

## SCHEDULES

### SCHEDULE 16

Section 44

#### DEALING NON-CUSTODIALLY WITH OFFENDERS

##### PART 1

###### COMMUNITY ORDERS: PUNITIVE ELEMENTS

- 1 The Criminal Justice Act 2003 is amended as follows.
- 2 In section 177 (community orders) after subsection (2) insert—
- “(2A) Where the court makes a community order, the court must—
- (a) include in the order at least one requirement imposed for the purpose of punishment, or
  - (b) impose a fine for the offence in respect of which the community order is made, or
  - (c) comply with both of paragraphs (a) and (b).
- (2B) Subsection (2A) does not apply where there are exceptional circumstances which—
- (a) relate to the offence or to the offender,
  - (b) would make it unjust in all the circumstances for the court to comply with subsection (2A)(a) in the particular case, and
  - (c) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.”

3 In section 148(2A) (restrictions in subsection (2) on making community orders etc are subject to certain enactments) after “subject to” insert “section 177(2A) (community orders: punitive elements) and to”.

4 An amendment made by this Part of this Schedule does not affect orders in respect of offences committed before the amendment comes into force.

##### PART 2

###### DEFERRING THE PASSING OF SENTENCE TO ALLOW FOR RESTORATIVE JUSTICE

- 5 After section 1 of the Powers of Criminal Courts (Sentencing) Act 2000 (court’s power to defer passing of sentence) insert—

###### “1ZA Undertakings to participate in restorative justice activities

- (1) Without prejudice to the generality of paragraph (b) of section 1(3), the requirements that may be imposed under that paragraph include restorative justice requirements.

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- (2) Any reference in this section to a restorative justice requirement is to a requirement to participate in an activity—
    - (a) where the participants consist of, or include, the offender and one or more of the victims,
    - (b) which aims to maximise the offender’s awareness of the impact of the offending concerned on the victims, and
    - (c) which gives an opportunity to a victim or victims to talk about, or by other means express experience of, the offending and its impact.
  - (3) Imposition under section 1(3)(b) of a restorative justice requirement requires, in addition to the offender’s consent and undertaking under section 1(3), the consent of every other person who would be a participant in the activity concerned.
  - (4) For the purposes of subsection (3), a supervisor appointed under section 1A(2) does not count as a proposed participant.
  - (5) Where a restorative justice requirement is imposed under section 1(3)(b), the duty under section 1(5) (to give copies of order) extends to every person who would be a participant in the activity concerned.
  - (6) In a case where there is such a restorative justice requirement, a person running the activity concerned must in doing that have regard to any guidance that is issued, with a view to encouraging good practice in connection with such an activity, by the Secretary of State.
  - (7) In this section “victim” means a victim of, or other person affected by, the offending concerned.”
- 6 In section 1(8) of that Act (effect of sections 1 and 1A to 1D) for “1A” substitute “1ZA”.
- 7 The amendment made by paragraph 5 does not apply in respect of offences committed before the amendment comes into force.

### PART 3

#### REMOVAL OF LIMITS ON COMPENSATION ORDERS MADE AGAINST ADULTS

- 8 (1) Section 131 of the Powers of Criminal Courts (Sentencing) Act 2000 (limit on amount payable under magistrates’ court compensation order) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) This section applies if (but only if) a magistrates’ court has convicted a person aged under 18 (“the offender”) of an offence or offences.”
- (3) In subsection (1) (compensation in respect of an offence not to exceed £5,000) for “a magistrates’ court in respect of any offence of which the court has convicted the offender” substitute “the court in respect of the offence, or any one of the offences,”.
- (4) In subsection (2) (limit in respect of offences taken into consideration) for “a magistrates” substitute “the”.
- (5) In the title, at the end insert “in case of young offender”.

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- 9 In section 33B(5) of the Environmental Protection Act 1990 (limit on compensation in relation to conviction for certain environmental offences) after “payable” insert “in case of young offender”.
- 10 Nothing in this Part of this Schedule affects orders in respect of offences committed before this Part of this Schedule comes into force.

#### PART 4

##### ELECTRONIC MONITORING OF OFFENDERS

- 11 The Criminal Justice Act 2003 is amended as follows.
- 12 (1) Section 177 (community orders) is amended as follows.
- (2) In subsection (1) (requirements which may be included in a community order)—
- (a) omit the “and” after paragraph (k), and
  - (b) after paragraph (l) insert “, and
    - (m) an electronic monitoring requirement (as defined by section 215).”
- (3) In subsection (2) (provisions to which subsection (1) is subject)—
- (a) omit the “and” after paragraph (g), and
  - (b) after paragraph (h) insert “, and
    - (i) section 215(2) (electronic monitoring requirement).”
- (4) In subsection (3) (curfew or exclusion requirement must be accompanied by electronic monitoring requirement) for “(as defined by section 215)” substitute “within section 215(1)(a) for securing the electronic monitoring of the curfew or exclusion requirement”.
- (5) Omit subsection (4) (power, in certain cases where subsection (3) does not apply, to impose requirement for electronic monitoring of another requirement included in the community order).
- (6) In consequence, omit section 72(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 13 (1) Section 190 (suspended sentence orders) is amended as follows.
- (2) In subsection (1) (requirements which may be included in a suspended sentence order)—
- (a) omit the “and” after paragraph (k), and
  - (b) after paragraph (l) insert “, and
    - (m) an electronic monitoring requirement (as defined by section 215).”
- (3) In subsection (2) (provisions to which subsection (1) is subject)—
- (a) omit the “and” after paragraph (g), and
  - (b) after paragraph (h) insert “, and
    - (i) section 215(2) (electronic monitoring requirement).”
- (4) In subsection (3) (curfew or exclusion requirement must be accompanied by electronic monitoring requirement) for “(as defined by section 215)” substitute

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“within section 215(1)(a) for securing the electronic monitoring of the curfew or exclusion requirement”.

- (5) Omit subsection (4) (power, in certain cases where subsection (3) does not apply, to impose requirement for electronic monitoring of another requirement included in the suspended sentence order).
- (6) In consequence, omit section 72(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- 14 In section 192(3)(b) (reviews of suspended sentence order)—
- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
  - (b) for “190(1)” substitute “190(1)(a) to (l)”.
- 15 In section 197(1)(a) (meaning of “the responsible officer” where curfew or exclusion requirement imposed)—
- (a) in sub-paragraph (i)—
    - (i) for “177(1)” substitute “177(1)(a) to (l)”, and
    - (ii) for “190(1)” substitute “190(1)(a) to (l)”, and
  - (b) in sub-paragraph (ii) after “requirement” insert “within section 215(1)(a)”.
- 16 (1) Section 215 (electronic monitoring requirement) is amended as follows.
- (2) In subsection (1) (“electronic monitoring requirement” is a requirement for securing the monitoring of compliance with other requirements)—
- (a) for “for securing the” substitute “to submit to either or both of the following—
    - (a)”,
    - and  - (b) at the end insert “, and
    - (b) electronic monitoring of the offender’s whereabouts (otherwise than for the purpose of monitoring the offender’s compliance with any other requirements included in the order) during a period specified in the order.”
- (3) After subsection (4) insert—
- “(4A) Where a relevant order imposes an electronic monitoring requirement, the offender must (in particular)—
- (a) submit, as required from time to time by the responsible officer or the person responsible for the monitoring, to—
    - (i) being fitted with, or installation of, any necessary apparatus, and
    - (ii) inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,
  - (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and
  - (c) take any steps required by the responsible officer, or the person responsible for the monitoring, for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring.”

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- (4) In subsection (5) (electronic monitoring requirement not to be imposed for monitoring compliance with alcohol abstinence and monitoring requirement) after “electronic monitoring requirement” insert “within subsection (1)(a)”.
- (5) In subsection (6) (subsection (5) does not prevent electronic monitoring of compliance with other requirements) for “this is” substitute “the electronic monitoring requirement is within subsection (1)(b) or is included”.

17 After section 215 insert—

**“215A Data from electronic monitoring: code of practice**

- (1) The Secretary of State must issue a code of practice relating to processing of data gathered in the course of electronic monitoring of offenders under electronic monitoring requirements imposed by relevant orders.
- (2) A failure to observe a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.”

18 (1) Section 218 (availability of arrangements in local area) is amended as follows.

(2) In subsection (4)—

- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
- (b) in paragraph (b), for “those arrangements” substitute “the arrangements currently available”.

(3) After subsection (8) insert—

“(9) A court may not include an electronic monitoring requirement within section 215(1)(b) in a relevant order in respect of an offender unless the court—

- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the local justice area proposed to be specified in the order,
- (b) is satisfied that the offender can be fitted with any necessary apparatus under the arrangements currently available and that any other necessary provision can be made under those arrangements, and
- (c) is satisfied that arrangements are generally operational throughout England and Wales (even if not always operational everywhere there) under which the offender’s whereabouts can be electronically monitored.”

19 In Schedule 8 (breach etc of community order) in paragraph 3(b)—

- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
- (b) for “177(1)” substitute “177(1)(a) to (l)”.

20 (1) Schedules 9 and 13 (transfer of community or suspended sentence order to Scotland or Northern Ireland) are amended as follows.

(2) In paragraphs 1(2)(g) and 3(2)(h) of Schedule 9, and paragraphs 1(2)(g) and 6(2)(h) of Schedule 13, after “requirement” insert “within section 215(1)(a)”.

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- (3) In paragraph 1(5) of each of Schedules 9 and 13 (certain requirements not to be included in orders to be complied with in Scotland) before “to be complied with” insert “, or an electronic monitoring requirement within section 215(1)(b),”.
- (4) In paragraph 3(1) of Schedule 9 and paragraph 6(1) of Schedule 13 (pre-conditions for imposing requirements where offender will be living in Northern Ireland) before the “and” at the end of paragraph (a) insert—
- “(aa) in the case of an order imposing an electronic monitoring requirement within section 215(1)(b)—
- (i) that any necessary provision can be made in the offender’s case under arrangements that exist for persons resident in that locality, and
- (ii) that arrangements are generally operational throughout Northern Ireland (even if not always operational everywhere there) under which the offender’s whereabouts can be electronically monitored.”.
- (5) In paragraphs 3(3)(b) and (4) and 13(b) of Schedule 9 and paragraph 6(3)(b) and (4) of Schedule 13 (references to the pre-conditions) for “and (b)” substitute “to (b)”.
- (6) In paragraph 4(3)(d) of Schedule 9 and paragraph 9(3)(d) of Schedule 13 (disapplication of section 218(4)) for “subsection (4)” substitute “subsections (4) and (9)”.
- (7) In paragraph 17 of Schedule 13 (reference to the pre-conditions) for “and (b)”, in the second place, substitute “to (b)”.
- 21 In Schedule 12 (breach or amendment of suspended sentence order and effect of further conviction) in paragraph 15(2)(b)—
- (a) after “electronic monitoring requirement” insert “within section 215(1)(a)”, and
- (b) for “190(1)” substitute “190(1)(a) to (l)”.

## PART 5

### COMMUNITY ORDERS: FURTHER PROVISION

#### *Breaches of community orders*

- 22 (1) Omit paragraph (a) in each of subsections (2) and (5) of section 67 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (amendments which would have turned duties to deal with breaches into powers to do so).
- (2) In paragraph 9(6) of Schedule 8 to the Criminal Justice Act 2003 (which refers to provision that would have been made by those amendments) for “have the power” substitute “be required”.

#### *Community order not to be made in case of knife etc offence attracting minimum sentence*

- 23 (1) In section 150 of the Criminal Justice Act 2003 (no power to make community order or youth rehabilitation order where sentence fixed by law)—
- (a) the existing provision becomes subsection (1) of that section, and

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(b) after that subsection insert—

“(2) The power to make a community order is not exercisable in respect of an offence for which the sentence—

- (a) falls to be imposed under section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for offence of threatening with offensive weapon in public), or
- (b) falls to be imposed under section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for offence of threatening with article with blade or point in public or on school premises or with offensive weapon on school premises).”

(2) In consequence of sub-paragraph (1), in Schedule 26 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 omit paragraph 19 (which would have made provision corresponding to the new section 150(2) of the 2003 Act but also preventing the making of youth rehabilitation orders).

## PART 6

### STATEMENTS OF ASSETS AND OTHER FINANCIAL CIRCUMSTANCES OF OFFENDERS ETC

#### *Financial circumstances orders*

24 In section 162(3) of the Criminal Justice Act 2003 (a “financial circumstances order” is a pre-sentencing order requiring a statement of an offender’s financial circumstances) after “statement of his” insert “assets and other”.

#### *Further amendments*

25 In section 84 of the Magistrates’ Courts Act 1980 (court’s power to require statement of means)—

- (a) in subsection (1) (court may require statement of means before or on inquiring into means under section 82) for “means”, in the second place, substitute “assets and other financial circumstances”, and
- (b) in the title for “means” substitute “assets and other financial circumstances”.

26 In section 20A of the Criminal Justice Act 1991 (false statements as to financial circumstances)—

- (a) in subsection (1) (person charged with offence commits further offence if person responds to official request by making false statement etc as to financial circumstances) for “his financial circumstances” substitute “financial circumstances (whether a statement of assets, of other financial circumstances or of both)”, and
- (b) in subsection (1A) (person charged with offence commits further offence if person fails to provide statement of financial circumstances in response to official request) for “his financial circumstances in response to” substitute “financial circumstances (whether a statement of assets, of other financial circumstances or of both) requested by”.

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- 27 In section 13B of the Crime and Disorder Act 1998 (parental compensation orders: the compensation)—
- (a) in subsection (4) (provision by parent or guardian of statement of financial circumstances) after “statement of his” insert “assets and other”, and
  - (b) in subsection (6) (provision of false statement) omit “of his financial circumstances”.
- 28 (1) The Courts Act 2003 is amended as follows.
- (2) In paragraph 48 of Schedule 5 (offences relating to provision of information as to financial circumstances)—
- (a) in sub-paragraph (1) (person commits offence if person responds to relevant request by making false statement etc as to financial circumstances) for “his financial circumstances” substitute “financial circumstances (whether a statement of assets, of other financial circumstances or of both)”,
  - (b) in sub-paragraph (3) (person commits offence if person fails to provide statement of financial circumstances in response to relevant request) for “statement of his financial circumstances to a fines officer in response to” substitute “fines officer with a statement of financial circumstances (whether a statement of assets, of other financial circumstances or of both) requested by”, and
  - (c) in sub-paragraph (5) (meaning of “relevant request”), in the opening words, after “information about P’s financial circumstances” insert “(whether about P’s assets, P’s other financial circumstances or both)”.
- (3) In paragraph 2 of Schedule 6 (cases in which work order may be made)—
- (a) in sub-paragraph (3) (magistrates’ court considering making work order may order person to give statement of means) for “means” substitute “assets and other financial circumstances”, and
  - (b) in sub-paragraph (4) (application of section 84(2) and (4) of the Magistrates’ Courts Act 1980) for “means” substitute “assets and other financial circumstances”.

## PART 7

### INFORMATION TO ENABLE A COURT TO DEAL WITH AN OFFENDER

#### *Power to disclose information*

- 29 (1) The Secretary of State or a Northern Ireland Department, or a person providing services to the Secretary of State or a Northern Ireland Department, may disclose social security information to a relevant person.
- (2) Her Majesty’s Revenue and Customs, or a person providing services to the Commissioners for Her Majesty’s Revenue and Customs, may disclose finances information to a relevant person.
- (3) The disclosure authorised by sub-paragraph (1) or (2) is disclosure of the information concerned for use by a court that, in connection with dealing with a person (“the defendant”) for an offence, is inquiring into or determining the defendant’s financial circumstances.



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- (4) Sub-paragraphs (1) and (2) do not authorise disclosure in a particular case at a time when the defendant is under 18.
- (5) Information disclosed to a relevant person under sub-paragraph (1) or (2) or paragraph (a)(ii)—
- (a) must not be further disclosed by the relevant person except—
    - (i) to a court that, in connection with dealing with the defendant for the offence, is inquiring into or determining the defendant’s financial circumstances, or
    - (ii) to another relevant person who wants social security information or finances information in order that it can be put before a court that, in connection with dealing with the defendant for the offence, is inquiring into or determining the defendant’s financial circumstances, and
  - (b) must not be used by the relevant person otherwise than for the purpose of disclosing it as mentioned in paragraph (a)(i) or (ii).
- (6) Sub-paragraphs (1), (2) and (5)(a) not only authorise disclosure after conviction of the defendant but also authorise disclosure at any time after the defendant is first charged with the offence.
- (7) Sub-paragraph (5) does not prohibit—
- (a) disclosure to the defendant, or to a person representing the defendant in any proceedings in connection with the offence;
  - (b) disclosure or use of information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
  - (c) disclosure or use of information which has previously been disclosed to the public with lawful authority;
  - (d) disclosure or use of information so far as necessary to comply with—
    - (i) an order of a court,
    - (ii) an order of a tribunal established by or under an Act, or
    - (iii) a duty imposed by or under an Act.
- (8) In sub-paragraph (7) “court” means any court, but elsewhere in this paragraph “court” means—
- (a) a magistrates’ court, or the Crown Court, in England and Wales,
  - (b) the Court Martial, the Service Civilian Court or the Summary Appeal Court, or
  - (c) any court hearing an appeal (including an appeal by case stated) from a court within paragraph (a) or (b).
- (9) In this paragraph—
- “finances information” means information which—
- (a) is about a person’s income, gains or capital, and
  - (b) is held—
    - (i) by Her Majesty’s Revenue and Customs, or
    - (ii) by a person providing services to the Commissioners for Her Majesty’s Revenue and Customs in connection with the provision of those services,

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or information which is held with information so held;

“relevant person” means—

- (a) a person who is appointed by the Lord Chancellor under section 2(1) of the Courts Act 2003 or provided under a contract made by virtue of section 2(4) of that Act,
- (b) a person who is a member of or on the staff of the Service Prosecuting Authority, or
- (c) a person not within paragraph (b) who is, or who is assisting, a person engaged to represent the Service Prosecuting Authority in proceedings before a court;

“Service Prosecuting Authority” means—

- (a) the Director of Service Prosecutions, and
- (b) the persons appointed under section 365 of the Armed Forces Act 2006 (prosecuting officers);

“social security information” means information which is held for the purposes of functions relating to social security—

- (a) by the Secretary of State or a Northern Ireland Department, or
- (b) by a person providing services to the Secretary of State, or a Northern Ireland Department, in connection with the provision of those services,

or information which is held with information so held.

- (10) The reference in sub-paragraph (9) to functions relating to social security includes a reference to functions relating to any of the matters listed in section 127(8) of the Welfare Reform Act 2012 (statutory payments and maternity allowances).

*Offence where information wrongly used or disclosed*

- 30 (1) It is an offence for a person to disclose or use information in contravention of paragraph 29(5).
- (2) It is a defence for a person charged with an offence under sub-paragraph (1) to prove that the person reasonably believed that the disclosure or use concerned was lawful.
- (3) A person guilty of an offence under sub-paragraph (1) is liable—
- (a) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years, or
    - (ii) to a fine, or
    - (iii) to both;
  - (b) on summary conviction—
    - (i) to imprisonment for a period not exceeding 12 months, or
    - (ii) to a fine not exceeding the statutory maximum, or
    - (iii) to both.
- (4) Sub-paragraph (3)(b) applies—
- (a) in England and Wales in relation to offences committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on power of magistrates’ courts to impose imprisonment), and
  - (b) in Northern Ireland,
- as if the reference to 12 months were a reference to 6 months.

- (5) A prosecution for an offence under sub-paragraph (1)—
- (a) may be instituted in England and Wales only by or with the consent of the Director of Public Prosecutions, and
  - (b) may be instituted in Northern Ireland only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

## PART 8

### RELATED AMENDMENTS IN ARMED FORCES ACT 2006

#### *Community orders: punitive elements*

- 31 The Armed Forces Act 2006 is amended as follows.
- 32 In section 178 (service community orders), in subsection (3) (provisions of the 2003 Act in which “community order” includes a service community order) for “177(3)” substitute “177(2A)”.
- 33 (1) Section 182 (overseas community orders) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) In section 177(2A) and (2B) of the 2003 Act (community orders: punitive elements) “community order” includes an overseas community order if the offender is aged 18 or over when convicted of the offence in respect of which the overseas community order is made.”
- (3) In subsection (5) (provisions of the 2003 Act in which “court” includes a relevant service court) for “those provisions” substitute “the provisions of the 2003 Act mentioned in subsections (3A) and (4)”.
- 34 In section 270 (restrictions on community punishments) after subsection (2) insert—
- “(2A) Subsection (2) is subject to section 177(2A) of the 2003 Act (community orders: punitive elements) as applied by section 178(3) and section 182(3A).”
- 35 An amendment made by any of paragraphs 32 to 34 does not affect orders in respect of offences committed before the amendment comes into force.

#### *Removal of limits on compensation orders made against adults*

- 36 (1) Section 284 of the Armed Forces Act 2006 (Service Civilian Court compensation orders etc: maximum amounts) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) The following subsections apply if (but only if) the Service Civilian Court has convicted a person aged under 18 (“the offender”) of an offence or offences.”
- (3) In subsection (3) (compensation in respect of an offence not to exceed amount mentioned in section 131(1) of the Powers of Criminal Courts (Sentencing) Act 2000) for “any offence of which the court has convicted the offender” substitute “the offence, or any one of the offences,”.

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- (4) Nothing in this paragraph affects orders in respect of offences committed before the day on which this paragraph comes into force.

*Electronic monitoring of offenders*

- 37 (1) The Armed Forces Act 2006 is amended as follows.
- (2) In section 182(1A) (requirements which may not be included in overseas community orders) at the end insert “or (m) (an electronic monitoring requirement)”.
- (3) In section 183(1) (provisions of Criminal Justice Act 2003 which do not apply to overseas community orders) for “section 215” substitute “sections 215 and 215A”.

*Statements of assets and other financial circumstances of offenders etc*

- 38 In section 266(2) of the Armed Forces Act 2006 (meaning of “financial statement order”) after “statement of his” insert “assets and other”.