after “(5)” insert “ , (5A), (5B) ”.

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- (5) In section 322 of that Act (financial penalty enforcement orders), in the definition of “financial penalty” in subsection (4), after “including” insert “ a fine imposed by the Court Martial or the Service Civilian Court under paragraph 10(1)(aa) of Schedule 8 to the 2003 Act by virtue of section 184 and Part 2 of Schedule 5 (breach etc of overseas community order) or ”.
- (6) In Part 1 of Schedule 5 to that Act (breach, revocation and amendment of service community orders), in paragraph 1(2) (provisions of Schedule 8 to the Criminal Justice Act 2003 that do not apply to such orders), after “18(4),” insert “ 19A(5), ”.
- (7) Part 2 of Schedule 5 to that Act (breach, revocation and amendment of overseas community orders) is amended as follows.
- (8) In paragraph 10(2)(b) (provisions of Schedule 8 to the Criminal Justice Act 2003 that do not apply to such orders), after “19,” insert “ 19A(5), ”.
- (9) After paragraph 14 insert—

“14A

- (1) The following provisions apply where the Court Martial or the Service Civilian Court imposes a fine under paragraph 10(1)(aa) of that Schedule as applied by this Part of this Schedule.
- (2) Section 251 of this Act (power to order payment of fine by instalments) applies in relation to the fine as it applies in relation to a fine imposed by a court for a service offence.
- (3) Where the offender is aged under 18 when the fine is imposed and has a service parent or service guardian (within the meaning of section 268 of this Act), subsections (2) to (4) of that section (payment of fine by service parent or service guardian) apply in relation to the fine as they apply in relation to a fine imposed in the circumstances mentioned in subsection (1) of that section.
- (4) In the application of subsection (2) of section 268 by virtue of sub-paragraph (3) of this paragraph, the reference in that subsection to the time of conviction is to be read as a reference to the time the fine is imposed.
- (5) Section 269(2) of this Act (power of court to make financial statement order before making order under section 268) does not apply in relation to an order under section 268 which is made by virtue of sub-paragraph (3) of this paragraph.”
- (10) In Schedule 6 to that Act (overseas community orders imposed on young offenders), in paragraph 5 (modification of drug rehabilitation requirement in relation to such offenders), omit sub-paragraph (4) (which disapplies section 209(3) of the Criminal Justice Act 2003).

#### Commencement Information

- III** S. 78 partly in force; s. 78 not in force at Royal Assent, see s. 151(1); s. 78(1)(2)(4)-(10) in force and s. 78(3) in force for specified purposes at 3.12.2012 by S.I. 2012/2906, art. 2(a)

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### Youth sentences

#### 79 Referral orders for young offenders

- (1) In section 16(1)(c) of the Powers of Criminal Courts (Sentencing) Act 2000 (duty or power to refer a young offender to a youth offender panel not to apply if court proposes to discharge the offender absolutely) for “absolutely” substitute “, whether absolutely or conditionally,”.
- (2) In section 17 of that Act (the referral conditions)—
  - (a) in subsection (2) at the end of paragraph (a) insert “ and ”,
  - (b) in that subsection omit paragraph (c) and the word “and” immediately before it, and
  - (c) omit subsections (2A) to (2D).
- (3) In consequence of the amendment made by subsection (2)(c) omit paragraph 12(3), (4) and (5) of Schedule 17 to the Coroners and Justice Act 2009.
- (4) The amendments made by this section do not apply in relation to any sentence passed in relation to an offence committed before the coming into force of this section.

#### 80 Breach of detention and training order

- (1) The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- (2) In section 104 (breach of detention and training order), in subsection (3) (penalties for breach), for paragraph (a) and the “or” at the end of that paragraph substitute—
  - “(a) order the offender to be detained, in such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding the maximum period found under subsection (3A) below, as the court may specify;
  - (aa) order the offender to be subject to such period of supervision, not exceeding the maximum period found under subsection (3A) below, as the court may specify; or”.
- (3) After subsection (3) of that section insert—
  - “(3A) The maximum period referred to in subsection (3)(a) and (aa) above is the shorter of—
    - (a) three months, and
    - (b) the period beginning with the date of the offender's failure and ending with the last day of the term of the detention and training order.
  - (3B) For the purposes of subsection (3A) above a failure that is found to have occurred over two or more days is to be taken to have occurred on the first of those days.
  - (3C) A court may order a period of detention or supervision, or impose a fine, under subsection (3) above before or after the end of the term of the detention and training order.
  - (3D) A period of detention or supervision ordered under subsection (3) above—
    - (a) begins on the date the order is made, and

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- (b) may overlap to any extent with the period of supervision under the detention and training order.”
- (4) After subsection (4) of that section insert—
- “(4A) Where an order under subsection (3)(a) above is made in the case of a person who has attained the age of 18, the order has effect to require the person to be detained in prison for the period specified by the court.”
- (5) After subsection (5) of that section insert—
- “(5A) Sections 104A and 104B below make further provision about the operation of orders under subsection (3) above.”
- (6) In subsection (6) of that section, after “(a)” insert “, (aa) ”.
- (7) After that section insert—

**“104A Application of sections 103 to 105 in relation to orders under section 104(3)(aa)**

- (1) Subsections (3) to (7) of section 103 above apply in relation to a period of supervision to which an offender is subject by virtue of an order under section 104(3)(aa) above as they apply to the period of supervision under a detention and training order.
- (2) In the application of section 103 above by virtue of subsection (1) above, subsection (7)(a) of that section is to be read as requiring a notice to be given to the offender as soon as is reasonably practicable after the order under section 104(3)(aa) above is made.
- (3) Section 104 above and section 105 below apply where an offender is subject to a period of supervision under section 104(3)(aa) above as they apply where a detention and training order is in force in respect of an offender.
- (4) In the application of section 104 above by virtue of subsection (3) above—
- the references in that section to section 103(6)(b) above are to be read as references to that provision as applied by subsection (1) above,
  - the references in subsections (3A)(b) and (3C) of that section to the term of the detention and training order are to be read as references to the term of the period of supervision under section 104(3)(aa) above, and
  - the reference in subsection (3D)(b) of that section to the period of supervision under the detention and training order is to be read as including a reference to the period of supervision under section 104(3)(aa) above.
- (5) In the application of section 105 below by virtue of subsection (3) above—
- paragraph (a) of subsection (1) of that section is to be read as if the words “after his release and” were omitted, and
  - the reference in that paragraph to the date on which the term of the detention and training order ends is to be read as a reference to the date on which the period of supervision under section 104(3)(aa) ends.

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### **104B Interaction of orders under section 104(3)(a) with other sentences**

- (1) Where a court makes a detention and training order in the case of an offender who is subject to a period of detention under section 104(3)(a) above, the detention and training order takes effect—
  - (a) at the beginning of the day on which it is made, or
  - (b) if the court so orders, at the time when the period of detention under section 104(3)(a) above ends.
- (2) Where a court orders an offender who is subject to a detention and training order to be subject to a period of detention under section 104(3)(a) above for a failure to comply with requirements under a different detention and training order, the period of detention takes effect as follows—
  - (a) if the offender has been released by virtue of subsection (2), (3), (4) or (5) of section 102 above, at the beginning of the day on which the order for the period of detention is made, and
  - (b) if not, either as mentioned in paragraph (a) above or, if the court so orders, at the time when the offender would otherwise be released by virtue of subsection (2), (3), (4) or (5) of section 102 above.
- (3) Subject to subsection (4) below, where at any time an offender is subject concurrently—
  - (a) to a detention and training order, and
  - (b) to a period of detention under section 104(3)(a) above,
 the offender is to be treated for the purposes of sections 102 to 105 of this Act as if the offender were subject only to the detention and training order.
- (4) Nothing in subsection (3) above requires the offender to be released in respect of either the order or the period of detention unless and until the offender is required to be released in respect of each of them.
- (5) The Secretary of State may by regulations make provision about the interaction between a period of detention under section 104(3)(a) above and a custodial sentence in a case where—
  - (a) an offender who is subject to such a period of detention becomes subject to a custodial sentence, or
  - (b) an offender who is subject to a custodial sentence becomes subject to such a period of detention.
- (6) The provision that may be made by regulations under subsection (5) above includes—
  - (a) provision as to the time at which the period of detention under section 104(3)(a) above or the custodial sentence is to take effect;
  - (b) provision for the offender to be treated, for the purposes of the enactments specified in the regulations, as subject only to the period of detention or the custodial sentence;
  - (c) provision about the effect of enactments relating to the person's release from detention or imprisonment in a case where that release is not to take effect immediately by virtue of provision in the regulations.



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- (7) The power of the Secretary of State to make regulations under subsection (5) above—
- (a) is exercisable by statutory instrument;
  - (b) includes power to make supplementary, incidental, transitional, transitory or saving provision.
- (8) A statutory instrument containing regulations under subsection (5) above is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (8) Before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentence of detention in a young offender institution) section 104(4A) of the Powers of Criminal Courts (Sentencing) Act 2000 has effect as if it referred to a person who has attained the age of 21.
- (9) In section 213 of the Armed Forces Act 2006 (application of provisions relating to civilian detention and training orders to orders under section 211 of that Act)—
- (a) in subsection (2), after “(13)” insert “ , 104B(1) ”, and
  - (b) after subsection (3) insert—
    - “(4) Subsection (5) applies where an order under section 104(3) (further period of detention or supervision) of the Sentencing Act is made against an offender for breach of supervision requirements—
      - (a) during a period of supervision under an order under section 211 of this Act,
      - (b) during a further period of supervision imposed for breach of supervision requirements during a period within paragraph (a), or
      - (c) during one of a series of further periods of supervision—
        - (i) each of which apart from the first was imposed for breach of supervision requirements during the previous further period of supervision, and
        - (ii) the first of which was imposed for breach of supervision requirements during a period within paragraph (a).
- (5) In the application of sections 104A and 104B of the Sentencing Act in relation to the offender, references to section 105 of that Act include section 214 of this Act.
- (6) In subsection (4)—
- “further period of supervision” means a period of supervision imposed under section 104(3)(aa) of the Sentencing Act;
- “supervision requirements” means requirements under section 103(6)(b) of that Act.
- (7) In section 104B of the Sentencing Act, references to a custodial sentence within the meaning of that Act include a custodial sentence within the meaning of this Act.”
- (10) The amendments made by this section apply in relation to a failure to comply with requirements under section 103(6)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 that occurs after this section comes into force.

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- (11) Where a failure is found to have occurred over two or more days, it is to be taken for the purposes of subsection (10) to have occurred on the first of those days.

## 81 Youth rehabilitation order: curfew requirement

- (1) Paragraph 14 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order: curfew requirement) is amended as follows.
- (2) In sub-paragraph (2) (order may not specify curfew period of more than 12 hours) for “12” substitute “16”.
- (3) In sub-paragraph (3) (order may not specify curfew periods outside period of 6 months from making of order) for “6” substitute “12”.

### Commencement Information

**I12** S. 81 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 3)

## 82 Youth rehabilitation order: mental health treatment requirement

- (1) Paragraph 20 of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order: mental health treatment requirement) is amended as follows.
- (2) In sub-paragraph (3)(a) (requirement for court to be satisfied as to offender's mental condition on evidence of registered medical practitioner)—
- (a) omit the words from “, on the evidence” to “1983 (c. 20),” and
  - (b) in sub-paragraph (ii), for “that Act” substitute “the Mental Health Act 1983”.
- (3) Omit sub-paragraph (5) (application of section 54(2) and (3) of the Mental Health Act 1983 to proof of offender's mental condition).

## 83 Youth rehabilitation order: duration

- (1) In Schedule 1 to the Criminal Justice and Immigration Act 2008 (further provisions about youth rehabilitation orders), in paragraph 32 (requirement for order to specify date by which requirements must have been complied with)—
- (a) in sub-paragraph (1), after the first “date” insert “ (“the end date”) ”,
  - (b) for sub-paragraph (2) substitute—
    - “(2) If a youth rehabilitation order imposes two or more different requirements falling within Part 2 of this Schedule, the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.” and
    - (c) after sub-paragraph (3) insert—
      - “(4) Subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order ceases to be in force on the end date.”
- (2) In Schedule 2 to that Act (breach, revocation or amendment of youth rehabilitation order), in paragraph 6 (powers of magistrates' court in case of breach of order)—

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- (a) in sub-paragraph (6), at the beginning insert “ Subject to sub-paragraph (6A), ”, and
  - (b) after that sub-paragraph insert—
    - “(6A) When imposing a requirement under sub-paragraph (2)(b), the court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.
    - (6B) A date substituted under sub-paragraph (6A)—
      - (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
      - (b) subject to that, may fall more than three years after the date on which the order took effect.
    - (6C) The power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 8(6A) has previously been exercised in relation to that order.
    - (6D) A date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.”
- (3) In that Schedule, in paragraph 8 (powers of Crown Court in case of breach of order)—
- (a) in sub-paragraph (6), at the beginning insert “ Subject to sub-paragraph (6A), ”, and
  - (b) after that sub-paragraph insert—
    - “(6A) When imposing a requirement under sub-paragraph (2)(b), the Crown Court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.
    - (6B) A date substituted under sub-paragraph (6A)—
      - (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
      - (b) subject to that, may fall more than three years after the date on which the order took effect.
    - (6C) The power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 6(6A) has previously been exercised in relation to that order.
    - (6D) A date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.”
- (4) In that Schedule, in paragraph 16(1) (exercise of powers to amend order: further provision), at the beginning insert “ Subject to paragraph 16A, ”.
- (5) After that paragraph insert—

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## 16A “Extension of order

- (1) The appropriate court may, on the application of the offender or the responsible officer, amend a youth rehabilitation order by substituting a later date for that specified under paragraph 32(1) of Schedule 1.
- (2) A date substituted under sub-paragraph (1)—
  - (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
  - (b) subject to that, may fall more than three years after the date on which the order took effect.
- (3) The power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.
- (4) A date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.
- (5) In this paragraph “the appropriate court” means—
  - (a) if the order was made by a youth court or other magistrates' court, or was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, the court determined under sub-paragraph (6), and
  - (b) if the order was made by the Crown Court and does not contain a direction under paragraph 36 of Schedule 1, the Crown Court.
- (6) The court referred to in sub-paragraph (5)(a) is—
  - (a) if the offender is aged under 18 when the application is made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
  - (b) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area.”

### Commencement Information

**I13** S. 83 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 5(2))

## 84 Youth rehabilitation order: fine for breach

- (1) Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach of requirement of youth rehabilitation order) is amended as follows.
- (2) In paragraph 6 (powers of magistrates' court in case of breach), in sub-paragraph (2) (a), for sub-paragraphs (i) and (ii) substitute “£2,500 ”.
- (3) In paragraph 8 (powers of Crown Court in case of breach), in sub-paragraph (2)(a), for sub-paragraphs (i) and (ii) substitute “£2,500 ”.
- (4) In paragraph 10 (power to amend amounts of fine)—
  - (a) in sub-paragraph (1) omit “(i) or (ii)” in both places, and
  - (b) in sub-paragraph (3)—
    - (i) in paragraph (a) omit “(i) or (ii)” in both places, and

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- (ii) in paragraph (b), for “this Act was passed” substitute “ section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force ”.

#### Commencement Information

**I14** S. 84 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(a) (with art. 4)

### Fines

VALID FROM 30/01/2014

#### **85** Removal of limit on certain fines on conviction by magistrates' court

- (1) Where, on the commencement day, a relevant offence would, apart from this subsection, be punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the offence is punishable on summary conviction on or after that day by a fine of any amount.
- (2) Where, on the commencement day, a relevant power could, apart from this subsection, be exercised to create an offence punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the power may be exercised on or after that day to create an offence punishable on summary conviction by a fine of any amount.
- (3) For the purposes of this section—
  - (a) an offence is relevant if, immediately before the commencement day, it is a common law offence or it is contained in an Act or an instrument made under an Act (whether or not the offence is in force at that time), and
  - (b) a power is relevant if, immediately before the commencement day, it is contained in an Act or an instrument made under an Act (whether or not the power is in force at that time).
- (4) Nothing in subsection (1) affects—
  - (a) fines for offences committed before the commencement day,
  - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
  - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
 and provision made in exercise of a relevant power in reliance on subsection (2) does not affect such fines or the operation of such restrictions.
- (5) The Secretary of State may by regulations make provision disapplying subsection (1) or (2).
- (6) The Secretary of State may by regulations make provision—
  - (a) for an offence in relation to which subsection (1) is disappplied to be punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations, and

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- (b) for a power in relation to which subsection (2) is disapplied to be exercisable to create an offence punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.
- (7) Subsection (8) applies in relation to—
- (a) a relevant offence that, immediately before the commencement day, is punishable on summary conviction by a fine or maximum fine expressed as a proportion of an amount of £5,000 or more (however that amount is expressed), and
  - (b) a relevant power which, immediately before the commencement day, can be exercised to create an offence punishable on summary conviction by such a fine or maximum fine.
- (8) The Secretary of State may by regulations make provision—
- (a) for the offence to be punishable on summary conviction by a fine or maximum fine of that proportion of an amount specified or described in the regulations, and
  - (b) for the power to be exercisable to create an offence punishable on summary conviction by such a fine or maximum fine.
- (9) Regulations under this section may not include provision affecting—
- (a) fines for offences committed before the regulations come into force,
  - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
  - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
- and provision made in exercise of a relevant power in reliance on regulations under this section may not include such provision.
- (10) Regulations under this section—
- (a) may make different provision for different cases or circumstances,
  - (b) may make provision generally or only for specified cases or circumstances, and
  - (c) may make consequential, incidental, supplementary, transitional, transitory or saving provision.
- (11) Regulations under this section, and regulations under section 149 making provision in relation to this section, may amend, repeal, revoke or otherwise modify any provision which, immediately before the commencement day, is contained in an Act or an instrument made under an Act (whether or not the provision is in force at that time).
- (12) Regulations under this section are to be made by statutory instrument.
- (13) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (14) If, immediately before the commencement day, the sum specified as level 5 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) is greater than £5,000, the references in this section to £5,000 have effect as if they were references to that sum.
- (15) Powers under this section—

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- (a) may be exercised from time to time, and
  - (b) are without prejudice to other powers to modify fines for relevant offences or fines that may be specified or described when exercising a relevant power.
- (16) For the purposes of this section, an offence is relevant whether it is a summary offence or an offence triable either way.
- (17) In this section—
- “Act” includes an Act or Measure of the National Assembly for Wales;
  - “the commencement day” means the day on which subsection (1) of this section comes into force;
- and references to an offence, power or provision contained in an Act or instrument include an offence, power or provision applied by, or extending to England and Wales by virtue of, an Act or instrument.

VALID FROM 28/05/2014

## 86 Power to increase certain other fines on conviction by magistrates' court

- (1) Subsection (2) applies in relation to a relevant offence which, immediately before the commencement day, is punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000.
- (2) The Secretary of State may by regulations make provision for the offence to be punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.
- (3) Subsection (4) applies in relation to a relevant power which, immediately before the commencement day, can be exercised to create an offence punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000 but not to create an offence so punishable by a fine or maximum fine of a fixed amount of £5,000 or more.
- (4) The Secretary of State may by regulations make provision for the power to be exercisable to create an offence punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.
- (5) Regulations under this section may not specify or describe an amount exceeding whichever is the greater of—
  - (a) £5,000, or
  - (b) the sum specified for the time being as level 4 on the standard scale.
- (6) Regulations under this section may not include provision affecting—
  - (a) fines for offences committed before the regulations come into force,
  - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
  - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
 and provision made in exercise of a relevant power in reliance on regulations under subsection (4) may not include such provision.
- (7) Regulations under this section—

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- (a) may make different provision for different cases or circumstances,
  - (b) may make provision generally or only for specified cases or circumstances, and
  - (c) may make consequential, incidental, supplementary, transitional, transitory or saving provision.
- (8) Regulations under this section may amend, repeal, revoke or otherwise modify any provision which, immediately before the commencement day, is contained in an Act or an instrument made under an Act (whether or not the provision is in force at that time).
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (11) If, immediately before the commencement day, the sum specified as level 5 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) is greater than £5,000, the references in this section to £5,000 have effect as if they were references to that sum.
- (12) Powers under this section—
- (a) may be exercised from time to time, and
  - (b) are without prejudice to other powers to modify fines for relevant offences or fines that may be specified or described when exercising a relevant power.
- (13) In this section “Act”, “the commencement day”, “relevant offence” and “relevant power”, and references to a provision contained in an Act or instrument, have the same meaning as in section 85.

VALID FROM 28/05/2014

## **87 Power to amend standard scale of fines for summary offences**

- (1) The Secretary of State may by order substitute for the sums for the time being specified as levels 1 to 4 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) such other sums as the Secretary of State considers appropriate.
- (2) The power under subsection (1) may not be exercised so as to alter the ratio of one of those levels to another.
- (3) In section 143 of the Magistrates' Courts Act 1980 (power to alter sums including standard scale of fines for summary offences), in subsection (3)(b), after “subsection (1) above” insert “ or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- (4) In section 37 of the Criminal Justice Act 1982 (standard scale of fines for summary offences), in subsection (3), at the end insert “ or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- (5) An order under this section is to be made by statutory instrument.



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- (6) 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 a resolution of, each House of Parliament.
- (7) An order under this section does not affect fines for offences committed before the order comes into force.

## 88 Withdrawal of warrants of control issued by fines officer

- (1) Schedule 5 to the Courts Act 2003 (collection of fines and other sums imposed on conviction) is amended as follows.
- (2) In paragraph 7(1) (Part 3 of Schedule does not apply on an appeal against a further steps notice) for “or 37(9)” substitute “, 37(9) or 37A(4) ”.
- (3) In paragraph 37(7) (further steps notice must specify steps that fines officer intends to take) for “intends” substitute “ wishes to be able ”.
- (4) After paragraph 37 insert—

### 37A “Issue by fines officer of replacement notice

- (1) This paragraph applies if—
  - (a) the fines officer has delivered to P a notice (“the current notice”) that is—
    - (i) a further steps notice that has not been replaced by a notice under this paragraph, or
    - (ii) a notice under this paragraph that has not been replaced by a further notice under this paragraph,
  - (b) P remains liable to pay any part of the sum due, and
  - (c) the fines officer wishes to be able to take one or more steps listed in paragraph 38 but not specified in the current notice.
- (2) The fines officer may deliver to P a notice replacing the current notice.
- (3) A notice under this paragraph (a “replacement notice”) must—
  - (a) state that the fines officer intends to take one or more of the steps listed in paragraph 38,
  - (b) specify the steps that the fines officer wishes to be able to take, and
  - (c) be in writing and dated.
- (4) P may, within 10 working days from the date of a replacement notice, appeal to the magistrates' court against it.
- (5) If a step is being taken in reliance on a notice at the time when the notice is replaced by a replacement notice, the taking of the step may continue despite the replacement.”
- (5) In paragraph 38(1) (list of steps referred to)—
  - (a) after “37(6)(b)” insert “, 37A(3)(a) ”, and
  - (b) in paragraph (a) (steps include issuing warrants that authorise taking control, and sale, of goods) for “levying” substitute “ recovering ”.

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- (6) In paragraph 39 (powers of court on referrals and appeals)—
- (a) in sub-paragraph (1)(c)—
    - (i) after “37(9)” insert “ or 37A(4) ”, and
    - (ii) after “further steps notice” insert “ or replacement notice ”, and
  - (b) in sub-paragraph (4) after “further steps notice” insert “ or replacement notice ”.
- (7) In paragraph 40 (implementation of notice)—
- (a) after “further steps notice”, in both places, insert “ or replacement notice ”, and
  - (b) after “may be taken” insert “ and retaken ”.
- (8) After paragraph 40 insert—

**40A “Withdrawal of warrant of control by fines officer**

- (1) This paragraph applies if, in taking a step specified in a further steps notice or replacement notice, the fines officer has issued a warrant of control for the purpose of recovering the sum due.
- (2) The fines officer may withdraw the warrant if—
  - (a) P remains liable to pay any part of the sum due, and
  - (b) the fines officer is satisfied that the warrant was issued by mistake, including in particular a mistake made in consequence of the non-disclosure or misrepresentation of a material fact.

**40B Discharge of warrant of control by magistrates' court**

- (1) This paragraph applies if—
  - (a) in taking a step specified in a further steps notice or replacement notice, the fines officer has issued a warrant of control for the purpose of recovering the sum due, and
  - (b) the fines officer subsequently refers P's case to the magistrates' court under paragraph 42.
- (2) The magistrates' court may discharge the warrant if—
  - (a) P remains liable to pay any part of the sum due, and
  - (b) the power conferred by section 142(1) of the Magistrates' Courts Act 1980 (power of magistrates' court to re-open cases to rectify mistakes etc) would have been exercisable by the court if the court had issued the warrant.

**40C Duty of fines officer if warrant of control withdrawn or discharged**

- (1) This paragraph applies if condition A or B is met.
- (2) Condition A is that the fines officer has withdrawn a warrant of control under paragraph 40A.
- (3) Condition B is that—

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- (a) in taking a step specified in a further steps notice or replacement notice, the fines officer has issued a warrant of control for the purpose of recovering the sum due,
  - (b) the fines officer has referred P's case to the magistrates' court under paragraph 42,
  - (c) the magistrates' court has discharged the warrant of control under paragraph 40B(2), and
  - (d) the magistrates' court has not discharged the collection order or exercised any of its powers under paragraph 42(2).
- (4) If P remains liable to pay any part of the sum due, the fines officer must—
- (a) take (or retake) one or more of the steps specified in the further steps notice or replacement notice that was the last notice to be delivered to P under paragraph 37 or 37A before the warrant of control was issued, or
  - (b) deliver to P a replacement notice and take one or more of the steps specified in that notice, or
  - (c) refer P's case to, or back to, the magistrates' court under paragraph 42.”

#### *Repeal of uncommenced provisions*

### **89 Custody plus orders and intermittent custody orders**

- (1) In the Criminal Justice Act 2003, omit the following provisions (custody plus and intermittent custody)—
- (a) sections 181 to 188;
  - (b) Schedules 10 and 11.
- (2) Schedule 10 (amendments consequential on subsection (1)) has effect.

## **CHAPTER 2**

### BAIL

### **90 Amendment of bail enactments**

Schedule 11 (amendment of enactments relating to bail) has effect.

## **CHAPTER 3**

### REMANDS OF CHILDREN OTHERWISE THAN ON BAIL

#### *Remands*

### **91 Remands of children otherwise than on bail**

- (1) This section applies where—

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- (a) a court deals with a child charged with or convicted of one or more offences by remanding the child, and
  - (b) the child is not released on bail.
- (2) This section also applies where—
- (a) a court remands a child in connection with extradition proceedings, and
  - (b) the child is not released on bail.
- (3) Subject to subsection (4), the court must remand the child to local authority accommodation in accordance with section 92.
- (4) The court may instead remand the child to youth detention accommodation in accordance with section 102 where—
- (a) in the case of a child remanded under subsection (1), the first or second set of conditions for such a remand (see sections 98 and 99) is met in relation to the child, or
  - (b) in the case of a child remanded under subsection (2), the first or second set of conditions for such a remand in an extradition case (see sections 100 and 101) is met in relation to the child.
- (5) This section is subject to section 128(7) of the Magistrates' Courts Act 1980 (remands to police detention for periods of not more than 3 days); but that provision has effect in relation to a child as if for the reference to 3 clear days there were substituted a reference to 24 hours.
- (6) In this Chapter, “child” means a person under the age of 18.
- (7) References in this Chapter (other than in relation to extradition proceedings) to the remand of a child include a reference to—
- (a) the sending of a child for trial, and
  - (b) the committal of a child for sentence,
- and related expressions are to be construed accordingly.
- (8) Before the insertion of section 51A of the Crime and Disorder Act 1998 (sending cases to the Crown Court: children and young persons) by Schedule 3 to the Criminal Justice Act 2003 is fully in force, subsection (7) has effect as if it also referred to the committal of a child for trial.
- (9) Subsection (7) also applies to any provision of an Act other than this Act that refers (directly or indirectly) to the remand of a child under this section.

#### Commencement Information

**I15** S. 91 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### *Remands to local authority accommodation*

#### **92 Remands to local authority accommodation**

- (1) A remand to local authority accommodation is a remand to accommodation provided by or on behalf of a local authority.

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- (2) A court that remands a child to local authority accommodation must designate the local authority that is to receive the child.
- (3) That authority must be—
  - (a) in the case of a child who is being looked after by a local authority, that authority, and
  - (b) in any other case, the local authority in whose area it appears to the court that the child habitually resides or the offence or one of the offences was committed.
- (4) The designated authority must—
  - (a) receive the child, and
  - (b) provide or arrange for the provision of accommodation for the child whilst the child is remanded to local authority accommodation.
- (5) Where a child is remanded to local authority accommodation, it is lawful for any person acting on behalf of the designated authority to detain the child.

#### Commencement Information

**I16** S. 92 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 93 Conditions etc on remands to local authority accommodation

- (1) A court remanding a child to local authority accommodation may require the child to comply with any conditions that could be imposed under section 3(6) of the Bail Act 1976 if the child were then being granted bail.
- (2) The court may also require the child to comply with any conditions imposed for the purpose of securing the electronic monitoring of the child's compliance with the conditions imposed under subsection (1) if—
  - (a) in the case of a child remanded under section 91(1) (proceedings other than extradition proceedings), the requirements in section 94 are met, or
  - (b) in the case of a child remanded under section 91(2) (extradition proceedings), the requirements in section 95 are met.
- (3) A court remanding a child to local authority accommodation may impose on the designated authority—
  - (a) requirements for securing compliance with any conditions imposed on the child under subsection (1) or (2), or
  - (b) requirements stipulating that the child must not be placed with a named person.
- (4) A court may only impose a condition under subsection (1) or (2), or a requirement under subsection (3), after consultation with the designated authority.
- (5) Where a child has been remanded to local authority accommodation, a relevant court—
  - (a) may, on the application of the designated authority, impose on that child any conditions that could be imposed under subsection (1) or (2) if the court were then remanding the child to local authority accommodation, and
  - (b) where it does so, may impose on the authority requirements for securing compliance with the conditions imposed under paragraph (a).

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- (6) Where a child has been remanded to local authority accommodation, a relevant court may, on the application of the designated authority or that child, vary or revoke any conditions or requirements imposed under this section (including as previously varied under this subsection).
- (7) A court that imposes conditions on a child under this section or varies conditions so imposed—
- (a) must explain to the child in open court and in ordinary language why it is imposing or varying those conditions, and
  - (b) if the court is a magistrates' court, must cause a reason given under paragraph (a) to be specified in the warrant of commitment and entered in the register.
- (8) In this section “relevant court”—
- (a) in relation to a child remanded to local authority accommodation by virtue of section 91(1) (proceedings other than extradition proceedings), means—
    - (i) the court by which the child was so remanded, or
    - (ii) any magistrates' court that has jurisdiction in the place where the child is for the time being;
  - (b) in relation to a child remanded to local authority accommodation by virtue of section 91(2) (extradition proceedings), means the court by which the child was so remanded.
- (9) References in this section to consultation are to such consultation (if any) as is reasonably practicable in all the circumstances of the case.

#### Commencement Information

I17 S. 93 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

## 94 Requirements for electronic monitoring

- (1) The requirements referred to in section 93(2)(a) (requirements for imposing electronic monitoring condition: non-extradition cases) are those set out in subsections (2) to (6).
- (2) The first requirement is that the child has reached the age of twelve.
- (3) The second requirement is that the offence mentioned in section 91(1), or one or more of those offences, is an imprisonable offence.
- (4) The third requirement is that—
  - (a) the offence mentioned in section 91(1), or one or more of those offences, is a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more, or
  - (b) the offence or offences mentioned in section 91(1), together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would, if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

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- (5) The fourth requirement is that the court is satisfied that the necessary provision for electronic monitoring can be made under arrangements currently available in each local justice area which is a relevant area.
- (6) The fifth requirement is that a youth offending team has informed the court that, in its opinion, the imposition of an electronic monitoring condition will be suitable in the child's case.
- (7) For the purposes of this section, a local justice area is a relevant area in relation to a proposed electronic monitoring condition if the court considers that it will not be practicable to secure the electronic monitoring in question unless electronic monitoring arrangements are available in that area.
- (8) In this Chapter—
- “electronic monitoring condition” means a condition imposed on a child remanded to local authority accommodation for the purpose of securing the electronic monitoring of the child's compliance with conditions imposed under section 93(1) or (5);
- “imprisonable offence” means—
- an offence punishable in the case of an adult with imprisonment, or
  - in relation to an offence of which a child has been accused or convicted outside England and Wales, an offence equivalent to an offence that, in England and Wales, is punishable in the case of an adult with imprisonment;
- “sexual offence” means an offence specified in Part 2 of Schedule 15 to the Criminal Justice Act 2003;
- “violent offence” means murder or an offence specified in Part 1 of Schedule 15 to the Criminal Justice Act 2003;
- “youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998.
- (9) References in this Chapter to a child being subject to a custodial remand are to the child being—
- remanded to local authority accommodation or youth detention accommodation, or
  - subject to a form of custodial detention in a country or territory outside England and Wales while awaiting trial or sentence in that country or territory or during a trial in that country or territory.
- (10) The reference in subsection (9) to a child being remanded to local authority accommodation or youth detention accommodation includes—
- a child being remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969, and
  - a child being remanded to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948.

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#### Commencement Information

**I18** S. 94 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

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## 95 Requirements for electronic monitoring: extradition cases

- (1) The requirements referred to in section 93(2)(b) (requirements for imposing electronic monitoring condition: extradition cases) are those set out in subsections (2) to (6).
- (2) The first requirement is that the child has reached the age of twelve.
- (3) The second requirement is that the offence to which the extradition proceedings relate, or one or more of those offences, is an imprisonable offence.
- (4) The third requirement is that—
  - (a) the conduct constituting the offence to which the extradition proceedings relate, or one or more of those offences, would, if committed in England and Wales, constitute a violent or sexual offence or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more, or
  - (b) the offence or offences to which the extradition proceedings relate, together with any other imprisonable offences of which the child has been convicted, amount or would, if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
- (5) The fourth requirement is that the court is satisfied that the necessary provision for electronic monitoring can be made under arrangements currently available in each local justice area which is a relevant area.
- (6) The fifth requirement is that a youth offending team has informed the court that, in its opinion, the imposition of an electronic monitoring condition will be suitable in the child's case.
- (7) For the purposes of this section, a local justice area is a relevant area in relation to a proposed electronic monitoring condition if the court considers that it will not be practicable to secure the electronic monitoring in question unless electronic monitoring arrangements are available in that area.

### Commencement Information

**I19** S. 95 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

## 96 Further provisions about electronic monitoring

- (1) Where a court imposes an electronic monitoring condition, the condition must include provision making a person responsible for the monitoring.
- (2) A person who is made responsible by virtue of subsection (1) must be of a description specified in an order made by the Secretary of State.
- (3) The Secretary of State may make rules for regulating—
  - (a) the electronic monitoring of compliance with conditions imposed under section 93(1) or (5), and
  - (b) in particular, the functions of persons made responsible by virtue of subsection (1) of this section.
- (4) Rules under this section may make different provision for different cases.



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- (5) Any power of the Secretary of State to make an order or rules under this section is exercisable by statutory instrument.
- (6) A statutory instrument containing rules under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Commencement Information

**I20** S. 96 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 97 Liability to arrest for breaking conditions of remand

- (1) A child may be arrested without warrant by a constable if—
  - (a) the child has been remanded to local authority accommodation,
  - (b) conditions under section 93 have been imposed in respect of the child, and
  - (c) the constable has reasonable grounds for suspecting that the child has broken any of those conditions.
- (2) Subject to subsection (3), a child arrested under subsection (1) must be brought before a justice of the peace—
  - (a) as soon as practicable, and
  - (b) in any event within the period of 24 hours beginning with the child's arrest.
- (3) If the child was arrested during the period of 24 hours ending with the time appointed for the child to appear before the court in pursuance of the remand, the child must be brought before the court before which the child was to have appeared.
- (4) In reckoning a period of 24 hours for the purposes of subsection (2) or (3), no account is to be taken of Christmas Day, Good Friday or any Sunday.
- (5) If a justice of the peace before whom a child is brought under subsection (2) is of the opinion that the child has broken any condition imposed in respect of the child under section 93, the justice of the peace must remand the child.
- (6) Section 91 applies to a child in relation to whom subsection (5) applies as if—
  - (a) except in a case within paragraph (b), the child was then charged with or convicted of the offence for which the child had been remanded, or
  - (b) in the case of a child remanded in connection with extradition proceedings, the child was then appearing before the justice of the peace in connection with those proceedings.
- (7) If a justice of the peace before whom a child is brought under subsection (2) is not of the opinion mentioned in subsection (5), the justice of the peace must remand the child to the place to which the child had been remanded at the time of the child's arrest subject to the same conditions as those which had been imposed on the child at that time.

#### Commencement Information

**I21** S. 97 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

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### *Remands to youth detention accommodation*

#### **98 First set of conditions for a remand to youth detention accommodation**

- (1) For the purposes of section 91(4)(a), the first set of conditions for a remand to youth detention accommodation is met in relation to a child if each of the following is met in relation to the child—
  - (a) the age condition (see subsection (2)),
  - (b) the offence condition (see subsection (3)),
  - (c) the necessity condition (see subsection (4)), and
  - (d) the first or second legal representation condition (see subsections (5) and (6)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences—
  - (a) is a violent or sexual offence, or
  - (b) is an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.
- (4) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (5) The first legal representation condition is that the child is legally represented before the court.
- (6) The second legal representation condition is that the child is not legally represented before the court and—
  - (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,
  - (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.

#### **Commencement Information**

**I22** S. 98 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

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## 99 Second set of conditions for a remand to youth detention accommodation

- (1) For the purposes of section 91(4)(a), the second set of conditions for a remand to youth detention accommodation is met in relation to a child if each of the following is met in relation to the child—
  - (a) the age condition (see subsection (2)),
  - (b) the sentencing condition (see subsection (3)),
  - (c) the offence condition (see subsection (4)),
  - (d) the first or second history condition or both (see subsections (5) and (6)),
  - (e) the necessity condition (see subsection (7)), and
  - (f) the first or second legal representation condition (see subsections (8) and (9)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The sentencing condition is that it appears to the court that there is a real prospect that the child will be sentenced to a custodial sentence for the offence mentioned in section 91(1) or one or more of those offences.
- (4) The offence condition is that the offence mentioned in section 91(1), or one or more of those offences, is an imprisonable offence.
- (5) The first history condition is that—
  - (a) the child has a recent history of absconding while subject to a custodial remand, and
  - (b) the offence mentioned in section 91(1), or one or more of those offences, is alleged to be or has been found to have been committed while the child was remanded to local authority accommodation or youth detention accommodation.
- (6) The second history condition is that the offence or offences mentioned in section 91(1), together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would, if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
- (7) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
  - (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (8) The first legal representation condition is that the child is legally represented before the court.
- (9) The second legal representation condition is that the child is not legally represented before the court and—
  - (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,

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- (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.
- (10) In this Chapter “custodial sentence” means a sentence or order mentioned in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2000.
- (11) The reference in subsection (5)(b) to a child being remanded to local authority accommodation or youth detention accommodation includes—
- (a) a child being remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969, and
  - (b) a child being remanded to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948.

#### Commencement Information

**I23** S. 99 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 100 First set of conditions for a remand to youth detention accommodation: extradition cases

- (1) For the purposes of section 91(4)(b), the first set of conditions for a remand to youth detention accommodation in an extradition case is met in relation to a child if each of the following is met in relation to the child—
- (a) the age condition (see subsection (2)),
  - (b) the offence condition (see subsection (3)),
  - (c) the necessity condition (see subsection (4)), and
  - (d) the first or second legal representation condition (see subsections (5) and (6)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The offence condition is that the conduct constituting the offence to which the extradition proceedings relate, or one or more of those offences, would, if committed in England and Wales, constitute—
- (a) a violent or sexual offence, or
  - (b) an offence punishable in the case of an adult with imprisonment for a term of 14 years or more.
- (4) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
- (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (5) The first legal representation condition is that the child is legally represented before the court.

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- (6) The second legal representation condition is that the child is not legally represented before the court and—
- (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,
  - (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.

#### Commencement Information

**I24** S. 100 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 101 Second set of conditions for a remand to youth detention accommodation: extradition cases

- (1) For the purposes of section 91(4)(b), the second set of conditions for a remand to youth detention accommodation in an extradition case is met in relation to a child if each of the following is met in relation to the child—
  - (a) the age condition (see subsection (2)),
  - (b) the sentencing condition (see subsection (3)),
  - (c) the offence condition (see subsection (4)),
  - (d) the first or second history condition or both (see subsections (5) and (6)),
  - (e) the necessity condition (see subsection (7)), and
  - (f) the first or second legal representation condition (see subsections (8) and (9)).
- (2) The age condition is that the child has reached the age of twelve.
- (3) The sentencing condition is that it appears to the court that, if the child were convicted in England and Wales of an offence equivalent to the offence to which the extradition proceedings relate or one or more of those offences, there would be a real prospect that the child would be sentenced to a custodial sentence for that offence or those offences.
- (4) The offence condition is that the offence to which the extradition proceedings relate, or one or more of those offences, is an imprisonable offence.
- (5) The first history condition is that—
  - (a) the child has a recent history of absconding while subject to a custodial remand, and
  - (b) the offence to which the extradition proceedings relate, or one or more of those offences, is alleged to be or has been found to have been committed while the child was subject to a custodial remand.
- (6) The second history condition is that the offence or offences to which the extradition proceedings relate, together with any other imprisonable offences of which the child has been convicted, amount or would, if the child were convicted of that offence or

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those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

- (7) The necessity condition is that the court is of the opinion, after considering all the options for the remand of the child, that only remanding the child to youth detention accommodation would be adequate—
- (a) to protect the public from death or serious personal injury (whether physical or psychological) occasioned by further offences committed by the child, or
  - (b) to prevent the commission by the child of imprisonable offences.
- (8) The first legal representation condition is that the child is legally represented before the court.
- (9) The second legal representation condition is that the child is not legally represented before the court and—
- (a) representation was provided to the child under Part 1 of this Act for the purposes of the proceedings, but was withdrawn—
    - (i) because of the child's conduct, or
    - (ii) because it appeared that the child's financial resources were such that the child was not eligible for such representation,
  - (b) the child applied for such representation and the application was refused because it appeared that the child's financial resources were such that the child was not eligible for such representation, or
  - (c) having been informed of the right to apply for such representation and having had the opportunity to do so, the child refused or failed to apply.

#### Commencement Information

**I25** S. 101 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

## 102 Remands to youth detention accommodation

- (1) A remand to youth detention accommodation is a remand to such accommodation of a kind listed in subsection (2) as the Secretary of State directs in the child's case.
- (2) Those kinds of accommodation are—
- (a) a secure children's home,
  - (b) a secure training centre,
  - (c) a young offender institution, and
  - (d) accommodation, or accommodation of a description, for the time being specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for purposes of detention and training order provisions).
- (3) A child's detention in one of those kinds of accommodation pursuant to a remand to youth detention accommodation is lawful.
- (4) Where a court remands a child to youth detention accommodation, the court must—
- (a) state in open court that it is of the opinion mentioned in section 98(4), 99(7), 100(4) or 101(7) (as the case may be), and
  - (b) explain to the child in open court and in ordinary language why it is of that opinion.

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- (5) A magistrates' court must ensure a reason that it gives under subsection (4)(b)—
  - (a) is specified in the warrant of commitment, and
  - (b) is entered in the register.
- (6) Where a court remands a child to youth detention accommodation, the court must designate a local authority as the designated authority for the child for the purposes of—
  - (a) subsection (8),
  - (b) regulations under section 103 (arrangements for remands), and
  - (c) section 104 (looked after child status).
- (7) That authority must be—
  - (a) in the case of a child who is being looked after by a local authority, that authority, and
  - (b) in any other case, the local authority in whose area it appears to the court that the child habitually resides or the offence or one of the offences was committed.
- (8) Before giving a direction under subsection (1), the Secretary of State must consult the designated authority.
- (9) A function of the Secretary of State under this section (other than the function of making regulations) is exercisable by the Youth Justice Board for England and Wales concurrently with the Secretary of State.
- (10) The Secretary of State may by regulations provide that subsection (9) is not to apply, either generally or in relation to a particular description of case.
- (11) In this Chapter “secure children's home” means accommodation which is provided in a children's home, within the meaning of the Care Standards Act 2000—
  - (a) which provides accommodation for the purposes of restricting liberty, and
  - (b) in respect of which a person is registered under Part 2 of that Act.
- (12) Before the coming into force in relation to England of section 107(2) of the Health and Social Care (Community Health and Standards) Act 2003, subsection (11) has effect as if it defined “secure children's home” in relation to England as accommodation which—
  - (a) is provided in a children's home, within the meaning of the Care Standards Act 2000, in respect of which a person is registered under Part 2 of that Act, and
  - (b) is approved by the Secretary of State for the purpose of restricting the liberty of children.

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#### Commencement Information

**I26** S. 102 wholly in force at 3.12.2012, see s. 151(1) and [S.I. 2012/2906](#), [art. 2\(c\)](#) (with [art. 7\(1\)\(3\)](#))

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### Supplementary

#### 103 Arrangements for remands

- (1) The Secretary of State may make arrangements for or in connection with the accommodation in secure children's homes, or accommodation within section 102(2)(d), of children remanded to youth detention accommodation.
- (2) The Secretary of State may by regulations make provision about the recovery from the designated authority by a person mentioned in subsection (3) of the costs of—
  - (a) a child being subject to a remand to youth detention accommodation;
  - (b) the exercise of functions of the kind mentioned in—
    - (i) section 80(1)(a) to (e) of the Criminal Justice Act 1991 (escort functions) read with section 92(3) of that Act, or
    - (ii) paragraph 1(1)(a) to (d) of Schedule 1 to the Criminal Justice and Public Order Act 1994 (escort functions),
 in relation to a child subject to such a remand.
- (3) Those persons are—
  - (a) the Secretary of State;
  - (b) a person other than the Secretary of State by whom the accommodation pursuant to the remand to youth detention accommodation is provided or the functions are exercised (as the case may be).
- (4) The Secretary of State may make payments to a local authority for the purpose of enabling the authority—
  - (a) to exercise functions under section 92(4) (duty to receive and accommodate child remanded to local authority accommodation);
  - (b) to make payments pursuant to regulations under this section.
- (5) A function of the Secretary of State under this section (other than the function of making regulations) is exercisable by the Youth Justice Board for England and Wales concurrently with the Secretary of State.
- (6) The power to make regulations under subsection (2) includes power to make provision about the recovery of costs by the Youth Justice Board for England and Wales.
- (7) The Secretary of State may by regulations provide that subsection (5), or provision made by virtue of subsection (6), is not to apply, either generally or in relation to a particular description of case.

#### Commencement Information

I27 S. 103 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

#### 104 Looked after child status

- (1) A child who is remanded to youth detention accommodation is to be treated as a child who is looked after by the designated authority.
- (2) The Secretary of State may by regulations provide for any Act or instrument made under an Act that applies to a child looked after by a local authority to apply with



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modifications, or not to apply, in relation to a child who is to be treated as looked after by a designated authority by virtue of this Chapter.

(3) In this section “Act” includes an Act or Measure of the National Assembly for Wales.

#### Commencement Information

**I28** S. 104 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 105 Minor and consequential amendments

Schedule 12 (remands of children otherwise than on bail: minor and consequential amendments) has effect.

#### Commencement Information

**I29** S. 105 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 106 Regulations under this Chapter

- (1) Regulations under this Chapter are to be made by statutory instrument.
- (2) Regulations under this Chapter may—
  - (a) make different provision for different cases;
  - (b) include supplementary, incidental, transitional, transitory or saving provision.
- (3) A statutory instrument containing regulations under this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (4).
- (4) A statutory instrument containing regulations under section 102(10) or 103(7) (whether alone or with any other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

#### Commencement Information

**I30** S. 106 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

### 107 Interpretation of Chapter

- (1) In this Chapter—
  - “child” has the meaning given by section 91(6);
  - “court” and “magistrates’ court” include a justice of the peace;
  - “custodial sentence” has the meaning given by section 99(10);
  - “the designated authority”—
    - (a) in relation to a child remanded to local authority accommodation, means the local authority that is designated by the court under section 92(2) to receive the child;

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- (b) in relation to a child remanded to youth detention accommodation, means the local authority that is designated by the court under section 102(6) as the designated authority for the child;
- “electronic monitoring condition” has the meaning given by section 94(8);
- “extradition proceedings” means proceedings under the Extradition Act 2003;
- “imprisonable offence” has the meaning given by section 94(8);
- “local authority” means—
- (a) a county council;
  - (b) a county borough council;
  - (c) a district council for an area for which there is no county council;
  - (d) a London borough council;
  - (e) the Common Council of the City of London;
  - (f) the Council of the Isles of Scilly;
- “secure children's home” has the meaning given by section 102(11);
- “sexual offence” has the meaning given by section 94(8);
- “violent offence” has the meaning given by section 94(8);
- “youth offending team” has the meaning given by section 94(8).
- (2) In this Chapter, references to the remand of a child, and related expressions, are to be construed in accordance with section 91(7) and (8).
- (3) In this Chapter, references to a remand to local authority accommodation, and related expressions, are to be construed in accordance with section 92(1).
- (4) In this Chapter, references to a child being subject to a custodial remand are to be construed in accordance with section 94(9).
- (5) In this Chapter, references to a remand to youth detention accommodation, and related expressions, are to be construed in accordance with section 102(1).
- (6) In this Chapter, references to a child who is looked after by a local authority are to be construed in accordance with section 22 of the Children Act 1989.
- (7) Subsections (3) and (5) are subject to sections 94(10) and 99(11) (references to remand to local authority accommodation or youth detention accommodation to include such a remand under section 23 of the Children and Young Persons Act 1969 or a remand to prison).

#### Commencement Information

**I31** S. 107 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(c) (with art. 7(1)(3))

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## CHAPTER 4

### RELEASE ON LICENCE ETC

#### *Calculation of days to be served*

#### **108 Crediting of periods of remand in custody**

- (1) Omit section 240 of the Criminal Justice Act 2003 (court to direct that remand time be credited towards time served).
- (2) Before section 240A of that Act insert—

**“240ZA Time remanded in custody to count as time served: terms of imprisonment and detention**

- (1) This section applies where—
  - (a) an offender is serving a term of imprisonment in respect of an offence, and
  - (b) the offender has been remanded in custody (within the meaning given by section 242) in connection with the offence or a related offence.
- (2) It is immaterial for that purpose whether, for all or part of the period during which the offender was remanded in custody, the offender was also remanded in custody in connection with other offences (but see subsection (5)).
- (3) The number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by the offender as part of the sentence.  
  
But this is subject to subsections (4) to (6).
- (4) If, on any day on which the offender was remanded in custody, the offender was also detained in connection with any other matter, that day is not to count as time served.
- (5) A day counts as time served—
  - (a) in relation to only one sentence, and
  - (b) only once in relation to that sentence.
- (6) A day is not to count as time served as part of any period of 28 days served by the offender before automatic release (see section 255B(1)).
- (7) For the purposes of this section a suspended sentence—
  - (a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 8(2)(a) or (b) of Schedule 12, and
  - (b) is to be treated as being imposed by the order under which it takes effect.
- (8) In this section “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.

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- (9) For the purposes of the references in subsections (3) and (5) to the term of imprisonment to which a person has been sentenced (that is to say, the reference to the offender's "sentence"), consecutive terms 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 person has not been released at any time during the period beginning with the first and ending with the last of those occasions.
- (10) The reference in subsection (4) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes—
- (a) detention pursuant to any custodial sentence;
  - (b) committal in default of payment of any sum of money;
  - (c) committal for want of sufficient distress to satisfy any sum of money;
  - (d) committal for failure to do or abstain from doing anything required to be done or left undone.
- (11) This section applies to a determinate sentence of detention under section 91 or 96 of the Sentencing Act or section 227 or 228 of this Act as it applies to an equivalent sentence of imprisonment.”

## 109 Crediting of periods of remand on bail

- (1) Section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail: terms of imprisonment and detention) is amended as follows.
- (2) In subsection (2), for “subsection (4)” substitute “ subsections (3A) and (3B) ”.
- (3) For subsections (3) to (7) substitute—

“(3) The credit period is calculated by taking the following steps.

*Step 1* Add—

- (a) the day on which the offender's bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question), and
- (b) the number of other days on which the offender's bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).

*Step 2* Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also—

- (a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender's compliance with a curfew requirement, or
- (b) on temporary release under rules made under section 47 of the Prison Act 1952.

*Step 3* From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

*Step 4* Divide the result by 2.

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*Step 5* If necessary, round up to the nearest whole number.

- (3A) A day of the credit period counts as time served—
- (a) in relation to only one sentence, and
  - (b) only once in relation to that sentence.
- (3B) A day of the credit period is not to count as time served as part of any period of 28 days served by the offender before automatic release (see section 255B(1)).”
- (4) In subsection (8)—
- (a) omit “or (5)”;
  - (b) for paragraph (b) substitute—  
“(b) the number of days (if any) which it deducted under each of steps 2 and 3.”
- (5) Omit subsections (9) and (10).
- (6) In subsection (11)—
- (a) for “Subsections (7) to (10) of section 240” substitute “ Subsections (7) to (9) and (11) of section 240ZA ”;
  - (b) in paragraph (b), for “in subsection (8) the reference to subsection (3) of section 240 is” substitute “ in subsection (9) the references to subsections (3) and (5) of section 240ZA are ”.
- (7) In subsection (12)—
- (a) before the definition of “electronic monitoring condition” insert—  
““curfew requirement” means a requirement (however described) to remain at one or more specified places for a specified number of hours in any given day, provided that the requirement is imposed by a court or the Secretary of State and arises as a result of a conviction;”;
  - (b) omit the definition of “related offence” and the “and” preceding it.
- (8) In the heading of the section, for “Crediting periods of remand on bail” substitute “ Time remanded on bail to count towards time served ”.

## **110 Amendments consequential on sections 108 and 109**

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In section 237(1C) (meaning of “fixed-term prisoner”)—
- (a) for “section 240” substitute “ section 240ZA ”;
  - (b) after “Armed Forces Act 2006” insert “ or section 240A ”.
- (3) Section 241 (effect of direction under section 240 or 240A) is amended as follows.
- (4) In subsection (1)—
- (a) for “to whom a direction under section 240 or 240A relates” substitute “ to whom section 240ZA applies or a direction under section 240A relates ”;
  - (b) for “specified in the direction” substitute “ specified in section 240ZA or in the direction under section 240A ”.

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- (5) In subsection (1A), for “a direction under section 240 or 240A includes a direction under” substitute “ section 240ZA includes ”.
- (6) In the heading, for “direction under section 240 or 240A” substitute “ section 240ZA or direction under section 240A ”.
- (7) In section 242 (interpretation of sections 240 to 241), in subsections (1) and (2) and in the heading, for “sections 240” substitute “ sections 240ZA ”.
- (8) For section 243(2) (persons extradited to the United Kingdom) substitute—
- “(2) In the case of an extradited prisoner, the court must specify in open court the number of days for which the prisoner was kept in custody while awaiting extradition.
- (2A) Section 240ZA applies to days specified under subsection (2) as if they were days for which the prisoner was remanded in custody in connection with the offence or a related offence.”
- (9) In section 246 (power to release prisoners early)—
- (a) in subsection (4)(i), for “to whom a direction under section 240 or 240A relates” substitute “ to whom section 240ZA applies or a direction under section 240A relates ”;
- (b) in subsection (4A)(b), for “a direction under section 240 includes a direction under” substitute “ section 240ZA includes ”.
- (10) In section 269 (determination of minimum term in relation to mandatory life sentence) —
- (a) in subsection (3)(b), for the words from “any direction which it would have given” to “certain types of condition)” substitute “ section 240ZA (crediting periods of remand in custody) or of any direction which it would have given under section 240A (crediting periods of remand on certain types of bail) ”;
- (b) after that subsection insert—
- “(3A) The reference in subsection (3)(b) to section 240ZA includes section 246 of the Armed Forces Act 2006 (crediting periods in service custody).”
- (11) In section 305(1A) (modification of reference to want of sufficient distress), inserted by paragraph 155 of Schedule 13 to the Tribunals, Courts and Enforcement Act 2007, for “In the definition of “sentence of imprisonment” in subsection (1) the reference” substitute “ In this Part any reference ”.
- (12) In section 330(5) (rules to be subject to affirmative resolution)—
- (a) after paragraph (b) insert “ or ”, and
- (b) omit paragraph (d) and the “or” preceding it.
- (13) Schedule 13 (crediting of time in custody) has effect.
- (14) In consequence of the amendments made by this section, in the Criminal Justice and Immigration Act 2008 omit—
- (a) section 21(2), (5) and (7);
- (b) section 22(2) and (3);
- (c) section 23 and Schedule 6.

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## Release

### 111 Prisoners serving less than 12 months

- (1) After section 243 of the Criminal Justice Act 2003 insert—

#### *“Unconditional release*

#### **243A Duty to release prisoners serving less than 12 months**

- (1) This section applies to a fixed-term prisoner who is serving a sentence which is for a term of less than twelve months.
- (2) As soon as a prisoner to whom this section applies has served the requisite custodial period for the purposes of this section, it is the duty of the Secretary of State to release that person unconditionally.
- (3) For the purposes of this section “the requisite custodial period” is—
- (a) in relation to a person serving a sentence of imprisonment for a term of less than twelve months or a determinate sentence of detention under section 91 or 96 of the Sentencing Act for such a term, one-half of the sentence, and
  - (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).
- (4) This section is subject to—
- (a) section 256B (supervision of young offenders after release), and
  - (b) paragraph 8 of Schedule 20B (transitional cases).”
- (2) Schedule 14 (amendments consequential on subsection (1)) has effect.

### 112 Restrictions on early release subject to curfew

- (1) In section 246 of the Criminal Justice Act 2003 (power to release prisoners on licence), subsection (4) is amended as follows.
- (2) After paragraph (a) insert—
- “(aa) the sentence is for a term of 4 years or more.”.
- (3) In paragraph (g)—
- (a) for “during the currency of the sentence” substitute “ at any time ”, and
  - (b) at the end insert “ (and the revocation has not been cancelled under section 255(3)) ”.
- (4) Omit the “or” at the end of paragraph (h) and after that paragraph insert—
- “(ha) the prisoner has at any time been returned to prison under section 40 of the Criminal Justice Act 1991 or section 116 of the Sentencing Act, or”.
- (5) After subsection (4) of that section insert—
- “(4ZA) Where subsection (4)(aa) applies to a prisoner who is serving two or more terms of imprisonment, the reference to the term of the sentence is—

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- (a) if the terms are partly concurrent, a reference to the period which begins when the first term begins and ends when the last term ends;
- (b) if the terms are to be served consecutively, a reference to the aggregate of the terms.”

(6) In subsection (6) of that section, at the end insert—

““term of imprisonment” includes a determinate sentence of detention under section 91 or 96 of the Sentencing Act or under section 227 or 228 of this Act.””

#### *Further release after recall*

### **113 Cancellation of revocation of licence**

(1) After section 254(2) of the Criminal Justice Act 2003 (representations by person recalled) insert—

“(2A) The Secretary of State, after considering any representations under subsection (2)(a) or any other matters, may cancel a revocation under this section.

(2B) The Secretary of State may cancel a revocation under subsection (2A) only if satisfied that the person recalled has complied with all the conditions specified in the licence.

(2C) Where the revocation of a person's licence is cancelled under subsection (2A), the person is to be treated as if the recall under subsection (1) had not happened.”

(2) In section 255(3) of that Act (cancellation of revocation under section 255), for “subsection (2)(b)” substitute “subsection (2)(a)”.

### **114 Further release after recall**

(1) For sections 255A to 255D of the Criminal Justice Act 2003 (further release after recall) substitute—

#### *“Further release after recall*

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

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

(2) The Secretary of State must, on recalling a person other than an extended sentence prisoner, consider whether the person is suitable for automatic release.

(3) For this purpose “automatic release” means release at the end of the period of 28 days beginning with the date on which the person returns to custody.



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- (4) A person is suitable for automatic release only if the Secretary of State is satisfied that the person will not present a risk of serious harm to members of the public if released at the end of that period.
- (5) The person must be dealt with—
  - (a) in accordance with section 255B if suitable for automatic release;
  - (b) in accordance with section 255C otherwise.
- (6) For the purposes of this section, a person returns to custody when that person, having been recalled, is detained (whether or not in prison) in pursuance of the sentence.
- (7) An “extended sentence prisoner” is a prisoner serving an extended sentence imposed under—
  - (a) section 227 or 228 of this Act, or
  - (b) section 85 of the Sentencing Act;and paragraph (b) includes (in accordance with paragraph 1(3) of Schedule 11 to the Sentencing Act) a reference to section 58 of the Crime and Disorder Act 1998.

#### **255B Automatic release**

- (1) A prisoner who is suitable for automatic release (“P”) must—
  - (a) on return to prison, be informed that he or she will be released under this section (subject to subsections (8) and (9)), and
  - (b) at the end of the 28 day period mentioned in section 255A(3), be released by the Secretary of State on licence under this Chapter (unless P is released before that date under subsection (2) or (5)).
- (2) The Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.
- (3) The Secretary of State must not release P under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that P should remain in prison until the end of the period mentioned in subsection (1)(b).
- (4) If P makes representations under section 254(2) before the end of that period, the Secretary of State must refer P's case to the Board on the making of those representations.
- (5) Where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction.
- (6) Subsection (7) applies if P is recalled before the date on which P would (but for the earlier release) have served the requisite custodial period for the purposes of section 243A or (as the case may be) section 244.
- (7) Where this subsection applies—
  - (a) if P is released under this section before that date, P's licence must include a curfew condition complying with section 253, and

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- (b) P is not to be so released (despite subsections (1)(b) and (5)) unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with.
- (8) Subsection (9) applies if, after P has been informed that he or she will be released under this section, the Secretary of State receives further information about P (whether or not relating to any time before P was recalled).
- (9) If the Secretary of State determines, having regard to that and any other relevant information, that P is not suitable for automatic release—
  - (a) the Secretary of State must inform P that he or she will not be released under this section, and
  - (b) section 255C applies to P as if the Secretary of State had determined, on P's recall, that P was not suitable for automatic release.

### **255C Extended sentence prisoners and those not suitable for automatic release**

- (1) This section applies to a prisoner (“P”) who—
  - (a) is an extended sentence prisoner, or
  - (b) is not considered to be suitable for automatic release.
- (2) The Secretary of State may, at any time after P is returned to prison, release P again on licence under this Chapter.
- (3) The Secretary of State must not release P under subsection (2) unless the Secretary of State is satisfied that it is not necessary for the protection of the public that P should remain in prison.
- (4) The Secretary of State must refer P's case to the Board—
  - (a) if P makes representations under section 254(2) before the end of the period of 28 days beginning with the date on which P returns to custody, on the making of those representations, or
  - (b) if, at the end of that period, P has not been released under subsection (2) and has not made such representations, at that time.
- (5) Where on a reference under subsection (4) the Board directs P's immediate release on licence under this Chapter, the Secretary of State must give effect to the direction.
- (6) Subsection (7) applies if P is recalled before the date on which P would (but for the earlier release) have served the requisite custodial period for the purposes of section 243A or (as the case may be) section 244.
- (7) Where this subsection applies—
  - (a) if P is released under this section before that date, P's licence must include a curfew condition complying with section 253, and
  - (b) P is not to be so released (despite subsection (5)) unless the Secretary of State is satisfied that arrangements are in place to enable that condition to be complied with.
- (8) For the purposes of this section, P returns to custody when P, having been recalled, is detained (whether or not in prison) in pursuance of the sentence.”

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(2) After section 244(1) of that Act (duty to release certain prisoners on licence at half-way point) insert—

“(1A) Subsection (1) does not apply if the prisoner has been released on licence under section 246 and recalled under section 254 (provision for the release of such persons being made by sections 255B and 255C).”

(3) In the heading of section 253 of that Act (curfew conditions) after “section 246” insert “, 255B or 255C”.

(4) In section 256(1) of that Act (review by the Board), for “section 255B(4), 255C(4) or 255D(1)” substitute “section 255B(4) or 255C(4)”.

(5) In consequence of the amendments made by this section, omit section 29(2) and (3) of the Criminal Justice and Immigration Act 2008.

#### *Other provisions about release*

### **115 Supervision of young offenders after release**

After section 256A of the Criminal Justice Act 2003 insert—

#### *“Supervision of young offenders after release*

##### **256B Supervision of young offenders after release**

- (1) This section applies where a person (“the offender”) is released under this Chapter from one of the following terms if the term is for less than 12 months—
  - (a) a term of detention in a young offender institution;
  - (b) a term of detention under section 91 of the Sentencing Act;
  - (c) a term of detention under section 209 of the Armed Forces Act 2006.
- (2) The offender is to be under the supervision of—
  - (a) an officer of a provider of probation services,
  - (b) a social worker of a local authority, or
  - (c) if the offender is under the age of 18 years at the date of release, a member of the youth offending team.
- (3) Where the supervision is to be provided by an officer of a provider of probation services, the officer must be an officer acting in the local justice area in which the offender resides for the time being.
- (4) Where the supervision is to be provided by—
  - (a) a social worker of a local authority, or
  - (b) a member of a youth offending team,
 the social worker or member must be a social worker of, or a member of a youth offending team established by, the local authority within whose area the offender resides for the time being.
- (5) The supervision period begins on the offender's release and ends three months later (whether or not the offender is detained under section 256C or otherwise during that period).

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- (6) During the supervision period, the offender must comply with such requirements, if any, as may for the time being be specified in a notice from the Secretary of State.
- (7) The requirements that may be specified in a notice under subsection (6) include—
- (a) requirements for securing the electronic monitoring of the offender's compliance with any other requirements specified in the notice;
  - (b) requirements for securing the electronic monitoring of the offender's whereabouts (otherwise than for the purpose of securing compliance with requirements specified in the notice);
  - (c) in the circumstances mentioned in subsection (8), requirements to provide, when instructed to do so by an officer of a provider of probation services or a person authorised by the Secretary of State, any sample mentioned in the instruction for the purpose of ascertaining whether the offender has any specified Class A drug in his or her body.
- (8) The circumstances referred to in subsection (7)(c) are that—
- (a) the offender has attained the age of 18 years;
  - (b) the offender's term of detention was imposed for a trigger offence; and
  - (c) the requirements to provide samples are being imposed for the purpose of determining whether the offender is complying with any other requirements specified in the notice.
- (9) The function of giving such an instruction as is mentioned in subsection (7)(c) must be exercised in accordance with guidance given from time to time by the Secretary of State; and the Secretary of State may make rules about the requirements that may be imposed by virtue of subsection (7) and the provision of samples in pursuance of such an instruction.
- (10) In this section—
- “specified Class A drug” has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000;
- “trigger offence”—
- (a) has the same meaning as in that Part, unless paragraph (b) applies;
  - (b) if the offender's term of detention was imposed for an offence under section 42 of the Armed Forces Act 2006 (criminal conduct), means such an offence as respects which the corresponding offence under the law of England and Wales is a trigger offence within the meaning of that Part.

### **256C Breach of supervision requirements**

- (1) Where an offender is under supervision under section 256B and it appears on information to a justice of the peace that the offender has failed to comply with requirements under section 256B(6), the justice may—
- (a) issue a summons requiring the offender to appear at the place and time specified in the summons, or
  - (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

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- (2) Any summons or warrant issued under this section must direct the offender to appear or be brought—
  - (a) before a court acting for the local justice area in which the offender resides, or
  - (b) if it is not known where the offender resides, before a court acting for same local justice area as the justice who issued the summons or warrant.
- (3) Where the offender does not appear in answer to a summons issued under subsection (1)(a), the court may issue a warrant for the offender's arrest.
- (4) If it is proved to the satisfaction of the court that the offender has failed to comply with requirements under section 256B(6), the court may—
  - (a) order the offender to be detained, in prison or such youth detention accommodation as the Secretary of State may determine, for such period, not exceeding 30 days, as the court may specify, or
  - (b) impose on the offender a fine not exceeding level 3 on the standard scale.
- (5) An offender detained in pursuance of an order under subsection (4)(a) is to be regarded as being in legal custody.
- (6) A fine imposed under subsection (4)(b) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (7) An offender may appeal to the Crown Court against any order made under subsection (4)(a) or (b).
- (8) In this section “court” means—
  - (a) if the offender has attained the age of 18 years at the date of release, a magistrates' court other than a youth court;
  - (b) if the offender is under the age of 18 years at the date of release, a youth court.”

## 116 Miscellaneous amendments relating to release and recall

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) Omit section 248(2) (Secretary of State to consult Board before releasing extended sentence prisoner on compassionate grounds).
- (3) In section 256(1) (review by the Board)—
  - (a) for “recommend” substitute “ direct ”;
  - (b) for “recommendation” substitute “ direction ”.
- (4) In section 256A (further review)—
  - (a) in subsection (4)(a), for “recommending” substitute “ directing ”;
  - (b) in subsection (4)(c), for “recommendation” substitute “ direction ”;
  - (c) in subsection (5), for “recommendation” (in both places) substitute “ direction ”.
- (5) In section 260(5) (duties and powers remaining exercisable in relation to persons removed from prison), after “244” insert “ , 247 ”.

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- (6) In section 261(5) (re-entry to UK of offender removed early: re-release), after “sentence expiry date,” insert “—
- (a) if the person is serving an extended sentence imposed under section 227 or 228, section 247 has effect in relation to that person as if the reference to one-half of the appropriate custodial term were a reference to the further custodial period;
  - (b) in any other case,”.
- (7) In section 261(6) (re-entry to UK of offender removed early: definitions), in the definition of “requisite custodial period”, after the words “requisite custodial period” insert “—
- (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,”.
- (8) In section 263(2)(b) (concurrent terms: authority to release), for “section 244” substitute “ section 246 ”.
- (9) In section 263(2)(c) (concurrent terms: licence period), for the words “for so long, and subject to such conditions, as is” substitute “—
- (i) until the last date on which the offender is required to be on licence in respect of any of the terms, and
  - (ii) subject to such conditions as are”.

## 117 Replacement of transitory provisions

- (1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release on licence) is amended as follows.
- (2) In section 237(1)(b) (“fixed-term prisoner” includes those serving sentence of detention)—
- (a) after “91” insert “ or 96 ”;
  - (b) before “228” insert “ 227 or ”.
- (3) At the end of that section insert—
- “(3) In this Chapter, references to a sentence of detention under section 96 of the Sentencing Act or section 227 of this Act are references to a sentence of detention in a young offender institution.”
- (4) In section 244(3)(a) (duty to release prisoners: requisite custodial period), after “91” insert “ or 96 ”.
- (5) In section 250(4) (licence conditions)—
- (a) after “91” insert “ or 96 ”;
  - (b) before “228” insert “ 227 or ”.
- (6) In section 258 (early release of fine defaulters and contemnors), after subsection (3) insert—

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- “(3A) The reference in subsection (3) to sentences of imprisonment includes sentences of detention under section 91 or 96 of the Sentencing Act or under section 227 or 228 of this Act.”
- (7) In section 263(4) (concurrent terms)—
- (a) after “91” insert “ or 96 ”;
  - (b) before “228” insert “ 227 or ”.
- (8) In section 264(7) (consecutive terms)—
- (a) after “91” insert “ or 96 ”;
  - (b) before “228” insert “ 227 or ”.
- (9) In section 265(2) (restriction on consecutive sentences)—
- (a) after “91” insert “ or 96 ”;
  - (b) before “228” insert “ 227 or ”.
- (10) In Part 2 of the Crime (Sentences) Act 1997 (life sentences: release on licence)—
- (a) in section 31A(5) (termination of licences), in the definition of “preventive sentence”, after “a sentence of imprisonment” insert “ or detention in a young offender institution ”;
  - (b) in section 34(2)(d) (interpretation), after “a sentence of imprisonment” insert “ or detention in a young offender institution ”.
- (11) In the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 (S.I. 2005/643), article 3(7), (10), (11), (12), (13), (14), (15) and (17)(a) and (b) (transitory provision replaced by this section) are revoked.

## 118 Repeal of uncommenced provisions

- (1) This section repeals certain provisions which have not been commenced.
- (2) Omit section 266 of the Criminal Justice Act 2003 (which amends section 64 of the Criminal Justice and Court Services Act 2000 in relation to drug testing requirements).
- (3) Omit section 34 of the Police and Justice Act 2006 (which makes amendments of Part 12 of the Criminal Justice Act 2003 relating to imprisonment for bail offences).
- (4) Omit the following provisions of the Criminal Justice and Immigration Act 2008 (which relate to the early release of persons with a settled intention of residing permanently outside the UK)—
- (a) section 33(2), (4), (7) and (8) (amendments of the Criminal Justice Act 1991);
  - (b) section 34(2), (4)(b), (7) and (10) (amendments of the Criminal Justice Act 2003).
- (5) In Schedule 8 to the Crime and Disorder Act 1998 (minor and consequential amendments) omit—
- (a) paragraph 86 (amendments of section 41 of the Criminal Justice Act 1991);
  - (b) paragraph 90 (amendment of section 47 of that Act).

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### *Life sentence prisoners*

## **119 Removal of prisoners from the United Kingdom**

After section 32 of the Crime (Sentences) Act 1997 insert—

### *“Persons liable to removal from the United Kingdom*

#### **32A Removal of prisoners liable to removal from United Kingdom**

- (1) Where P—
  - (a) is a life prisoner in respect of whom a minimum term order has been made, and
  - (b) is liable to removal from the United Kingdom,
 the Secretary of State may remove P from prison under this section at any time after P has served the relevant part of the sentence (whether or not the Parole Board has directed P's release under section 28).
- (2) But if P is serving two or more life sentences—
  - (a) this section does not apply to P unless a minimum term order has been made in respect of each of those sentences; and
  - (b) the Secretary of State may not remove P from prison under this section until P has served the relevant part of each of them.
- (3) If P is removed from prison under this section—
  - (a) P is so removed only for the purpose of enabling the Secretary of State to remove P from the United Kingdom under powers conferred by—
    - (i) Schedule 2 or 3 to the Immigration Act 1971, or
    - (ii) section 10 of the Immigration and Asylum Act 1999, and
  - (b) so long as remaining in the United Kingdom, P remains liable to be detained in pursuance of the sentence.
- (4) So long as P, having been removed from prison under this section, remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State under section 28 or 30 is exercisable in relation to P as if P were in prison.
- (5) In this section—
 

“liable to removal from the United Kingdom” has the meaning given by section 259 of the Criminal Justice Act 2003;

“the relevant part” has the meaning given by section 28.

#### **32B Re-entry into United Kingdom of offender removed from prison**

- (1) This section applies if P, having been removed from prison under section 32A, is removed from the United Kingdom.
- (2) If P enters the United Kingdom—
  - (a) P is liable to be detained in pursuance of the sentence from the time of P's entry into the United Kingdom;



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- (b) if no direction was given by the Parole Board under subsection (5) of section 28 before P's removal from prison, that section applies to P;
  - (c) if such a direction was given before that removal, P is to be treated as if P had been recalled to prison under section 32.
- (3) A person who is liable to be detained by virtue of subsection (2)(a) is, if at large, to be taken for the purposes of section 49 of the Prison Act 1952 (persons unlawfully at large) to be unlawfully at large.
- (4) Subsection (2)(a) does not prevent P's further removal from the United Kingdom.”

#### *Application and transitional provision*

### **120 Application and transitional etc provision**

Schedule 15 (application of sections 108 to 119 and transitional and transitory provision) has effect.

#### *Simplification of existing transitional provisions*

### **121 Simplification of existing transitional provisions**

- (1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (“the 2003 Act”) is to apply to any person serving a sentence for an offence committed before 4 April 2005 (whenever that sentence was or is imposed).
- (2) Section 258 of the 2003 Act (release of fine defaulters and contemnors) is to apply to any person who was, before 4 April 2005, committed to prison or to be detained under section 108 of the Powers of Criminal Courts (Sentencing) Act 2000—
  - (a) in default of payment of a sum adjudged to be paid by a conviction, or
  - (b) for contempt of court or any kindred offence.
- (3) In accordance with subsections (1) and (2)—
  - (a) the repeal of Part 2 of the Criminal Justice Act 1991 which is made by section 303(a) of the 2003 Act has effect in relation to any person mentioned in those subsections;
  - (b) paragraphs 15 to 18, 19(a), (c) and (d), 20, 22 to 28 and 30 to 34 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2008 (S.I. 2005/950) (which relate to the coming into force of provisions of Chapter 6 of Part 12 of the 2003 Act) are revoked.
- (4) Section 86 of the Powers of Criminal Courts (Sentencing) Act 2000 (extension of periods in custody and on licence in the case of certain sexual offences) is repealed.
- (5) Schedule 16 (transitional and other provision consequential on this section) has effect.
- (6) Schedule 17 (amendments to the 2003 Act restating the effect of certain transitional and other provision relating to the release and recall of prisoners) has effect.

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## CHAPTER 5

### DANGEROUS OFFENDERS

#### 122 Life sentence for second listed offence

- (1) In Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders), after section 224 insert—

##### “224A Life sentence for second listed offence

- (1) This section applies where—
- (a) a person aged 18 or over is convicted of an offence listed in Part 1 of Schedule 15B,
  - (b) the offence was committed after this section comes into force, and
  - (c) the sentence condition and the previous offence condition are met.
- (2) The court must impose a sentence of imprisonment for life unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence, to the previous offence referred to in subsection (4) or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3) The sentence condition is that, but for this section, the court would, in compliance with sections 152(2) and 153(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A.
- (4) The previous offence condition is that —
- (a) at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B (“the previous offence”), and
  - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (5) A life sentence is relevant for the purposes of subsection (4)(b) if—
- (a) the offender was not eligible for release during the first 5 years of the sentence, or
  - (b) the offender would not have been eligible for release during that period but for the reduction of the period of ineligibility to take account of a relevant pre-sentence period.
- (6) An extended sentence imposed under this Act (including one imposed as a result of the Armed Forces Act 2006) is relevant for the purposes of subsection (4)(b) if the appropriate custodial term imposed was 10 years or more.
- (7) Any other extended sentence is relevant for the purposes of subsection (4)(b) if the custodial term imposed was 10 years or more.

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- (8) Any other sentence of imprisonment or detention for a determinate period is relevant for the purposes of subsection (4)(b) if it was for a period of 10 years or more.
- (9) An extended sentence or other sentence of imprisonment or detention is also relevant if it would have been relevant under subsection (7) or (8) but for the reduction of the sentence, or any part of the sentence, to take account of a relevant pre-sentence period.
- (10) For the purposes of subsections (4) to (9)—
- “extended sentence” means—
- (a) a sentence imposed under section 85 of the Sentencing Act or under section 226A, 226B, 227 or 228 of this Act (including one imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006), or
- (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “life sentence” means—
- (a) a life sentence as defined in section 34 of the Crime (Sentences) Act 1997, or
- (b) an equivalent sentence imposed under the law of Scotland, Northern Ireland or a member State (other than the United Kingdom);
- “relevant pre-sentence period”, in relation to the previous offence referred to in subsection (4), means any period which the offender spent in custody or on bail before the sentence for that offence was imposed;
- “sentence of imprisonment or detention” includes any sentence of a period in custody (however expressed).
- (11) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.”
- (2) Schedule 18 (new Schedule 15B to the Criminal Justice Act 2003) has effect.
- (3) Schedule 19 (life sentence for second listed offence: consequential and transitory provision) has effect.

## 123 Abolition of certain sentences for dangerous offenders

In Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders) omit—

- (a) section 225(3) to (4) (imprisonment for public protection for serious offences),
- (b) section 226(3) to (4) (detention for public protection for serious offences),
- (c) section 227 (extended sentence for certain violent or sexual offences: persons 18 or over), and
- (d) section 228 (extended sentence for certain violent or sexual offences: persons under 18).

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#### Commencement Information

**I32** S. 123 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(e) (with art. 6)

## 124 New extended sentences

In Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders), after section 226 and the italic heading “Extended sentences” insert—

### “226A Extended sentence for certain violent or sexual offences: persons 18 or over

- (1) This section applies where—
  - (a) a person aged 18 or over is convicted of a specified offence (whether the offence was committed before or after this section comes into force),
  - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences,
  - (c) the court is not required by section 224A or 225(2) to impose a sentence of imprisonment for life, and
  - (d) condition A or B is met.
- (2) Condition A is that, at the time the offence was committed, the offender had been convicted of an offence listed in Schedule 15B.
- (3) Condition B 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.
- (4) The court may impose an extended sentence of imprisonment on the offender.
- (5) 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.
- (6) The appropriate custodial term is the term of imprisonment that would (apart from this section) be imposed in compliance with section 153(2).
- (7) The extension period must be a period 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 the offender of further specified offences, subject to subsections (8) and (9).
- (8) The extension period must not exceed—
  - (a) 5 years in the case of a specified violent offence, and
  - (b) 8 years in the case of a specified sexual offence.
- (9) The term of an extended sentence of imprisonment imposed under this section in respect of an offence must not exceed the term that, at the time the offence was committed, was the maximum term permitted for the offence.

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- (10) In subsections (1)(a) and (8), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that—
- (a) was abolished before 4 April 2005, and
  - (b) would have constituted such an offence if committed on the day on which the offender was convicted of the offence.
- (11) Where the offence mentioned in subsection (1)(a) was committed before 4 April 2005—
- (a) subsection (1)(c) has effect as if the words “by section 224A or 225(2)” were omitted, and
  - (b) subsection (6) has effect as if the words “in compliance with section 153(2)” were omitted.

### **226B Extended sentence for certain violent or sexual offences: persons under 18**

- (1) This section applies where—
- (a) a person aged under 18 is convicted of a specified offence (whether the offence was committed before or after this section comes into force),
  - (b) the court considers that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences,
  - (c) the court is not required by section 226(2) to impose a sentence of detention for life under section 91 of the Sentencing Act, and
  - (d) 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.
- (2) The court may impose an extended sentence of detention on the offender.
- (3) 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.
- (4) The appropriate custodial term is the term of detention that would (apart from this section) be imposed in compliance with section 153(2).
- (5) The extension period must be a period 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 the offender of further specified offences, subject to subsections (6) and (7).
- (6) The extension period must not exceed—
- (a) 5 years in the case of a specified violent offence, and
  - (b) 8 years in the case of a specified sexual offence.
- (7) The term of an extended sentence of detention imposed under this section in respect of an offence may not exceed the term that, at the time the offence was committed, was the maximum term of imprisonment permitted for the offence in the case of a person aged 18 or over.

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- (8) In subsections (1)(a) and (6), references to a specified offence, a specified violent offence and a specified sexual offence include an offence that—
  - (a) was abolished before 4 April 2005, and
  - (b) would have constituted such an offence if committed on the day on which the offender was convicted of the offence.
- (9) Where the offence mentioned in subsection (1)(a) was committed before 4 April 2005—
  - (a) subsection (1) has effect as if paragraph (c) were omitted, and
  - (b) subsection (4) has effect as if the words “in compliance with section 153(2)” were omitted.”

## 125 New extended sentences: release on licence etc

- (1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (sentencing: release and recall) is amended as follows.
- (2) In section 244(1) (duty to release prisoners on licence) (as amended by Schedule 14 to this Act) after “243A” insert “, 246A ”.
- (3) After section 246 insert—

### **“246A Release on licence of prisoners serving extended sentence under section 226A or 226B**

- (1) This section applies to a prisoner (“P”) who is serving an extended sentence imposed under section 226A or 226B.
- (2) It is the duty of the Secretary of State to release P on licence under this section as soon as P has served the requisite custodial period for the purposes of this section unless either or both of the following conditions are met—
  - (a) the appropriate custodial term is 10 years or more;
  - (b) the sentence was imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B or in respect of offences that include one or more offences listed in those Parts of that Schedule.
- (3) If either or both of those conditions are met, it is the duty of the Secretary of State to release P on licence in accordance with subsections (4) to (7).
- (4) The Secretary of State must refer P's case to the Board—
  - (a) as soon as P has served the requisite custodial period, and
  - (b) where there has been a previous reference of P's case to the Board under this subsection and the Board did not direct P's release, not later than the second anniversary of the disposal of that reference.
- (5) It is the duty of the Secretary of State to release P on licence under this section as soon as—
  - (a) P has served the requisite custodial period, and
  - (b) the Board has directed P's release under this section.
- (6) The Board must not give a direction under subsection (5) unless—
  - (a) the Secretary of State has referred P's case to the Board, and

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- (b) the Board is satisfied that it is no longer necessary for the protection of the public that P should be confined.
- (7) It is the duty of the Secretary of State to release P on licence under this section as soon as P has served the appropriate custodial term, unless P has previously been released on licence under this section and recalled under section 254 (provision for the release of such persons being made by section 255C).
- (8) For the purposes of this section—
  - “appropriate custodial term” means the term determined as such by the court under section 226A or 226B (as appropriate);
  - “the requisite custodial period” means—
    - (a) in relation to a person serving one sentence, two-thirds of the appropriate custodial term, and
    - (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).”
- (4) Schedule 20 (release of new extended sentence prisoners: consequential amendments of Chapter 6 of Part 12 of the Criminal Justice Act 2003) has effect.

## **126 Sections 123 to 125: consequential and transitory provision**

Schedule 21 (abolition of certain sentences for dangerous offenders and new extended sentences: consequential and transitory provision) has effect.

## **127 Dangerous offenders subject to service law etc**

Schedule 22 (dangerous offenders subject to service law etc) has effect.

## **128 Power to change test for release on licence of certain prisoners**

- (1) The Secretary of State may by order provide that, following a referral by the Secretary of State of the case of a discretionary release prisoner, the Parole Board—
  - (a) must direct the prisoner's release if it is satisfied that conditions specified in the order are met, or
  - (b) must do so unless it is satisfied that conditions specified in the order are met.
- (2) “Discretionary release prisoner” means—
  - (a) an IPP prisoner,
  - (b) an extended sentence prisoner, or
  - (c) a person to whom paragraph 4, 15, 24 or 27 of Schedule 20B to the Criminal Justice Act 2003 (determinate sentence prisoners subject to transitional provisions) applies.
- (3) An order under this section may—
  - (a) amend section 28 of the Crime (Sentences) Act 1997 (duty to release IPP prisoners and others),
  - (b) amend section 246A of the Criminal Justice Act 2003 (release on licence of extended sentence prisoners),

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- (c) amend paragraph 6, 15, 25 or 28 of Schedule 20B to the Criminal Justice Act 2003 (release on licence of determinate sentence prisoners subject to transitional provisions),
  - (d) make provision in relation to any person whose case is disposed of by the Parole Board on or after the day on which the regulations come into force (even if the Secretary of State referred that person's case to the Board before that day),
  - (e) make different provision in relation to each of the categories of discretionary release prisoner mentioned in subsection (2), and
  - (f) include consequential provision.
- (4) An order under this section is to be made by statutory instrument.
- (5) 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 a resolution of, each House of Parliament.
- (6) In this section—
- “extended sentence prisoner” means a prisoner who is serving a sentence under section 226A or 226B of the Criminal Justice Act 2003 (including one imposed as a result of section 219A or 221A of the Armed Forces Act 2006);
- “IPP prisoner” means a prisoner who is serving one or more of the following sentences and is not serving any other life sentence—
- (a) a sentence of imprisonment for public protection or detention in a young offender institution for public protection under section 225 of the Criminal Justice Act 2003 (including one imposed as a result of section 219 of the Armed Forces Act 2006);
  - (b) a sentence of detention for public protection under section 226 of the Criminal Justice Act 2003 (including one imposed as a result of section 221 of the Armed Forces Act 2006);
- “life sentence” has the same meaning as in section 34 of the Crime (Sentences) Act 1997.

## CHAPTER 6

### PRISONERS ETC

PROSPECTIVE

#### 129 Employment in prisons: deductions etc from payments to prisoners

- (1) In section 47 of the Prison Act 1952 (power of Secretary of State to make rules for the regulation and management of prisons etc), in subsection (1) omit “employment,”.
- (2) After that subsection insert—
- “(1A) The Secretary of State may make rules about—
- (a) the employment of persons who are required to be detained in secure training centres or young offender institutions;



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- (b) the making of payments to such persons in respect of work or other activities undertaken by them, or in respect of their unemployment.”

- (3) In that section, after subsection (5) insert—

“(6) Rules made under this section may—

- (a) make different provision for different cases;
- (b) contain supplementary, incidental, transitional, transitory or saving provision.”

- (4) After that section insert—

#### “47A Rules about employment in prisons etc

- (1) The Secretary of State may make rules about—
- (a) the employment of prisoners;
  - (b) the making of payments to prisoners in respect of work or other activities undertaken by them, or in respect of their unemployment.
- (2) The Secretary of State may make rules about the making, by the governor of the prison in which a prisoner is detained or the Secretary of State, of reductions in payments to the prisoner in respect of—
- (a) work undertaken by the prisoner,
  - (b) other activities undertaken by the prisoner, or
  - (c) the prisoner's unemployment,
- where those payments are made by or on behalf of the Secretary of State.
- (3) Rules under subsection (2) may make provision, in a case where reductions are made by the governor, for amounts generated by the reductions to be used by the governor—
- (a) for making payments for the benefit of victims or communities;
  - (b) for making payments for the purposes of the rehabilitation of offenders;
  - (c) for other prescribed purposes.
- (4) Rules under subsection (2) may make provision, in a case where reductions are made by the governor—
- (a) for amounts generated by the reductions to be used by the governor for making payments into an account of a prescribed kind;
  - (b) for the administration of the account;
  - (c) for the making of payments out of the account to a prisoner before or after the prisoner's release on fulfilment by the prisoner of prescribed conditions.
- (5) Rules under subsection (2) that make provision for amounts generated by reductions to be used to make payments may provide for such payments to be made after the deduction of amounts of a prescribed description.
- (6) The Secretary of State may make rules about the making of deductions from, or the imposition of levies on, payments to a prisoner in respect of—
- (a) work undertaken by the prisoner,
  - (b) other activities undertaken by the prisoner, or

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- (c) the prisoner's unemployment,  
where those payments are made otherwise than by or on behalf of the Secretary of State.
- (7) Rules under subsection (6)—
- (a) may provide for deductions to be made, or levies to be imposed, by the governor of the prison or by the Secretary of State;
  - (b) must provide that, if the governor makes the deductions or imposes the levies, the governor must pay amounts generated to the Secretary of State.
- (8) The Secretary of State may make rules providing—
- (a) for the making of payments by the Secretary of State into an account of a prescribed kind;
  - (b) for the administration of the account;
  - (c) for the making of payments out of the account to a prisoner before or after the prisoner's release on fulfilment by the prisoner of prescribed conditions.
- (9) Rules under this section may—
- (a) make different provision for different cases;
  - (b) contain supplementary, incidental, transitional, transitory or saving provision.
- (10) In this section references to the governor of a prison include—
- (a) the director of a contracted out prison within the meaning of Part 4 of the Criminal Justice Act 1991, and
  - (b) an officer of a prison who may exercise the functions of a governor in accordance with rules under section 47 or this section.
- (11) In this section—
- “prescribed” means prescribed by rules under this section;
- “prisoner” includes a prisoner on temporary release.”
- (5) In section 66(4) of the Criminal Justice Act 1967 (procedure applying to rules under section 47 of the Prison Act 1952), for “of the said Act of 1952” substitute “ or section 47A of the Prison Act 1952 ”.
- (6) In section 127(6) of the Criminal Justice and Public Order Act 1994 (inducements to prison officers to contravene prison rules: meaning of “prison rules”), after “section 47” insert “ or 47A ”.
- (7) In section 4 of the Prisoners' Earnings Act 1996 (interpretation)—
- (a) omit subsection (2) (application of the Act to England and Wales), and
  - (b) in subsection (3) (application of the Act to Scotland), for “In the application of this Act to Scotland” substitute “ In this Act ”.
- (8) In section 5 of that Act (short title, commencement and extent), for subsection (3) substitute—
- “(3) This Act extends to Scotland only.”

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- (9) In section 45(2) of the National Minimum Wage Act 1998 (exclusion for prisoners doing work in pursuance of prison rules: interpretation), in paragraph (a) of the definition of “prison rules”, after “section 47” insert “ or 47A ”.
- (10) Before the coming into force of section 59 of the Criminal Justice and Court Services Act 2000 (abolition of power to provide remand centres), section 47(1A) of the Prison Act 1952 has effect as if it referred also to persons required to be detained in remand centres.
- (11) Before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution, custody for life etc)—
- (a) section 47(1A) of the Prison Act 1952 has effect as if the references to persons required to be detained in young offender institutions were to persons aged under 18 required to be so detained, and
  - (b) section 47A of that Act has effect as if—
    - (i) “prison” included a young offender institution, and
    - (ii) “prisoner” included a person aged 18 or over who is required to be detained in a young offender institution.
- (12) The Secretary of State may make such payments to such persons as the Secretary of State considers appropriate in connection with measures that appear to the Secretary of State to be intended to—
- (a) rehabilitate offenders,
  - (b) prevent re-offending, or
  - (c) limit the impact of crime.
- (13) In making payments under subsection (12), the Secretary of State must have regard to the sums that have been made available to, or received by, the Secretary of State by virtue of rules under section 47A of the Prison Act 1952 (reductions, deductions and levies in respect of payments to prisoners etc.).

### 130 Transfer of prisoners: prosecution of other offences

In the Repatriation of Prisoners Act 1984, after section 3 insert—

#### “3A Prosecution of other offences

- (1) This section applies where—
- (a) a person has been transferred into Great Britain under a warrant under section 1, and
  - (b) the international arrangements in accordance with which the person has been transferred contain a speciality provision.
- (2) The person must not, unless a condition in subsection (3) is met—
- (a) be prosecuted for any offence committed before the departure of that person from the country or territory from which that person has been transferred, or
  - (b) be detained or otherwise subjected to any restriction of liberty for any offence committed before the departure of that person from the country

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or territory from which that person has been transferred, other than the offence in respect of which the person has been transferred.

- (3) For the purposes of subsection (2), the conditions are as follows—
- (a) the person has consented to the transfer;
  - (b) the offence is an offence which is not punishable with imprisonment or another form of detention;
  - (c) the offence is an offence in respect of which the person will not be detained in connection with the person's trial, sentence or appeal;
  - (d) the person is given an opportunity to leave Great Britain and—
    - (i) the person does not do so before the end of the permitted period, or
    - (ii) if the person does so before the end of the permitted period, the person subsequently returns to Great Britain;
  - (e) after the transfer has taken place, the person has made a renunciation of the application of subsection (2) to the offence;
  - (f) the appropriate authority of the country or territory from which the person has been transferred consents to the prosecution of the offence.
- (4) For the purpose of subsection (3)(d) the “permitted period” is 45 days starting with the day on which the person's sentence ends.
- (5) For the purpose of subsection (3)(e) a renunciation must be made before a court before which the person may be prosecuted for that offence.
- (6) In this section a “speciality provision” means a provision preventing or limiting the prosecution, detention or other restriction of liberty of the person (“P”) for any offence committed before the departure of P from the country or territory from which P has been transferred, other than for the offence in respect of which P has been transferred.”

### 131 Transit of prisoners

- (1) In the Repatriation of Prisoners Act 1984, after section 6 insert—

#### “6A Transit

- (1) The relevant Minister may issue a transit order 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 persons to whom subsection (2) applies; and
  - (b) the relevant Minister has received a request from the appropriate authority of that country or territory in accordance with those arrangements for the transit of a person to whom subsection (2) applies through a part of Great Britain.
- (2) A person falls within this subsection if—
- (a) that person is for the time being required to be detained in a prison, a hospital or any other institution either—

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- (i) by virtue of 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) by virtue of any provisions of the law of such a country or territory which are similar to any of the provisions of this Act; and
  - (b) except in a case where a transit request is made in the circumstances described in section 6D (1), that person is present in a country or territory outside the British Islands.
- (3) The relevant Minister may issue a transit order where—
  - (a) international arrangements apply to any of the Channel Islands or the Isle of Man which provide for the transfer between that island and a country or territory outside the British Islands of persons to whom subsection (4) applies; and
  - (b) the relevant Minister has received a request from the appropriate authority of that island for the transit of a person to whom subsection (4) applies through a part of Great Britain.
- (4) A person falls within this subsection if—
  - (a) that person is for the time being required to be detained in a prison, a hospital or any other institution either—
    - (i) by virtue of an order made in the course of the exercise of its criminal jurisdiction by a court or tribunal in the island from which the transit request is made; or
    - (ii) by virtue of any provisions of the law of that island which are similar to any of the provisions of this Act; and
  - (b) except in a case where a transit request is made in the circumstances described in section 6D(1), that person is present in that island.
- (5) Terms used in subsection (2)(a) or (4)(a) have the same meaning as in section 1(7).
- (6) In this section and sections 6B, 6C and 6D “transit order” means an order issued by the relevant Minister, in respect of a person who has been the subject of a request within subsection (1)(b) or (3)(b), which authorises the detention of that person in any part of Great Britain at any time when that person is in transit.
- (7) In subsection (6) “detention” includes detention while the person is being taken from one place to another place within Great Britain.
- (8) A person may be detained pursuant to a transit order only for as long as is reasonable and necessary to allow the transit to take place.
- (9) In this section and section 6B “relevant Minister” means—
  - (a) the Scottish Ministers, in a case where it is proposed that the person who is the subject of a request under subsection (1)(b) or (3)(b) will, whilst in transit—
    - (i) be present only in Scotland, or
    - (ii) arrive in Scotland before being taken to another part of Great Britain;
  - (b) the Secretary of State, in any other case.

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- (10) For the purposes of this section and sections 6B and 6C a person who is the subject of a transit order is “in transit” at any time during the period beginning with the arrival of that person in Great Britain and ending with the removal of that person from Great Britain.

### **6B Transit: supplementary**

- (1) A person who is the subject of a transit order is deemed to be in the legal custody of the relevant Minister at any time when that person is in transit.
- (2) A constable may for the purposes of a transit order detain a person who is the subject of that order.
- (3) The relevant Minister may, from time to time, designate any person as a person who is for the time being authorised for the purposes of a transit order to detain a person under the order.
- (4) A person authorised under subsection (3) has all the powers, authority, protection and privileges of a constable in any part of Great Britain in which the person who is the subject of the transit order is for the time being.
- (5) If a person who is the subject of a transit order escapes or is unlawfully at large, that person may be arrested without warrant by a constable.
- (6) A constable may search a person who is the subject of a transit order, and any item in the possession of that person, for any item which that person might use—
- (a) to cause physical injury to that person or to any other person; or
  - (b) to assist that person to escape from detention.
- (7) The power conferred by subsection (6) does not authorise a constable to require a person to remove any clothing other than an outer coat, jacket, headgear or gloves.
- (8) The power conferred by subsection (6) includes power to use reasonable force where necessary.
- (9) A constable searching a person in the exercise of the power conferred by subsection (6) may seize any item found if the constable has reasonable grounds for believing that the person searched might use the item —
- (a) to cause physical injury to that person or to any other person; or
  - (b) to assist that person to escape from detention.
- (10) Any item seized from a person under subsection (9) may be retained while that person is in transit.
- (11) In this section “constable” means—
- (a) any person who is a constable in any part of Great Britain or who has, under any enactment (including subsection (4) above), the powers of a constable in any part of Great Britain, or
  - (b) any person who is a prison officer within the meaning of section 117(1) of the Criminal Justice and Public Order Act 1994.
- (12) A person who is a constable by virtue of subsection (11)(a) has, for the purposes of section 6A, this section and section 6C, all the powers, authority,

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protection and privileges of a constable in any part of Great Britain in which a person who is the subject of a transit order is for the time being.

### **6C Transit through different parts of Great Britain**

- (1) Where the Scottish Ministers issue a transit order and it is proposed that the person who is the subject of the order will be taken to a part of Great Britain other than Scotland whilst in transit, they must notify the Secretary of State.
- (2) The Scottish Ministers need not notify the Secretary of State where the Secretary of State has agreed in writing to the transit order.
- (3) Unless the Secretary of State agrees in writing to the transit order, that order authorises the detention of the person subject to it in Scotland only.
- (4) But where the person escapes or is unlawfully at large, the order also authorises—
  - (a) the arrest of the person under section 6B(5) in a part of Great Britain other than Scotland, and
  - (b) the detention of the person in that part by a constable (within the meaning of that section) for the purpose of taking the person to Scotland.
- (5) Where the Secretary of State issues a transit order and it is proposed that the person who is the subject of the order will be taken to Scotland whilst in transit, the Secretary of State must notify the Scottish Ministers.
- (6) The Secretary of State need not notify the Scottish Ministers where the Scottish Ministers have agreed in writing to the transit order.
- (7) Unless the Scottish Ministers agree in writing to the transit order, that order authorises the detention of the person subject to it only in a part of Great Britain other than Scotland.
- (8) But where the person escapes or is unlawfully at large, the order also authorises—
  - (a) the arrest of the person under section 6B(5) in Scotland, and
  - (b) the detention of the person in Scotland by a constable (within the meaning of that section) for the purpose of taking the person to a part of Great Britain other than Scotland.

### **6D Transit: unscheduled arrivals**

- (1) This section applies where—
  - (a) a person is being transferred between two countries or territories outside the United Kingdom in accordance with international arrangements between those two countries or territories providing for the transfer of persons within section 6A(2)(a) or (4)(a),
  - (b) the United Kingdom is a party to international arrangements of the kind mentioned in section 6A(1)(a) with at least one of those countries or territories such that the country or territory can make a request under section 6A(1)(b), and
  - (c) the person makes an unscheduled arrival in Great Britain.

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- (2) A constable may detain a person to whom subsection (1) applies until the expiry of the period of 72 hours beginning with the person's arrival in Great Britain or until a transit order is issued under section 6A in respect of that person, whichever is the sooner.
  - (3) In this section “constable” means any person who is a constable in any part of Great Britain or who has, under any enactment (including section 6B(4) above), the powers of a constable in any part of Great Britain.
  - (4) A person who is a constable by virtue of subsection (3) has for the purposes of this section all the powers, authority, protection and privileges of a constable in the part of Great Britain in which the person mentioned in subsection (2) is for the time being.”
- (2) In section 9 of the Repatriation of Prisoners Act 1984 (short title, commencement and extent)—
- (a) at the beginning of subsection (3) insert “ Subject to subsection (3A), ”, and
  - (b) after that subsection insert—
- “(3A) Sections 3A and 6A to 6D extend to England and Wales and Scotland only.”

## CHAPTER 7

### OUT OF COURT DISPOSALS

#### *Penalty notices*

#### **132 Penalty notices for disorderly behaviour**

Schedule 23 (penalty notices for disorderly behaviour) has effect.

#### *Cautions*

#### **133 Conditional cautions: involvement of prosecutors**

- (1) The Criminal Justice Act 2003 is amended as follows.
- (2) In section 22(3A) (conditions that may be attached to a conditional caution) for “by a relevant prosecutor” substitute “ in the condition ”.
- (3) In section 23(2) (relevant prosecutor must decide there is sufficient evidence to prosecute and that a conditional caution should be given) after “a relevant prosecutor” insert “ or the authorised person ”.
- (4) In section 23A(5) (relevant prosecutor must specify amount of financial penalty and how it is to be paid etc) for “a relevant prosecutor must also” substitute “ the condition must ”.
- (5) In section 23B (variation of conditions by relevant prosecutor) after “A relevant prosecutor” insert “ or an authorised person ”.



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- (6) In section 25 (code of practice) in subsection (2)(ga) (Secretary of State's code of practice may include provision about what a relevant prosecutor may provide under section 23A(5)(b)) for “by a relevant prosecutor” substitute “in a condition”.

### 134 Conditional cautions: removal etc of certain foreign offenders

In section 22 of the Criminal Justice Act 2003 (conditional cautions)—

- (a) in subsection (3) (both as originally enacted and as substituted by section 17 of the Police and Justice Act 2006) (conditions attached to conditional cautions to have certain objects) for “such a caution” substitute “any conditional caution”, and
- (b) after subsection (3C) insert—

“(3D) A conditional caution given to a relevant foreign offender may have conditions attached to it that have one or more of the objects mentioned in subsection (3E) (whether or not in addition to conditions with one or more of the objects mentioned in subsection (3)).

(3E) The objects are—

- (a) bringing about the departure of the relevant foreign offender from the United Kingdom;
- (b) ensuring that the relevant foreign offender does not return to the United Kingdom for a period of time.

(3F) If a relevant foreign offender is given a conditional caution with a condition attached to it with the object of ensuring that the offender does not return to the United Kingdom for a period of time, the expiry of that period does not of itself give rise to any right on the part of the offender to return to the United Kingdom.

(3G) In this section “relevant foreign offender” means—

- (a) an offender directions for whose removal from the United Kingdom have been, or may be, given under—
- (i) Schedule 2 to the Immigration Act 1971, or
  - (ii) section 10 of the Immigration and Asylum Act 1999,
- or
- (b) an offender against whom a deportation order under section 5 of the Immigration Act 1971 is in force.”

#### *Youth cautions*

### 135 Youth cautions

- (1) Omit sections 65 (reprimands and warning) and 66 (effect of reprimands and warnings) of the Crime and Disorder Act 1998.
- (2) Before section 66A of that Act insert—

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### *“Young offenders: youth cautions*

#### **66ZA Youth cautions**

- (1) A constable may give a child or young person (“Y”) a caution under this section (a “youth caution”) if—
  - (a) the constable decides that there is sufficient evidence to charge Y with an offence,
  - (b) Y admits to the constable that Y committed the offence, and
  - (c) the constable does not consider that Y should be prosecuted or given a youth conditional caution in respect of the offence.
- (2) A youth caution given to a person under the age of 17 must be given in the presence of an appropriate adult.
- (3) If a constable gives a youth caution to a person, the constable must explain the matters referred to in subsection (4) in ordinary language to—
  - (a) that person, and
  - (b) where that person is under the age of 17, the appropriate adult.
- (4) Those matters are—
  - (a) the effect of subsections (1) to (3) and (5) to (7) of section 66ZB, and
  - (b) any guidance issued under subsection (4) of that section.
- (5) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, guidance as to—
  - (a) the circumstances in which it is appropriate to give youth cautions,
  - (b) the places where youth cautions may be given,
  - (c) the category of constable by whom youth cautions may be given, and
  - (d) the form which youth cautions are to take and the manner in which they are to be given and recorded.
- (6) No caution other than a youth caution or a youth conditional caution may be given to a child or young person.
- (7) In this Chapter “appropriate adult”, in relation to a child or young person, means—
  - (a) a parent or guardian of the child or young person,
  - (b) if the child or young person is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
  - (c) a social worker of a local authority, or
  - (d) if no person falling within paragraph (a), (b) or (c) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police.

#### **66ZB Effect of youth cautions**

- (1) If a constable gives a youth caution to a person, the constable must as soon as practicable refer the person to a youth offending team.

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- (2) Subject to subsection (3), on a referral of a person under subsection (1), the youth offending team—
    - (a) must assess the person, and
    - (b) unless they consider it inappropriate to do so, must arrange for the person to participate in a rehabilitation programme.
  - (3) If the person has not previously been referred under subsection (1) and has not previously been given a youth conditional caution, the youth offending team—
    - (a) may assess the person, and
    - (b) may arrange for the person to participate in a rehabilitation programme.
  - (4) The Secretary of State must publish, in such manner as the Secretary of State considers appropriate, guidance as to—
    - (a) what should be included in a rehabilitation programme arranged for a person under subsection (2) or (3),
    - (b) the manner in which any failure by a person to participate in a programme is to be recorded, and
    - (c) the persons to whom any such failure must be notified.
  - (5) Subsection (6) applies if—
    - (a) a person who has received two or more youth cautions is convicted of an offence committed within two years beginning with the date of the last of those cautions, or
    - (b) a person who has received a youth conditional caution followed by a youth caution is convicted of an offence committed within two years beginning with the date of the youth caution.
  - (6) The court by or before which the person is convicted—
    - (a) must not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the person that justify it doing so, and
    - (b) where it does so, must state in open court that it is of that opinion and its reasons for that opinion.
  - (7) There may be cited in criminal proceedings—
    - (a) a youth caution given to a person, and
    - (b) a report on a failure by a person to participate in a rehabilitation programme arranged for the person under subsection (2) or (3),in the same circumstances as a conviction of the person may be cited.
  - (8) In this section “rehabilitation programme” means a programme with the purpose of rehabilitating participants and preventing them from re-offending.”
- (3) Schedule 24 (youth cautions: consequential amendments) has effect.
- (4) The amendments made by this section and that Schedule do not apply in relation to an offence committed before they come into force.

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- (5) A reprimand or warning of a person under section 65 of the Crime and Disorder Act 1998, or any caution treated as such by virtue of paragraph 5 of Schedule 9 to that Act, is to be treated for the purposes of any enactment or instrument (whenever passed or made) as a youth caution given to that person under section 66ZA(1) of that Act.
- (6) A referral of a person to a youth offending team under section 66(1) of the Crime and Disorder Act 1998 is to be treated for the purposes of section 66ZB of that Act as a referral under that section.
- (7) A rehabilitation programme provided under section 66 of the Crime and Disorder Act 1998 is to be treated for the purposes of any enactment or instrument (whenever passed or made) as provided under section 66ZB of that Act.

### **136 Youth conditional cautions: previous convictions**

In section 66A(1) of the Crime and Disorder Act 1998 (requirements to be met before youth conditional caution may be given) omit paragraph (a) and the “and” at the end of that paragraph (requirement of no previous convictions).

### **137 Youth conditional cautions: references to youth offending teams**

In section 66A of the Crime and Disorder Act 1998 (youth conditional cautions) after subsection (6) insert—

“(6A) If an authorised person gives a youth conditional caution to an offender, the authorised person must as soon as practicable refer the offender to a youth offending team.”

### **138 Youth conditional cautions: involvement of prosecutors**

- (1) The Crime and Disorder Act 1998 is amended as follows.
- (2) In section 66A(4) (conditions that may be attached to a youth conditional caution) for “by a relevant prosecutor” substitute “ in the condition ”.
- (3) In section 66B(2) (relevant prosecutor must decide that there is sufficient evidence to prosecute and that a conditional caution should be given) after “a relevant prosecutor” insert “ or the authorised person ”.
- (4) In section 66C(5) (relevant prosecutor must specify amount of financial penalty and how it must be paid etc) for “a relevant prosecutor must also” substitute “ the condition must ”.
- (5) In section 66D (variation of conditions by relevant prosecutor) after “A relevant prosecutor” insert “ or an authorised person ”.
- (6) In section 66G (code of practice) in subsection (2)(h) (Secretary of State's code of practice may include provision about what a relevant prosecutor may provide under section 66C(5)(b)) for “by a relevant prosecutor” substitute “ in a condition ”.

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## CHAPTER 8

### REHABILITATION OF OFFENDERS

VALID FROM 29/05/2013

#### 139 Establishment or alteration of rehabilitation periods

- (1) The Rehabilitation of Offenders Act 1974 is amended as follows.
- (2) In section 5(1)(b) and (d) (sentences excluded from rehabilitation) for “thirty months” substitute “ forty eight months ”.
- (3) In the opening words of section 5(1A) (references to provisions of the Armed Forces Act 2006) for “subsection (1)(d)” substitute “ this section ”.
- (4) For section 5(2) to (11) (rehabilitation periods) substitute—
  - “(2) For the purposes of this Act and subject to subsections (3) and (4), the rehabilitation period for a sentence is the period—
    - (a) beginning with the date of the conviction in respect of which the sentence is imposed, and
    - (b) ending at the time listed in the following Table in relation to that sentence:

<i>Sentence</i>	<i>End of rehabilitation period for adult offenders</i>	<i>End of rehabilitation period for offenders under 18 at date of conviction</i>
A custodial sentence of more than 30 months and up to, or consisting of, 48 months	The end of the period of 7 years beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 42 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of more than 6 months and up to, or consisting of, 30 months	The end of the period of 48 months beginning with the day on which the sentence (including any licence period) is completed	The end of the period of 24 months beginning with the day on which the sentence (including any licence period) is completed
A custodial sentence of 6 months or less	The end of the period of 24	The end of the period of 18

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		months beginning with the day on which the sentence (including any licence period) is completed	months beginning with the day on which the sentence (including any licence period) is completed
Removal from Her Majesty's service		The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A sentence of service detention		The end of the period of 12 months beginning with the day on which the sentence is completed	The end of the period of 6 months beginning with the day on which the sentence is completed
A fine		The end of the period of 12 months beginning with the date of the conviction in respect of which the sentence is imposed	The end of the period of 6 months beginning with the date of the conviction in respect of which the sentence is imposed
A compensation order		The date on which the payment is made in full	The date on which the payment is made in full
A community or youth rehabilitation order		The end of the period of 12 months beginning with the day provided for by or under the order as the last day on which the order is to have effect	The end of the period of 6 months beginning with the day provided for by or under the order as the last day on which the order is to have effect
A relevant order		The day provided for by or under the order as the last day on which the order is to have effect	The day provided for by or under the order as the last day on which the order is to have effect

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- (3) Where no provision is made by or under a community or youth rehabilitation order or a relevant order for the last day on which the order is to have effect, the rehabilitation period for the order is to be the period of 24 months beginning with the date of conviction.
- (4) There is no rehabilitation period for—
- (a) an order discharging a person absolutely for an offence, or
  - (b) any other sentence in respect of a conviction where the sentence is not dealt with in the Table or under subsection (3),
- and, in such cases, references in this Act to any rehabilitation period are to be read as if the period of time were nil.
- (5) See also—
- (a) section 8AA (protection afforded to spent alternatives to prosecution), and
  - (b) Schedule 2 (protection for spent cautions).
- (6) The Secretary of State may by order amend column 2 or 3 of the Table or the number of months for the time being specified in subsection (3).
- (7) For the purposes of this section—
- (a) consecutive terms of imprisonment or other custodial sentences are to be treated as a single term,
  - (b) terms of imprisonment or other custodial sentences which are wholly or partly concurrent (that is terms of imprisonment or other custodial sentences imposed in respect of offences of which a person was convicted in the same proceedings) are to be treated as a single term,
  - (c) no account is to be taken of any subsequent variation, made by a court dealing with a person in respect of a suspended sentence of imprisonment, of the term originally imposed,
  - (d) no account is to be taken of any subsequent variation of the day originally provided for by or under an order as the last day on which the order is to have effect,
  - (e) no account is to be taken of any detention or supervision ordered by a court under section 104(3) of the Powers of Criminal Courts (Sentencing) Act 2000,
  - (f) a sentence imposed by a court outside England and Wales is to be treated as the sentence mentioned in this section to which it most closely corresponds.
- (8) In this section—
- “community or youth rehabilitation order” means—
- (a) a community order under section 177 of the Criminal Justice Act 2003,
  - (b) a service community order or overseas community order under the Armed Forces Act 2006,
  - (c) a youth rehabilitation order under Part 1 of the Criminal Justice and Immigration Act 2008, or
  - (d) any order of a kind superseded (whether directly or indirectly) by an order mentioned in paragraph (a), (b) or (c),

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“custodial sentence” means—

- (a) a sentence of imprisonment,
- (b) a sentence of detention in a young offender institution,
- (c) a sentence of Borstal training,
- (d) a sentence of youth custody,
- (e) a sentence of corrective training,
- (f) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 209 of the Armed Forces Act 2006,
- (g) a detention and training order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000 or an order under section 211 of the Armed Forces Act 2006,
- (h) any sentence of a kind superseded (whether directly or indirectly) by a sentence mentioned in paragraph (f) or (g),

“earlier statutory order” means—

- (a) an order under section 54 of the Children and Young Persons Act 1933 committing the person convicted to custody in a remand home,
- (b) an approved school order under section 57 of that Act, or
- (c) any order of a kind superseded (whether directly or indirectly) by an order mentioned in any of paragraphs (c) to (e) of the definition of “relevant order” or in paragraph (a) or (b) above,

“relevant order” means—

- (a) an order discharging a person conditionally for an offence,
- (b) an order binding a person over to keep the peace or be of good behaviour,
- (c) an order under section 1(2A) of the Street Offences Act 1959,
- (d) a hospital order under Part 3 of the Mental Health Act 1983 (with or without a restriction order),
- (e) a referral order under section 16 of the Powers of Criminal Courts (Sentencing) Act 2000,
- (f) an earlier statutory order, or
- (g) any order which imposes a disqualification, disability, prohibition or other penalty and is not otherwise dealt with in the Table or under subsection (3),

but does not include a reparation order under section 73 of the Powers of Criminal Courts (Sentencing) Act 2000,

“removal from Her Majesty's service” means a sentence of dismissal with disgrace from Her Majesty's service, a sentence of dismissal from Her Majesty's service or a sentence of cashiering or discharge with ignominy,

“sentence of imprisonment” includes a sentence of penal servitude (and “term of imprisonment” is to be read accordingly),

“sentence of service detention” means—

- (a) a sentence of service detention (within the meaning given by section 374 of the Armed Forces Act 2006), or a sentence of detention corresponding to such a sentence, in respect of a conviction in service disciplinary proceedings, or



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(b) any sentence of a kind superseded (whether directly or indirectly) by a sentence mentioned in paragraph (a).”

(5) In section 6 (subsequent convictions to extend the rehabilitation period applicable to a conviction)—

- (a) in subsection (5) (exception to rule for certain orders imposing disqualifications etc) for “in accordance with section 5(8) above” substitute “by virtue of paragraph (g) of the definition of “relevant order” in section 5(8) above”, and
- (b) omit subsection (6) (other exceptions to the rule).

(6) After section 8A (protection afforded to spent cautions) insert—

**“8AA Protection afforded to spent alternatives to prosecution**

(1) The following provisions of this Act apply, with the modifications specified in subsection (3), to a spent alternative to prosecution as they apply to a spent caution—

- (a) section 9A (unauthorised disclosure of spent cautions), and
- (b) paragraphs 2 to 6 of Schedule 2 (protection relating to spent cautions and ancillary circumstances).

(2) An alternative to prosecution becomes spent for the purposes of this Act when it becomes spent under the law of Scotland.

(3) The modifications mentioned in subsection (1) are—

- (a) references to cautions are to be read as references to alternatives to prosecution (and references to cautioned are to be read accordingly),
- (b) references to the offence which was the subject of the caution are to be read as references to the offence in respect of which the alternative to prosecution was given,
- (c) paragraphs (e) and (f) of paragraph 2(1) of Schedule 2 are to be read as if they were—
  - “(e) anything done or undergone in pursuance of the terms of the alternative to prosecution,”
- (d) references to cautions for an offence are to be read as references to alternatives to prosecution in respect of an offence, and
- (e) the reference in paragraph 5 of Schedule 2 to the rehabilitation period applicable to the caution is to be read as a reference to the time at which the alternative to prosecution becomes spent.

(4) In this section “alternative to prosecution” has the same meaning as in section 8B as that section has effect in the law of Scotland but disregarding subsection (1)(f) of that section.”

(7) In paragraph 1 of Schedule 2 (protection for spent cautions)—

- (a) in sub-paragraph (1)(a) (when conditional cautions to be regarded as spent cautions) for “, at the end of the relevant period for the caution;” substitute “—
  - (i) at the end of the period of three months from the date on which the caution is given, or

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- (ii) if earlier, when the caution ceases to have effect; and”, and
- (b) omit sub-paragraphs (2) and (3) (meaning of “the relevant period for the caution”).

#### 140 No rehabilitation for certain immigration or nationality purposes

Before section 57 of the UK Borders Act 2007 (and after the italic cross-heading before that section) insert—

##### “56A No rehabilitation for certain immigration or nationality purposes

- (1) Section 4(1), (2) and (3) of the Rehabilitation of Offenders Act 1974 (effect of rehabilitation) do not apply—
- (a) in relation to any proceedings in respect of a relevant immigration decision or a relevant nationality decision, or
- (b) otherwise for the purposes of, or in connection with, any such decision.

- (2) In this section—

“immigration officer” means a person appointed by the Secretary of State as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971,

“relevant immigration decision” means any decision, or proposed decision, of the Secretary of State or an immigration officer under or by virtue of the Immigration Acts, or rules made under section 3 of the Immigration Act 1971 (immigration rules), in relation to the entitlement of a person to enter or remain in the United Kingdom (including, in particular, the removal of a person from the United Kingdom, whether by deportation or otherwise),

“relevant nationality decision” means any decision, or proposed decision, of the Secretary of State under or by virtue of—

- (a) the British Nationality Act 1981,
- (b) the British Nationality (Hong Kong) Act 1990, or
- (c) the Hong Kong (War Wives and Widows) Act 1996,

in relation to the good character of a person.

- (3) The references in subsection (2) to the Immigration Acts and to the Acts listed in the definition of “relevant nationality decision” include references to any provision made under section 2(2) of the European Communities Act 1972, or of EU law, which relates to the subject matter of the Act concerned.”

#### 141 Transitional and consequential provision

- (1) Section 139 applies in relation to convictions or (as the case may be) cautions before the commencement date (as well as in relation to convictions or cautions on or after that date).
- (2) The Rehabilitation of Offenders Act 1974 (“the 1974 Act”) applies in relation to convictions or cautions before the commencement date as if the amendments and repeals made by section 139 had always had effect.

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- (3) Where by virtue of subsection (2)—
- (a) a person would, before the commencement date, have been treated for the purposes of the 1974 Act as a rehabilitated person in respect of a conviction, or
  - (b) a conviction would, before that date, have been treated for the purposes of that Act as spent,
- the person or conviction concerned is (subject to any order made by virtue of section 4(4) or 7(4) of that Act) to be so treated on and after that date.
- (4) Where by virtue of subsection (2)—
- (a) a person would, before the commencement date, have been treated as mentioned in paragraph 3(1) of Schedule 2 to the 1974 Act in respect of a caution, or
  - (b) a caution would, before that date, have been treated for the purposes of that Act as spent,
- the person or caution concerned is (subject to any order made by virtue of paragraph 4 or 6(1) and (4) of that Schedule to that Act) to be so treated on and after that date.
- (5) But—
- (a) no person who, immediately before the commencement date—
    - (i) is treated as a rehabilitated person for the purposes of the 1974 Act in respect of a conviction, or
    - (ii) is treated as mentioned in paragraph 3(1) of Schedule 2 to that Act in respect of a caution, and
  - (b) no conviction or caution which, immediately before the commencement date, is treated for the purposes of that Act as spent,
- is to cease to be so treated merely because of section 139.
- (6) Section 139 does not apply in relation to alternatives to prosecution given before the commencement date.
- (7) Section 140 applies in relation to convictions before the commencement date (as well as in relation to convictions on or after that date).
- (8) Section 140 applies as mentioned in subsection (7) above whether or not, immediately before the commencement date—
- (a) the person concerned is treated as a rehabilitated person for the purposes of the 1974 Act in respect of the conviction, or
  - (b) the conviction is treated for the purposes of that Act as spent.
- (9) But section 140 does not affect—
- (a) any proceedings begun, but not completed, before the commencement date,
  - (b) any applications for immigration or nationality decisions made, but not finally determined, before the commencement date, or
  - (c) the validity of any proceedings, or any relevant immigration or nationality decision (within the meaning of section 56A of the UK Borders Act 2007) which is made, before the commencement date.
- (10) Schedule 25 (consequential provision) has effect.
- (11) Any reference in this section to section 139 is to be read as including a reference to Schedule 25.

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- (12) In this section “the commencement date” means such day as may be specified by order of the Secretary of State made by statutory instrument; and different days may be specified for different purposes.

#### Subordinate Legislation Made

- P1** S. 141(12) power exercised: 1.10.2012 specified as "the commencement date" for the purposes of s. 141(7)-(9) by [S.I. 2012/2412](#), [art. 3](#)

#### Commencement Information

- I33** S. 141 partly in force; s. 141 not in force at Royal Assent, see s. 151(1); s. 141(7)-(9)(12) in force at 1.10.2012 by [S.I. 2012/2412](#), [art. 2\(f\)](#)

## CHAPTER 9

### OFFENCES

#### 142 Offences of threatening with article with blade or point or offensive weapon in public or on school premises

- (1) In the Prevention of Crime Act 1953, after section 1 (prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse) insert—

##### “1A Offence of threatening with offensive weapon in public

- (1) A person is guilty of an offence if that person—
- (a) has an offensive weapon with him or her in a public place,
  - (b) unlawfully and intentionally threatens another person with the weapon, and
  - (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.
- (2) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
- (3) In this section “public place” and “offensive weapon” have the same meaning as in section 1.
- (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- (5) Where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and

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- (b) would make it unjust to do so in all the circumstances.
  - (6) In this section “appropriate custodial sentence” means—
    - (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
    - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
  - (7) In considering whether it is of the opinion mentioned in subsection (5) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.
  - (8) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (4) (a) to 12 months is to be read as a reference to 6 months.
  - (9) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
  - (10) If on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 1, the person may be convicted of the offence under that section.”
- (2) In the Criminal Justice Act 1988 after section 139A (offence of having article with blade or point or offensive weapon on school premises) insert—

**“139AA Offence of threatening with article with blade or point or offensive weapon**

- (1) A person is guilty of an offence if that person—
  - (a) has an article to which this section applies with him or her in a public place or on school premises,
  - (b) unlawfully and intentionally threatens another person with the article, and
  - (c) does so in such a way that there is an immediate risk of serious physical harm to that other person.
- (2) In relation to a public place this section applies to an article to which section 139 applies.
- (3) In relation to school premises this section applies to each of these—
  - (a) an article to which section 139 applies;
  - (b) an offensive weapon within the meaning of section 1 of the Prevention of Crime Act 1953.
- (4) For the purposes of this section physical harm is serious if it amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861.
- (5) In this section—

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“public place” has the same meaning as in section 139;

“school premises” has the same meaning as in section 139A.

- (6) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 4 years or to a fine, or to both.
- (7) Where a person aged 16 or over is convicted of an offence under this section, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (8) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
  - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- (9) In considering whether it is of the opinion mentioned in subsection (7) in the case of a person aged under 18, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933.
- (10) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6) (a) to 12 months is to be read as a reference to 6 months.
- (11) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (8)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.
- (12) If on a person's trial for an offence under this section (whether on indictment or not) the person is found not guilty of that offence but it is proved that the person committed an offence under section 139 or 139A, the person may be convicted of the offence under that section.”
- (3) Schedule 26 (knives and offensive weapons: minor and consequential amendments) has effect.

### **143 Offence of causing serious injury by dangerous driving**

- (1) The Road Traffic Act 1988 is amended as follows.
- (2) After section 1 insert—

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### “1A Causing serious injury by dangerous driving

- (1) A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.
- (2) In this section “serious injury” means—
  - (a) in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and
  - (b) in Scotland, severe physical injury.”
- (3) In section 2A (meaning of dangerous driving) in subsections (1) and (2) after “sections 1” insert “, 1A ”.
- (4) Section 1A inserted by subsection (2) has effect only in relation to driving occurring after that subsection comes into force.
- (5) In Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences under the Traffic Acts) in the appropriate place insert—

“RTA section 1A	Causing serious injury by dangerous driving.	(a) Summarily.	(a) 12 months or the statutory maximum or both.	Obligatory.	Obligatory.	3-11.”
		(b) indictment.	(b) 5 years or a fine or both.”			

- (6) In the entry inserted by subsection (5), in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 “12 months” is to be read as “6 months (in England and Wales) or 12 months (in Scotland)”.
- (7) Schedule 27 (causing serious injury by dangerous driving: minor and consequential amendments) has effect.

### 144 Offence of squatting in a residential building

- (1) A person commits an offence if—
  - (a) the person is in a residential building as a trespasser having entered it as a trespasser,
  - (b) the person knows or ought to know that he or she is a trespasser, and
  - (c) the person is living in the building or intends to live there for any period.
- (2) The offence is not committed by a person holding over after the end of a lease or licence (even if the person leaves and re-enters the building).
- (3) For the purposes of this section—
  - (a) “building” includes any structure or part of a structure (including a temporary or moveable structure), and

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- (b) a building is “residential” if it is designed or adapted, before the time of entry, for use as a place to live.
- (4) For the purposes of this section the fact that a person derives title from a trespasser, or has the permission of a trespasser, does not prevent the person from being a trespasser.
- (5) A person convicted of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or a fine not exceeding level 5 on the standard scale (or both).
- (6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5) to 51 weeks is to be read as a reference to 6 months.
- (7) For the purposes of subsection (1)(a) it is irrelevant whether the person entered the building as a trespasser before or after the commencement of this section.
- (8) In section 17 of the Police and Criminal Evidence Act 1984 (entry for purpose of arrest etc)—
  - (a) in subsection (1)(c), after sub-paragraph (v) insert—
    - “(vi) section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (squatting in a residential building);”;
  - (b) in subsection (3), for “or (iv)” substitute “, (iv) or (vi)”.
- (9) In Schedule 10 to the Criminal Justice and Public Order Act 1994 (consequential amendments), omit paragraph 53(b).

#### **145 Scrap metal dealing: increase in penalties for existing offences**

- (1) The Scrap Metal Dealers Act 1964 is amended as follows.
- (2) For the following words (which have effect as references to a fine not exceeding level 3 on the standard scale) substitute in each case “ a fine not exceeding level 5 on the standard scale ”
  - (a) in section 1(7) (dealer failing to register) the words from “a fine” to the end;
  - (b) in section 2(6) (dealer failing to record dealings) the words from “a fine” to the end;
  - (c) in section 3(4) (itinerant collector failing to keep receipts) the words from “a fine” to the end;
  - (d) in section 4(4) (convicted dealer failing to meet additional requirements) the same words before “and the court”.
- (3) For the following words (which have effect as references to a fine not exceeding level 1 on the standard scale) substitute in each case “ a fine not exceeding level 3 on the standard scale ”
  - (a) in section 1(8) (dealer failing to give notice of cessation of business) the words from “a fine” to the end;
  - (b) in section 5(1) (dealer acquiring metal from a person under 16) the same words before the proviso;
  - (c) in section 5(2) (selling metal to a dealer under a false name or address) the words from “a fine” to the end;



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- (d) in section 6(5) (obstructing entry and inspection) the words from “a fine” to the end.

#### Commencement Information

**I34** S. 145 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2770, art. 2(c) (with art. 3)

### 146 Offence of buying scrap metal for cash etc

- (1) The Scrap Metal Dealers Act 1964 is amended as follows.  
 (2) After section 3 insert—

#### “3A Offence of buying scrap metal for cash etc

- (1) A scrap metal dealer must not pay for scrap metal except—
- (a) by a cheque which under section 81A of the Bills of Exchange Act 1882 is not transferable, or
  - (b) by an electronic transfer of funds (authorised by credit or debit card or otherwise).
- (2) The Secretary of State may by order amend subsection (1) to permit other methods of payment.
- (3) In this section paying includes paying in kind (with goods or services).
- (4) If a scrap metal dealer pays for scrap metal in breach of subsection (1), each of the following is guilty of an offence—
- (a) the scrap metal dealer;
  - (b) a person who makes the payment acting for the dealer;
  - (c) a manager who fails to take reasonable steps to prevent the payment being made in breach of subsection (1).
- (5) In subsection (4)(c) “manager” means a person who works in the carrying on of the dealer's business as a scrap metal dealer in a capacity, whether paid or unpaid, which authorises the person to prevent the payment being made in breach of subsection (1).
- (6) Subsection (1) does not apply if—
- (a) the payment is made in the carrying on of the dealer's business as a scrap metal dealer as part of the business of an itinerant collector, and
  - (b) at the time of the payment an order under section 3(1) is in force in relation to the dealer.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (8) An order under subsection (2) is to be made by statutory instrument.
- (9) A statutory instrument containing an order under subsection (2) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”
- (3) Section 2 (records of dealings) is amended as follows.

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(4) After subsection (2)(d) insert—

“(da) where paragraph (d) applies, any part of the price that is unpaid at the time when the entry is to be made;”.

(5) In subsection (2)(e) for “the last preceding paragraph” substitute “ paragraph (d) ”.

(6) After subsection (4) insert—

“(4A) If a scrap metal dealer pays at any time for scrap metal falling within subsection (1)(a)—

- (a) the dealer must keep, with the book containing the entry relating to receipt of the scrap metal, a copy of the cheque (if the payment was by cheque), or any receipt identifying the transfer (if the payment was by electronic transfer and such a receipt was obtained), and
- (b) the particulars required by this section to be entered include those listed in subsection (4B).

(4B) The particulars are—

- (a) the full name and address of any person who makes the payment acting for the dealer;
- (b) the full name and address of the person to whom the payment is made;
- (c) in the case of an electronic transfer where no receipt identifying the transfer was obtained, particulars identifying the transfer.

(4C) Anything kept by virtue of subsection (4A)(a) must be marked so as to identify the scrap metal by reference to the entry relating to receipt of the metal.

(4D) An entry in pursuance of subsection (4A)(b)—

- (a) must be made immediately after the payment is made, and
- (b) if not made at the same time as the entry relating to receipt of the scrap metal, must identify the metal by reference to that entry.”

(7) In subsection (5), after “this section and” insert “ the book and anything required by subsection (4A)(a) to be kept with it ”.

(8) Section 3 (special provisions as to records in certain cases) is amended as follows.

(9) In subsection (5)(d), for “subsection (4)” substitute “ subsections (4) and (4D)(a) ”.

(10) In subsection (6)(a)—

- (a) after “books” insert “ , and the obligation imposed by subsection (4A)(a) of that section to keep anything with a book, ”;
- (b) after “the like particulars” insert “ , and to keeping the same things, ”;
- (c) for “and (3)” substitute “ , (3) and (4A) to (4D) ”.

(11) In subsection (6)(c), for “subsection (4)” substitute “ subsections (4) and (4D)(a) ”.

(12) In section 4(1) (power for court to impose additional requirements on convicted dealers)—

- (a) omit “or” at the end of paragraph (a), and
- (b) after that paragraph insert—
  - “(aa) is convicted of an offence under section 3A, or”.

(13) Section 6 (rights of entry and inspection) is amended as follows.

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(14) After subsection (3) insert—

“(3A) Whether or not a place is one to which a constable has a right of entry in accordance with subsection (1), a justice of the peace may issue a warrant described in subsection (3B) if satisfied by information on oath that there are reasonable grounds for believing that the place—

- (a) is a scrap metal store where scrap metal paid for contrary to section 3A is or has been received or kept, or
- (b) is a place to which admission is reasonably required in order to ascertain whether that section is being complied with.

(3B) The warrant is a warrant signed by the justice issuing it which specifies the place concerned and authorises a constable to enter the place, if need be by force, at any time within one month from the date of the warrant.

(3C) A constable authorised to enter a place by a warrant granted under subsection (3A) has a right—

- (a) to inspect that place;
- (b) to require production of, and to inspect, any scrap metal kept at that place;
- (c) to require production of and to inspect any book which the dealer is required by this Act to keep at that place and any copy or receipt required to be kept with the book, or, as the case may be, any receipt which the dealer is required to keep as mentioned in section 3(1)(b), and to take copies of the book, copy or receipt;
- (d) to require production of and to inspect any other record kept at that place relating to payment for scrap metal, and to take copies of the record.”

(15) In subsection (4) for “the last preceding subsection” substitute “subsection (3) or (3A)”.

#### **147 Review of offence of buying scrap metal for cash etc**

(1) Before the end of 5 years beginning with the day on which section 146(2) comes into force, the Secretary of State must—

- (a) carry out a review of the offence created by that subsection, and
- (b) publish a report of the conclusions of the review.

(2) The report must in particular—

- (a) set out the objectives intended to be achieved by creating the offence,
- (b) assess the extent to which those objectives have been achieved, and
- (c) assess whether it is appropriate to retain the offence to achieve those objectives.

VALID FROM 14/05/2013

#### **148 Reasonable force for the purposes of self-defence etc**

(1) Section 76 of the Criminal Justice and Immigration Act 2008 (reasonable force for the purposes of self-defence etc) is amended as follows.

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- (2) In subsection (2) after paragraph (a) omit “and” and insert—  
 “(aa) the common law defence of defence of property; and”.
- (3) After subsection (6) insert—  
 “(6A) In deciding the question mentioned in subsection (3), a possibility that D could have retreated is to be considered (so far as relevant) as a factor to be taken into account, rather than as giving rise to a duty to retreat.”
- (4) In subsection (8) for “Subsection (7) is” substitute “ Subsections (6A) and (7) are ”.
- (5) In subsection (10)(a) after sub-paragraph (i) omit “or” and insert—  
 “(ia) the purpose of defence of property under the common law, or”.
- (6) Paragraph 27 of Schedule 27 to the Criminal Justice and Immigration Act 2008 (which provides for section 76 of that Act to apply whenever the alleged offence took place, but not in relation to certain proceedings if they began, or the arraignment took place, before that section comes into force) applies to any amendment made by this section to section 76 of that Act as it applies to that section, but as if references to the date on which that section comes into force were references to the date on which the amendment comes into force.

## PART 4

### FINAL PROVISIONS

#### 149 Power to make consequential and supplementary provision etc

- (1) The Lord Chancellor or the Secretary of State may by regulations make consequential, supplementary, incidental, transitional, transitory or saving provision in relation to any provision of this Act.
- (2) The regulations may, in particular amend, repeal, revoke or otherwise modify legislation.
- (3) Regulations under this section are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (5).
- (5) A statutory instrument containing regulations under this section that amend or repeal an Act (whether alone or with other provision) 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 this section—  
 “Act” includes an Act or Measure of the National Assembly for Wales;  
 “legislation”, in relation to regulations made in relation to a provision of this Act, means—  
 (a) this Act or an Act passed before or in the same Session as this Act, or  
 (b) an instrument made under an Act before the provision comes into force.

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## 150 Financial provision

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred by a Minister of the Crown by virtue of this Act, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

## 151 Commencement

- (1) The provisions of this Act come into force on such day as the Lord Chancellor or the Secretary of State may appoint by order, subject to subsections (2) and (3).
- (2) The following provisions come into force on the day on which this Act is passed—
  - (a) section 77,
  - (b) section 119, and
  - (c) this Part.
- (3) This section does not apply to section 76 (but see section 77).
- (4) An order under this section is to be made by statutory instrument.
- (5) An order under this section may—
  - (a) appoint different days for different purposes, and
  - (b) make transitional, transitory or saving provision.
- (6) An order under this section bringing into force section 133, 134, 136, 137 or 138 may appoint different days for different areas.

### Subordinate Legislation Made

- P2** S. 151(1) power partly exercised: 1.9.2012 appointed for specified provision by {S.I. 2012/1956}, art. 2;
- S. 151(1) power partly exercised: 1.10.2012 appointed for specified provisions by {S.I. 2012/2412}, art. 2;
- S. 151(1) power partly exercised: 3.12.2012 appointed for specified provisions by {S.I. 2012/2770}, art. 2;
- S. 151(1) power partly exercised: 3.12.2012 appointed for specified provisions and purposes by {S.I. 2012/2906}, art. 2;
- S. 151(1) power partly exercised: 19.1.2013 and 1.4.2013 appointed for specified provisions and purposes by {S.I. 2013/77}, arts. 2, 3
- S. 151(1) power partly exercised: 4.3.2013, 1.4.2013 and 8.4.2013 appointed for specified provisions and purposes by {S.I. 2013/453}, arts. 2, 3, 4 (with savings and transitional provisions in S.I. 2013/534, art. 6);
- S. 151(1) power partly exercised: 1.4.2013 appointed for specified provisions by {S.I. 2013/773}, art. 2;
- S. 151(1) power partly exercised: 14.5.2013 appointed for specified provision by {S.I. 2013/1127}, art. 2

## 152 Extent

- (1) Parts 1 to 3 of this Act extend to England and Wales only, subject to subsections (2) to (8).

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- (2) Sections 130 and 131(1) extend to England and Wales and Scotland.
- (3) The following provisions extend to England and Wales and Northern Ireland—
  - (a) section 22,
  - (b) section 33,
  - (c) section 40 and Schedule 6, and
  - (d) sections 41 to 43.
- (4) Section 77 extends to England and Wales, Scotland and Northern Ireland, subject to subsection (11).
- (5) In Chapter 8 of Part 3—
  - (a) section 139 extends to England and Wales only,
  - (b) sections 140 and 141 extend to England and Wales, Scotland and Northern Ireland,
  - (c) paragraphs 1 to 11 of Schedule 25 extend to England and Wales only,
  - (d) paragraphs 12 to 17 of that Schedule extend to Scotland only, and
  - (e) Part 2 of that Schedule extends to England and Wales only.
- (6) An amendment, repeal or revocation made by this Act has the same extent as the relevant part of the Act or instrument amended, repealed or revoked (ignoring extent by virtue of an Order in Council), subject to subsections (2), (5), (7) and (8).
- (7) Subsection (6) applies to section 148(1) to (5) only so far as the provisions amended extend to England and Wales or apply in relation to service offences.
- (8) Subsection (6) does not apply to paragraphs 15 and 18 of Schedule 7, which extend to England and Wales only.
- (9) The following have the same extent as the amendments, modifications, enactments, instruments or provisions to which they relate—
  - (a) section 68(7),
  - (b) section 80(10) and (11),
  - (c) section 135(4), (5) and (7),
  - (d) section 148(6),
  - (e) Part 4 of Schedule 7 and Part 3 of Schedule 8, and
  - (f) Schedule 15.
- (10) Sections 149, 150, 151, this section and section 154 extend to England and Wales, Scotland and Northern Ireland.
- (11) But, in so far as sections 77, 149 and 151 confer power to make provision modifying or otherwise relating to a provision of, or made under or applied by, the Armed Forces Act 2006, they have the same extent as that Act (ignoring extent by virtue of an Order in Council).

### **153 Channel Islands, Isle of Man and British overseas territories**

- (1) The power conferred by section 9(4) of the Repatriation of Prisoners Act 1984 (power to extend to Channel Islands, Isle of Man and British overseas territories) is exercisable in relation to any amendment of that Act that is made by or under this Act.

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- (2) The powers conferred by sections 177, 178 and 222 of the Extradition Act 2003 (powers to apply provisions to extradition to or from British overseas territories and to extend to Channel Islands and Isle of Man) are exercisable in relation to any amendment of that Act that is made by or under this Act.
- (3) The power conferred by section 338 of the Criminal Justice Act 2003 (power to extend to Channel Islands and Isle of Man) is exercisable in relation to any amendment of that Act that is made by or under this Act.
- (4) In section 384 of the Armed Forces Act 2006 (extent to Channel Islands, Isle of Man and British overseas territories) references to that Act include that Act as amended by or under this Act.

#### **154 Short title**

This Act may be cited as the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

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**Changes to legislation:**

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