

*These notes refer to the Criminal Justice Act 2003 (c.44)
which received Royal Assent on 20th November 2003*

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

SCHEDULES

Schedule 11 – Transfer of custody plus orders or intermittent custody orders to Scotland or Northern Ireland

779. *Schedule 11* provides for the transfer of custody plus and intermittent custody orders to Scotland and Northern Ireland.
780. *Part 1* is an interpretative provision. Parts 2 and 3 relate to Scotland and Northern Ireland, respectively, Part 4 contains general provisions applicable to both and Part 5 contains supplementary provisions.

Parts 2 and 3

781. *Paragraphs 2(1) and 9(1)* allow the court to set requirements that can be complied with in Scotland and Northern Ireland, respectively. Paragraphs 2(2) and 9(2) ensure that arrangements can be made for the offender to comply with the requirements in the locality in Scotland or Northern Ireland in which he will live, and that supervision can be arranged.
782. *Paragraphs 2(3) and 9(3)* do not set out a complete list of requirements available for transfer. They list those which have arrangements associated with them that the court has to confirm are available. These arrangements involve third parties, whose co-operation must be obtained before imposing them. For example, supervision does not need further arrangements because it only concerns the offender and the probation officer. A programme requirement, however, requires a place to be available on a suitable course.
783. *Paragraphs 2(4) and 9(4)* provide for the eventuality that the Secretary of State declines to transfer the prisoner after the court has set requirements that can be complied with in Scotland or Northern Ireland. It is the Secretary of State who takes the decision on all prisoner transfers. If he declines, an application has to be made to the court to change the requirements so that they can be complied with in England and Wales.
784. *Paragraphs 3 and 10* allow custody plus orders and intermittent custody orders to transfer once they have begun (the latter will only transfer once all of the custodial periods have been served). It gives the court the power to amend the order such that it requires the requirements to be complied with in Scotland and Northern Ireland, respectively. The court must be satisfied that the offender lives there, the Secretary of State must have made, or indicated his willingness, to transfer the offender, and arrangements must be made so that the offender can comply with the requirements in Scotland or Northern Ireland.
785. *Paragraph 4* prevents the court from including an attendance centre requirement in an order to be transferred to Scotland, as they do not have them there.

786. *Paragraphs 5 and 11* require the order to specify the local authority area in Scotland and the petty sessions district in Northern Ireland where the offender will be living. A supervising officer will also be assigned.
787. *Paragraphs 6 and 12* provide for a copy of the order to be sent to the local authority in Scotland or the Probation Board in Northern Ireland, along with any other relevant information. The provision regarding who would receive the order if it were not transferring are disapplied.
788. *Paragraphs 7 and 13* modify Chapter 4 of Part 12, which provides the requirements available under relevant orders, so that it can apply in Scotland or Northern Ireland, for the purpose of transferred orders. *Sub-paragraph (3) of paragraphs 7 and 13* omits all of the provisions which state that the provider of a certain requirement have to be specified by the Secretary of State. This needs to be omitted because it would not include providers in Scotland and Northern Ireland, and thus those requirements would not be able to form part of a transferred order.

Part 4

789. **Part 4** contains general provisions applying to custody plus and intermittent custody orders transferred to either Scotland or Northern Ireland. Under *paragraph 17(1)* the home court (the local court in Scotland or Northern Ireland) can amend a transferred order as regards the residence of the offender, or as regards the requirements, exactly as a court in England and Wales can for an ordinary custody plus or intermittent custody order. *Sub-paragraphs (2) and (3)* set out procedural requirements for ensuring that the offender is present for any amendment not applied for by the offender, except when the court cancels a requirement, as it is assumed an offender would not object to that. *Sub-paragraph (4)* ensures that where an amendment is being considered to a requirement which can only be made on recommendation of an officer of the local probation board, “officer of the local probation board” refers to the supervising officer in the case of transferred orders.
790. *Paragraph 18* gives the Scottish or Northern Ireland court the option to decline to amend the order and send it back to the original court to deal with.
791. *Paragraph 19* requires the court to ensure that any amendments to a transferred suspended sentence order can be complied with in the area of Scotland or Northern Ireland in which the offender lives.
792. *Paragraph 20* applies the Schedule to any amended order as it applies to an unamended order. *Paragraph 21* provides for the distribution of copies of the amended order.
793. *Paragraph 22* applies to cases where orders have been made or amended such that they can be complied with in Scotland and Northern Ireland, but the offender will in fact be serving his sentence in England and Wales, either because the Secretary of State has declined to transfer him or because he wants to transfer back to England and Wales. *Sub-paragraph (1)(a)* concerns the case indicated in paragraphs 2(4) and 9(4) where the Secretary of State declines to transfer a prisoner who has already had his order amended so as to be able to be complied with in Scotland or Northern Ireland. In this case the court must amend the order so that it can be complied with in England and Wales.
794. *Sub-paragraph (1)(b)* provides for the home court to amend the requirements of a custody provides for custody plus and intermittent custody orders transferred to Scotland or Northern Ireland to be transferred back to England and Wales. Before the court amends the requirements so that they can be complied with in England and Wales the Secretary of State must have agreed to the transfer, or indicated his willingness to agree to it.
795. *Sub-paragraph (3)* indicates that the court must amend the order in the case where the Secretary of State has declined to transfer the prisoner. *Sub-paragraph (4)* requires the court to substitute or cancel any requirement which cannot be complied with in

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England and Wales. *Sub-paragraph (5)* requires the court to ensure that an appropriate programme is available in the new area. *Sub-paragraph (6)* ensures that the petty sessions area is specified on the order when it is transferred back. *Sub-paragraph (7)* concerns distributing copies of the amended order and *sub-paragraph (8)* disapplies this Schedule to orders transferred back to England and Wales.

796. *Part 5* of this Schedule ensures that the Scottish legislation in relation to electronic monitoring reports being submitted in court will apply to transferred suspended sentence orders, and that summonses, citations and warrants can be executed on offenders in different parts of the United Kingdom.