



Psychoactive Substances Act 2016

2016 CHAPTER 2

Powers for dealing with prohibited activities

12 Meaning of “prohibited activity”

- (1) In this Act “prohibited activity” means any of the following activities—
- (a) producing a psychoactive substance that is likely to be consumed by individuals for its psychoactive effects;
 - (b) supplying such a substance;
 - (c) offering to supply such a substance;
 - (d) importing such a substance;
 - (e) exporting such a substance;
 - (f) assisting or encouraging the carrying on of a prohibited activity listed in any of paragraphs (a) to (e).
- (2) The carrying on by a person of an activity listed in any of paragraphs (a) to (e) of subsection (1) is not the carrying on of a prohibited activity if the carrying on of the activity by that person would not be an offence under this Act by virtue of section 11.

13 Prohibition notices

- (1) A senior officer or a local authority may give a prohibition notice to a person if conditions A and B are met.
- (2) A prohibition notice is a notice that requires the person to whom it is given not to carry on any prohibited activity or a prohibited activity of a description specified in the notice.
- (3) Condition A is that the senior officer or local authority reasonably believes that the person is carrying on, or is likely to carry on, a prohibited activity.
- (4) Condition B is that the senior officer or local authority reasonably believes that it is necessary and proportionate to give the prohibition notice for the purpose of preventing the person from carrying on any prohibited activity.

- (5) A prohibition notice may not be given—
 - (a) in England and Wales or Northern Ireland, to an individual who is under the age of 10, or
 - (b) in Scotland, to an individual who is under the age of 12.
- (6) A prohibition notice given to an individual who is under the age of 18—
 - (a) must specify the period for which it has effect, and
 - (b) may not have effect for more than 3 years.
- (7) In this Act “senior officer” means—
 - (a) a constable of at least the rank of inspector;
 - (b) a designated NCA officer of grade 3 or above;
 - (c) a general customs official of at least the grade of higher officer.

14 Premises notices

- (1) A senior officer or a local authority may give a premises notice to a person if conditions A and B are met.
- (2) A premises notice is a notice that requires the person to whom it is given to take all reasonable steps to prevent any prohibited activity, or a prohibited activity of a description specified in the notice, from being carried on at any premises specified in the notice that are owned, leased, occupied, controlled or operated by the person.
- (3) Condition A is that—
 - (a) the senior officer or local authority reasonably believes that a prohibited activity is being, or is likely to be, carried on at particular premises, and
 - (b) the person owns, leases, occupies, controls or operates the premises.
- (4) Condition B is that the senior officer or local authority reasonably believes that it is necessary and proportionate to give the premises notice for the purpose of preventing any prohibited activity from being carried on at any premises owned, leased, occupied, controlled or operated by the person.
- (5) A premises notice may not be given to an individual who is under the age of 18.
- (6) For the purposes of this section a person (other than a mortgagee not in possession) “owns” premises in England and Wales or Northern Ireland if—
 - (a) the person is entitled to dispose of the fee simple in the premises, whether in possession or reversion, or
 - (b) the person holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term of not less than 3 years.
- (7) For the meaning of “senior officer”, see section 13(7).

15 Prohibition notices and premises notices: supplementary

- (1) This section applies to the giving of prohibition notices and premises notices.
- (2) A notice must—
 - (a) set out the grounds for giving the notice;
 - (b) explain the possible consequences of not complying with the notice.

- (3) A notice may be withdrawn by a notice to that effect given by—
 - (a) where the notice was given by a senior officer, that officer or another senior officer acting on behalf of the same person as that officer;
 - (b) where the notice was given by a local authority, that local authority.
- (4) The withdrawal of a notice does not prevent the giving of a further notice to the same person.
- (5) For the meaning of “senior officer”, see section 13(7).

16 Further provision about giving notices under sections 13 to 15

- (1) This section applies to the giving of notices under sections 13 to 15.
- (2) A notice takes effect when it is given.
- (3) A notice may be given to a person by—
 - (a) handing it to the person,
 - (b) leaving it at the person’s proper address,
 - (c) sending it by post to the person at that address, or
 - (d) subject to subsection (9), sending it to the person by electronic means.
- (4) A notice to a body corporate may be given to the secretary or clerk of that body.
- (5) A notice to a partnership may be given to a partner or a person who has the control or management of the partnership business.
- (6) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of a person is—
 - (a) in the case of a body corporate or its secretary or clerk, the address of the body’s registered or principal office;
 - (b) in the case of a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;
 - (c) in any other case, the person’s last known address.
- (7) For the purposes of subsection (6) the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (8) If a person has specified an address in the United Kingdom, other than the person’s proper address within the meaning of subsection (6), as the one at which the person or someone on the person’s behalf will accept notices of the same description as a notice under section 13, 14 or 15 (as the case may be), that address is also treated for the purposes of this section and section 7 of the Interpretation Act 1978 as the person’s proper address.
- (9) A notice may be sent to a person by electronic means only if—
 - (a) the person has indicated that notices of the same description as a notice under section 13, 14 or 15 (as the case may be) may be given to the person by being sent to an electronic address and in an electronic form specified for that purpose, and

- (b) the notice is sent to that address in that form.
- (10) A notice sent to a person by electronic means is, unless the contrary is proved, to be treated as having been given at 9 am on the working day immediately following the day on which it was sent.
- (11) In this section—
 - “electronic address” means any number or address used for the purposes of sending or receiving documents or information by electronic means;
 - “working day” means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

17 Meaning of “prohibition order”

- (1) In this Act a “prohibition order” means an order prohibiting the person against whom it is made from carrying on any prohibited activity or a prohibited activity of a description specified in the order.
- (2) A prohibition order may be made—
 - (a) on application (see section 18), or
 - (b) following conviction of an offence under any of sections 4 to 8 or a related offence (see section 19).
- (3) For the meaning of “prohibited activity”, see section 12.

18 Prohibition orders on application

- (1) The appropriate court may make a prohibition order under this section against a person if—
 - (a) condition A or B is met, and
 - (b) condition C is met.
- (2) Condition A is that the court is satisfied on the balance of probabilities that the person has failed to comply with a prohibition notice.
- (3) Condition B is that, where no prohibition notice has been given (or one was given but has been withdrawn)—
 - (a) the court is satisfied on the balance of probabilities that the person is carrying on, or is likely to carry on, a prohibited activity, and
 - (b) the court considers that the person would fail to comply with a prohibition notice if given.
- (4) Condition C is that the court considers it necessary and proportionate to make the prohibition order for the purpose of preventing the person from carrying on any prohibited activity.
- (5) If a court makes a prohibition order under this section based on condition A having been met, the prohibition notice is to be treated as having been withdrawn.
- (6) A prohibition order under this section may not be made—
 - (a) in England and Wales or Northern Ireland, against an individual who is under the age of 10, or
 - (b) in Scotland, against an individual who is under the age of 12.

- (7) A prohibition order under this section made against an individual who is under the age of 18 at the time the order is made—
 - (a) must specify the period for which it has effect, and
 - (b) may not have effect for more than 3 years.
- (8) A prohibition order under this section may be made only on an application made in accordance with section 21.
- (9) In this section “the appropriate court” means—
 - (a) in relation to England and Wales—
 - (i) where the person in respect of whom the application is made is an individual who is under the age of 18, a youth court, and
 - (ii) in any other case, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland—
 - (i) where the person in respect of whom the application is made is an individual who is under the age of 18, a youth court, and
 - (ii) in any other case, a court of summary jurisdiction.

19 Prohibition orders following conviction

- (1) Where a court is dealing with a person who has been convicted of a relevant offence, the court may make a prohibition order under this section if the court considers it necessary and proportionate for the purpose of preventing the person from carrying on any prohibited activity.
- (2) A prohibition order may not be made under this section except—
 - (a) in addition to a sentence imposed in respect of the offence concerned, or
 - (b) in addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely.
- (3) If a court makes a prohibition order under this section, any prohibition notice that has previously been given to the person against whom the order is made is to be treated as having been withdrawn.
- (4) A prohibition order under this section made against an individual who is under the age of 18 at the time the order is made—
 - (a) must specify the period for which it has effect, and
 - (b) may not have effect for more than 3 years.
- (5) In this section “relevant offence” means—
 - (a) an offence under any of sections 4 to 8;
 - (b) an offence of attempting or conspiring to commit an offence under any of sections 4 to 8;
 - (c) an offence under Part 2 of the Serious Crime Act 2007 in relation to an offence under any of sections 4 to 8;
 - (d) an offence of inciting a person to commit an offence under any of sections 4 to 8;
 - (e) an offence of aiding, abetting, counselling or procuring the commission of an offence under any of sections 4 to 8.

20 Premises orders

- (1) The appropriate court may make a premises order against a person if—
 - (a) condition A or B is met, and
 - (b) condition C is met.
- (2) A premises order is an order that requires the person against whom it is made to take all reasonable steps to prevent any prohibited activity, or a prohibited activity of a description specified in the order, from being carried on at any premises specified in the order that are owned, leased, occupied, controlled or operated by the person.
- (3) Condition A is that the court is satisfied on the balance of probabilities that the person has failed to comply with a premises notice.
- (4) Condition B is that, where no premises notice has been given (or one was given but has been withdrawn)—
 - (a) the court is satisfied on the balance of probabilities that a prohibited activity is being, or is likely to be, carried on at particular premises,
 - (b) the person owns, leases, occupies, controls or operates the premises, and
 - (c) the court considers that the person would fail to comply with a premises notice if given.
- (5) Condition C is that the court considers it necessary and proportionate to make the premises order for the purpose of preventing any prohibited activity from being carried on at any premises owned, leased, occupied, controlled or operated by the person.
- (6) If a court makes a premises order based on condition A having been met, the premises notice is to be treated as having been withdrawn.
- (7) A premises order may not be made against an individual who is under the age of 18.
- (8) A premises order may be made only on an application made in accordance with section 21.
- (9) In this section the “appropriate court” means—
 - (a) in relation to England and Wales, a magistrates’ court;
 - (b) in relation to Scotland, the sheriff;
 - (c) in relation to Northern Ireland, a court of summary jurisdiction.
- (10) Subsection (6) of section 14 (when a person “owns” premises) applies for the purposes of this section as it applies for the purposes of that section.

21 Applications for prohibition orders and premises orders

- (1) An application for a prohibition order under section 18 or a premises order may be made—
 - (a) in England and Wales, by the chief officer of police for a police area,
 - (b) in Scotland, by the chief constable of the Police Service of Scotland,
 - (c) in Northern Ireland, by the chief constable of the Police Service of Northern Ireland,
 - (d) in England and Wales or Scotland, by the chief constable of the British Transport Police Force,
 - (e) by the Director General of the National Crime Agency,

- (f) by the Secretary of State by whom general customs functions are exercisable, or
- (g) by a local authority.

This is subject to subsection (2).

- (2) Where an application is made based on a failure to comply with a prohibition notice or a premises notice (as the case may be), the application must be made—
 - (a) where the notice was given by a constable, by the chief officer of police or chief constable (as the case may be) of the police force of which the constable was a member when the notice was given;
 - (b) where the notice was given by a designated NCA officer, by the Director General of the National Crime Agency;
 - (c) where the notice was given by a general customs official, by the Secretary of State by whom general customs functions are exercisable;
 - (d) where the notice was given by a local authority, by that local authority.
- (3) An application for a prohibition order under section 18 or a premises order is—
 - (a) in England and Wales, to be made by complaint;
 - (b) in Northern Ireland, to be made by complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

22 Provision that may be made by prohibition orders and premises orders

- (1) A court making a prohibition order or a premises order, or a court varying such an order under or by virtue of any of sections 28 to 31, may by the order impose any prohibitions, restrictions or requirements that the court considers appropriate (in addition to the prohibition referred to in section 17(1) or the requirement referred to in section 20(2) (as the case may be)).
- (2) Subsections (3) to (6) contain examples of the type of provision that may be made under subsection (1), but they do not limit the type of provision that may be so made.
- (3) The prohibitions, restrictions or requirements that may be imposed on a person by a prohibition order or a premises order include prohibitions or restrictions on, or requirements in relation to, the person's business dealings (including the conduct of the person's business over the internet).
- (4) The requirements that may be imposed on a person by a prohibition order include a requirement to hand over for disposal an item belonging to the person that the court is satisfied—
 - (a) is a psychoactive substance, or
 - (b) has been, or is likely to be, used in the carrying on of a prohibited activity.
- (5) An item that is handed over in compliance with a requirement imposed by virtue of subsection (4) may not be disposed of—
 - (a) before the end of the period within which an appeal may be made against the imposition of the requirement (ignoring any power to appeal out of time), or
 - (b) if such an appeal is made, before it is determined or otherwise dealt with.
- (6) The prohibitions that may be imposed on a person by a prohibition order or a premises order include a prohibition prohibiting access to premises owned, occupied, leased, controlled or operated by the person for a specified period (an "access prohibition").

- (7) The period specified under subsection (6) may not exceed 3 months (but see subsections (3) to (5) of section 28).
- (8) An access prohibition may prohibit access—
 - (a) by all persons, or by all persons except those specified, or by all persons except those of a specified description;
 - (b) at all times, or at all times except those specified;
 - (c) in all circumstances, or in all circumstances except those specified.
- (9) An access prohibition may—
 - (a) be made in respect of the whole or any part of the premises;
 - (b) include provision about access to a part of the building or structure of which the premises form part.
- (10) In this section “specified” means specified in the prohibition order or the premises order (as the case may be).
- (11) Subsection (6) of section 14 (when a person “owns” premises) applies for the purposes of subsection (6) of this section as it applies for the purposes of that section.

23 Enforcement of access prohibitions

- (1) An authorised person may—
 - (a) enter premises in respect of which an access prohibition is in effect (see section 22(6));
 - (b) do anything necessary to secure the premises against entry.
- (2) In this section “authorised person”—
 - (a) in relation to an access prohibition imposed by a prohibition order under section 18, or a premises order, made on the application of the chief officer of police for a police area, the chief constable of the Police Service of Scotland, the chief constable of the Police Service of Northern Ireland or the chief constable of the British Transport Police Force, means a constable or a person authorised by the chief officer of police or the chief constable (as the case may be) who applied for the order;
 - (b) in relation to an access prohibition imposed by a prohibition order under section 18, or a premises order, made on the application of the Director General of the National Crime Agency, means a person authorised by the Director General;
 - (c) in relation to an access prohibition imposed by a prohibition order under section 18, or a premises order, made on the application of the Secretary of State by whom general customs functions are exercisable, means a general customs official or a person authorised by that Secretary of State;
 - (d) in relation to an access prohibition imposed by a prohibition order under section 18, or a premises order, made on the application of a local authority, means a person authorised by that local authority;
 - (e) in relation to an access prohibition imposed by a prohibition order under section 19, means a constable, a general customs official or a person authorised by a person listed in subsection (3).
- (3) Those persons are—

- (a) the chief officer of police for a police area, in the case of an order made in England and Wales;
 - (b) the chief constable of the Police Service of Scotland, in the case of an order made in Scotland;
 - (c) the chief constable of the Police Service of Northern Ireland, in the case of an order made in Northern Ireland;
 - (d) the chief constable of the British Transport Police Force, in the case of an order made in England and Wales or Scotland;
 - (e) the Director General of the National Crime Agency;
 - (f) the Secretary of State by whom general customs functions are exercisable.
- (4) A person acting under subsection (1) may use reasonable force.
- (5) A person seeking to enter premises under subsection (1) must, if required to do so by the occupier of the premises or, where the occupier is not present, by another person appearing to be in charge of the premises—
- (a) give his or her name;
 - (b) if not a constable in uniform, produce documentary evidence that he or she is an authorised person.
- (6) An authorised person may also enter premises in respect of which an access prohibition is in effect to carry out essential maintenance or repairs to the premises.

24 Access prohibitions: reimbursement of costs

- (1) A person listed in subsection (2) that incurs expenditure for the purpose of clearing, securing or maintaining premises in respect of which an access prohibition is in effect (see section 22(6)) may apply to the court for an order under this section.
- (2) Those persons are—
- (a) a local policing body;
 - (b) the Scottish Police Authority;
 - (c) the chief constable of the Police Service of Northern Ireland;
 - (d) the British Transport Police Authority;
 - (e) the Director General of the National Crime Agency;
 - (f) the Secretary of State by whom general customs functions are exercisable;
 - (g) a local authority.
- (3) On an application under this section the court may make whatever order it considers appropriate for the reimbursement (in full or in part) by the person against whom the order imposing the access prohibition was made of the expenditure mentioned in subsection (1).
- (4) An application for an order under this section may not be heard unless it is made before the end of the period of 3 months starting with the day on which the access prohibition ceases to have effect.
- (5) An application under this section must be served on the person against whom the order imposing the access prohibition was made.
- (6) In this section “the court” means—

- (a) in a case where the prohibition order or the premises order imposing the access prohibition was made by a court in England and Wales or Northern Ireland, the court that made the order, except where paragraph (b) or (c) applies;
- (b) where the court that made the order was the Court of Appeal, the Crown Court;
- (c) where the court that made the order was a youth court but the person against whom the order was made is aged 18 or over at the time of the application, a magistrates' court or, in Northern Ireland, a court of summary jurisdiction;
- (d) in a case where the prohibition order or the premises order imposing the access prohibition was made by a court in Scotland, the sheriff.

25 Access prohibitions: exemption from liability

- (1) Neither an authorised person, nor the person under whose direction or control the authorised person acts, is to be liable in damages for anything done, or omitted to be done, by the authorised person in the exercise or purported exercise of a power under section 23.
- (2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.
- (3) Subsection (1) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (4) This section does not affect any other exemption from liability (whether at common law or otherwise).
- (5) In this section “authorised person” has the same meaning as in section 23.

26 Offence of failing to comply with a prohibition order or premises order

- (1) A person against whom a prohibition order or a premises order is made commits an offence by failing to comply with the order.
- (2) A person guilty of an offence under this section is liable—
 - (a) on summary conviction in England and Wales—
 - (i) to imprisonment for a term not exceeding 12 months (or 6 months, if the offence was committed before the commencement of section 154(1) of the Criminal Justice Act 2003), or
 - (ii) to a fine,
 or both;
 - (b) on summary conviction in Scotland—
 - (i) to imprisonment for a term not exceeding 12 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or both;
 - (c) on summary conviction in Northern Ireland—
 - (i) to imprisonment for a term not exceeding 6 months, or
 - (ii) to a fine not exceeding the statutory maximum,
 or both;
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine, or both.

- (3) A person does not commit an offence under this section if—
 - (a) the person took all reasonable steps to comply with the order, or
 - (b) there is some other reasonable excuse for the failure to comply.

27 Offence of failing to comply with an access prohibition, etc

- (1) This section applies where a prohibition order or a premises order imposes an access prohibition (see section 22(6)).
- (2) A person, other than the person against whom the order was made, who without reasonable excuse remains on or enters premises in contravention of the access prohibition commits an offence.
- (3) A person who without reasonable excuse obstructs a person acting under section 23(1) commits an offence.
- (4) A person guilty of an offence under subsection (2) or (3) is liable—
 - (a) on summary conviction in England and Wales, to either or both of the following—
 - (i) imprisonment for a term not exceeding 51 weeks (or 6 months, if the offence was committed before the commencement of section 281(5) of the Criminal Justice Act 2003);
 - (ii) a fine;
 - (b) on summary conviction in Scotland, to either or both of the following—
 - (i) imprisonment for a term not exceeding 12 months;
 - (ii) a fine not exceeding level 5 on the standard scale;
 - (c) on summary conviction in Northern Ireland, to either or both of the following—
 - (i) imprisonment for a term not exceeding 6 months;
 - (ii) a fine not exceeding level 5 on the standard scale.

28 Variation and discharge on application

- (1) The court may vary or discharge a prohibition order or a premises order on the application of—
 - (a) the person who applied for the order (if any),
 - (b) the person against whom the order was made, or
 - (c) any other person who is significantly adversely affected by the order.
- (2) Where a prohibition order is made under section 19, the court may also vary or discharge the order on the application of—
 - (a) in the case of an order made in England and Wales, the chief officer of police for a police area or the chief constable of the British Transport Police Force;
 - (b) in the case of an order made in Scotland, the Lord Advocate or a procurator fiscal;
 - (c) in the case of an order made in Northern Ireland, the chief constable of the Police Service of Northern Ireland;
 - (d) in the case of an order made in England and Wales or Northern Ireland, the Director General of the National Crime Agency;

- (e) in the case of an order made in England and Wales or Northern Ireland, the Secretary of State by whom general customs functions are exercisable.
- (3) Subsection (4) applies where—
 - (a) a prohibition order or a premises order imposes an access prohibition (see section 22(6)), and
 - (b) an application for the variation of the order is made by the person who applied for the order, or by a person mentioned in subsection (2), before the expiry of the period for which the access prohibition has effect.
- (4) Where this subsection applies, the court may vary the order by extending (or further extending) the period for which the access prohibition has effect.
- (5) The period for which an access prohibition has effect may not be extended so that it has effect for more than 6 months.
- (6) In this section “the court” means—
 - (a) the court that made the order, except where paragraph (b) or (c) applies;
 - (b) where—
 - (i) the order was made under section 19 on an appeal in relation to a person’s conviction or sentence for an offence, or
 - (ii) the order was made by a court under that section against a person committed or remitted to that court for sentencing for an offence,
 the court by or before which the person was convicted (but see subsection (7));
 - (c) where the court that made the order was a youth court but the person against whom the order was made is aged 18 or over at the time of the application, a magistrates’ court or, in Northern Ireland, a court of summary jurisdiction.
- (7) Where the person mentioned in subsection (6)(b)—
 - (a) was convicted by a youth court, but
 - (b) is aged 18 or over at the time of the application,
 the reference in subsection (6)(b) to the court by or before which the person was convicted is to be read as a reference to a magistrates’ court or, in Northern Ireland, a court of summary jurisdiction.
- (8) An order that has been varied under this section remains an order of the court that first made it for the purposes of—
 - (a) section 24;
 - (b) any further application under this section.

29 Variation following conviction

- (1) This section applies where—
 - (a) a court is dealing with a person who has been convicted of a relevant offence and against whom a prohibition order or a premises order has previously been made, or
 - (b) a court is dealing with a person who has been convicted of an offence under section 26 of failing to comply with a prohibition order or a premises order.
- (2) The court may vary the prohibition order or (as the case may be) the premises order.

- (3) An order that has been varied under subsection (2) remains an order of the court that first made it for the purposes of sections 24 and 28.
- (4) An order may not be varied under this section except—
- (a) in addition to a sentence imposed in respect of the offence concerned, or
 - (b) in addition to an order discharging the person conditionally or, in Scotland, discharging the person absolutely.
- (5) In this section “relevant offence” has the same meaning as in section 19.

30 Appeals against making of prohibition orders and premises orders

Orders made under section 18 or 20

- (1) A person against whom a prohibition order under section 18 or a premises order is made by a court specified in the first column of the table may appeal against the making of the order to the court specified in the corresponding entry in the second column of the table—

<i>Court that made order</i>	<i>Court to which appeal lies</i>
Youth court in England and Wales Magistrates’ court	Crown Court
Sheriff	Sheriff Appeal Court
Youth court in Northern Ireland Court of summary jurisdiction	County Court

- (2) An appeal under subsection (1) against the making of an order must be made before the end of the period of 28 days starting with the date of the order.
- (3) On an appeal under subsection (1) the court hearing the appeal may by order affirm, vary or revoke the order, and may also make such incidental or consequential orders as appear to it to be just.
- (4) An order that has been affirmed or varied under subsection (3) remains an order of the court that first made it for the purposes of sections 24 and 28.

Orders made under section 19

- (5) A person against whom a prohibition order is made under section 19 may appeal against the making of the order as if it were a sentence passed on the person for the offence referred to in section 19(1) (to the extent it would not otherwise be so appealable).

31 Appeals about variation and discharge

Decisions under section 28

- (1) An appeal may be made against a decision under section 28 of a court specified in the first column of the table to the court specified in the corresponding entry in the second column of the table—

<i>Court that made section 28 decision</i>	<i>Court to which appeal lies</i>
Youth court in England and Wales Magistrates' court	Crown Court
Sheriff	High Court of Justiciary sitting as the Court of Criminal Appeal, in a case where the relevant order was made under section 19 and the person against whom it was made had been convicted in proceedings on indictment Sheriff Appeal Court, in any other case
Youth court in Northern Ireland Court of summary jurisdiction	County Court
Crown Court	Court of Appeal
High Court of Justiciary	High Court of Justiciary sitting as the Court of Criminal Appeal

- (2) The right of appeal under subsection (1) is exercisable by—
- the person against whom the relevant order was made, and
 - any other person who is significantly adversely affected by that order.
- (3) In subsections (1) and (2) the “relevant order” means the order that was the subject of the application under section 28.
- (4) An appeal under subsection (1) against the making of a decision must be made before the end of the period of 28 days starting with the date of the decision.
- (5) On an appeal under subsection (1) the court hearing the appeal may (to the extent it would not otherwise have power to do so) make such orders as may be necessary to give effect to its determination of the appeal, and may also make such incidental or consequential orders as appear to it to be just.
- (6) A prohibition order or a premises order that has been varied by virtue of subsection (5) remains an order of the court that first made it for the purposes of sections 24 and 28.

Decisions under section 29

- (7) A person against whom a prohibition order or a premises order has been made may appeal against a variation of the order under section 29 as if the varied order were a sentence passed on the person for the offence referred to in section 29(1) (to the extent it would not otherwise be so appealable).

32 Nature of proceedings under sections 19 and 29, etc

- (1) Proceedings before a court arising by virtue of section 19 or 29 are civil proceedings (like court proceedings under section 18, 20 or 28).
- (2) The standard of proof to be applied by the court in the proceedings is the balance of probabilities.

- (3) The court is not restricted in the proceedings to considering evidence that would have been admissible in the criminal proceedings in which the person concerned was convicted.
- (4) The court may adjourn any proceedings arising by virtue of section 19 or 29 even after sentencing the person concerned.
- (5) An Act of Adjournal under section 305 of the Criminal Procedure (Scotland) Act 1995 (Acts of Adjournal) may be made in relation to proceedings before the High Court of Justiciary, the sheriff or the Sheriff Appeal Court—
 - (a) arising by virtue of section 19 or 29;
 - (b) under section 28, where the application relates to a prohibition order made under section 19;
 - (c) under section 30(5);
 - (d) under subsection (1) of section 31, where the relevant order (as defined in subsection (3) of that section) was made under section 19;
 - (e) under section 31(7).
- (6) A prohibition order may be made or varied as mentioned in section 19(2)(b) or 29(4)(b) (as the case may be) in spite of anything in the following provisions (which relate to orders discharging a person conditionally or absolutely and their effect)—
 - (a) sections 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000;
 - (b) sections 246 and 247 of the Criminal Procedure (Scotland) Act 1995;
 - (c) Articles 4 and 6 of the Criminal Justice (Northern Ireland) Order 1996 ([S.I. 1996/3160 \(N.I. 24\)](#)).

33 Special measures for witnesses: England and Wales

- (1) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) applies to relevant proceedings under this Act as it applies to criminal proceedings, but with—
 - (a) the omission of the provisions of that Act mentioned in subsection (2) (which make provision only in the context of criminal proceedings), and
 - (b) any other necessary modifications.
- (2) The provisions are—
 - (a) section 17(4) to (7);
 - (b) section 21(4C)(e);
 - (c) section 22A;
 - (d) section 32.
- (3) Rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act apply to relevant proceedings under this Act—
 - (a) to the extent provided by rules of court, and
 - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of that Act (restrictions on reporting special measures directions etc.) applies with any necessary modifications—
 - (a) to a direction under section 19 of that Act as applied by this section;
 - (b) to a direction discharging or varying such a direction.

Sections 49 and 51 of that Act (offences) apply accordingly.

- (5) In this section “relevant proceedings under this Act” means—
- (a) proceedings in England and Wales under section 18, 20, 28, 30 or 31, and
 - (b) proceedings in England and Wales arising by virtue of section 19 or 29.

34 Special measures for witnesses: Northern Ireland

- (1) Part 2 of the Criminal Evidence (Northern Ireland) Order 1999 ([S.I. 1999/2789 \(N.I. 8\)](#)) (special measures directions in the case of vulnerable and intimidated witnesses) applies to relevant proceedings under this Act as it applies to criminal proceedings, but with—
- (a) the omission of the provisions of the Order of 1999 mentioned in subsection (2) (which make provision only in the context of criminal proceedings), and
 - (b) any other necessary modifications.
- (2) The provisions are—
- (a) Article 5(4);
 - (b) Article 9(4C)(e);
 - (c) Article 10A;
 - (d) Article 20.
- (3) Rules of court made under or for the purposes of Part 2 of the Order of 1999 apply to relevant proceedings under this Act—
- (a) to the extent provided by rules of court, and
 - (b) subject to any modifications provided by rules of court.
- (4) Section 47 of the Youth Justice and Criminal Evidence Act 1999 (restrictions on reporting special measures directions etc.) applies with any necessary modifications—
- (a) to a direction under Article 7 of the Order of 1999 as applied by this section;
 - (b) to a direction discharging or varying such a direction.

Sections 49 and 51 of that Act (offences) apply accordingly.

- (5) In this section “relevant proceedings under this Act” means—
- (a) proceedings in Northern Ireland under section 18, 20, 28, 30 or 31, and
 - (b) proceedings in Northern Ireland arising by virtue of section 19 or 29.

35 Transfer of proceedings from youth court

- (1) This section applies where—
- (a) an individual against whom a prohibition order is sought reaches the age of 18 while proceedings before a youth court for the making of the order are ongoing;
 - (b) an individual against whom a prohibition order has been made reaches the age of 18 while proceedings before a youth court for the variation or discharge of the order are ongoing;
 - (c) an individual against whom a prohibition order imposing an access prohibition has been made reaches the age of 18 while proceedings before a youth court under section 24 are ongoing.

- (2) Rules of court may provide for the transfer of the proceedings from the youth court to—
 - (a) in England and Wales, a magistrates' court;
 - (b) in Northern Ireland, a court of summary jurisdiction.
- (3) Rules of court may prescribe circumstances in which the proceedings may or must remain in the youth court.