

SCHEDULES

SCHEDULE 7

Section 106.

PRE-CONSOLIDATION AMENDMENTS: POWERS OF CRIMINAL COURTS

Children and Young Persons Act 1933 (c. 12)

- 1 (1) In subsection (1A) of section 55 of the 1933 Act (power to order parent or guardian to pay fine etc.), in paragraph (a), for the words “section 15(2A)” there shall be substituted the words “section 15(3)(a)”.
- (2) For paragraph (b) of that subsection there shall be substituted the following paragraphs—
- “(b) a court would impose a fine on a child or young person under section 19(3) of the Criminal Justice Act 1982 (breach of attendance centre order or attendance centre rules); or
 - (bb) a court would impose a fine on a child or young person under paragraph 3(1)(a) or 4(1)(a) of Schedule 2 to the Criminal Justice Act 1991 (breach of requirement of a relevant order (within the meaning given by that Schedule) or of a combination order);”.
- (3) After subsection (5) of that section there shall be added the following subsection—
- “(6) In relation to any other child or young person, references in this section to his parent shall be construed in accordance with section 1 of the Family Law Reform Act 1987.”

Criminal Justice Act 1967 (c. 80)

- 2 (1) In subsection (1)(b)(i) of section 56 of the Criminal Justice Act 1967 (committal for sentence for offences tried summarily), for the words from “section 93” to “34 to 36” there shall be substituted the words “section 34, 35 or 36”.
- (2) In subsection (2) of that section, for the words from “section 8(6)” to the end there shall be substituted the words “section 1B(5) of the Powers of Criminal Courts Act 1973 (conditionally discharged person convicted of further offence) and section 24(2) of that Act (offender convicted during operational period of suspended sentence).”
- (3) Subsection (3) of that section shall cease to have effect.
- (4) For subsection (5) of that section there shall be substituted the following subsections—
- “(5) Where under subsection (1) above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence, the Crown Court may after inquiring into the circumstances of the case deal with him in any way in which the magistrates' court could deal with him if it had just convicted him of the offence.

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(5A) Subsection (5) above does not apply where under subsection (1) above a magistrates' court commits a person to be dealt with by the Crown Court in respect of a suspended sentence, but in such a case the powers under section 23 of the Powers of Criminal Courts Act 1973 (power of court to deal with suspended sentence) shall be exercisable by the Crown Court.

(5B) Without prejudice to subsections (5) and (5A) above, where under subsection (1) above or any enactment to which this section applies a magistrates' court commits a person to be dealt with by the Crown Court, any duty or power which, apart from this subsection, would fall to be discharged or exercised by the magistrates' court shall not be discharged or exercised by that court but shall instead be discharged or may instead be exercised by the Crown Court.

(5C) Where under subsection (1) above a magistrates' court commits a person to be dealt with by the Crown Court in respect of an offence triable only on indictment in the case of an adult (being an offence which was tried summarily because of the offender's being under 18 years of age), the Crown Court's powers under subsection (5) above in respect of the offender after he attains the age of 18 years shall be powers to do either or both of the following—

- (a) to impose a fine not exceeding £5,000;
- (b) to deal with the offender in respect of the offence in any way in which the magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

(5D) For the purposes of this section the age of an offender shall be deemed to be that which it appears to the court to be after considering any available evidence.”

(5) Subsection (13) of that section shall cease to have effect.

Children and Young Persons Act 1969 (c. 54)

3 After subsection (8) of section 7 of the 1969 Act (alterations in treatment of young offenders etc.) there shall be added the following subsection—

“(9) The reference in subsection (8) above to a person's parent shall be construed in accordance with section 1 of the Family Law Reform Act 1987 (and not in accordance with section 70(1A) of this Act).”

4 In section 12 of the 1969 Act (power to include requirements in supervision orders), after subsection (3) there shall be added the following subsection—

“(4) Directions given by the supervisor by virtue of subsection (2)(b) or (c) above shall, as far as practicable, be such as to avoid—

- (a) any conflict with the offender's religious beliefs or with the requirements of any other community order (within the meaning of Part I of the Criminal Justice Act 1991) to which he may be subject; and
- (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.”

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- 5 (1) In subsection (1) of section 12B of the 1969 Act (power to include in supervision order requirements as to mental treatment)—
- (a) for the words “medical practitioner”, in the first place where they occur, there shall be substituted the words “registered medical practitioner”;
 - (b) for the words “his detention in pursuance of a hospital order under Part III” there shall be substituted the words “the making of a hospital order or guardianship order within the meaning”;
 - (c) in paragraph (a), for the words “fully registered medical practitioner” there shall be substituted the words “registered medical practitioner”;
 - (d) after that paragraph there shall be inserted the following paragraph—
 - “(aa) treatment by or under the direction of a chartered psychologist specified in the order;”;
 - (e) in paragraph (b), for the words “a place” there shall be substituted the words “an institution or place”; and
 - (f) in paragraph (c), for the words “the said Act of 1983” there shall be substituted the words “the Mental Health Act 1983”.
- (2) After that subsection there shall be inserted the following subsection—
- “(1A) In subsection (1) of this section “registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 and “chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists.”
- (3) After subsection (2) of that section there shall be added the following subsection—
- “(3) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 shall have effect with respect to proof for the purposes of subsection (1) above of a supervised person’s mental condition as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.”
- 6 In section 16(11) of the 1969 Act (provisions supplementary to section 15), the words “seventeen or” shall cease to have effect.
- 7 (1) In subsection (1)(a) of section 16A of the 1969 Act (application of sections 17 to 19 of Criminal Justice Act 1982), for the words “section 15(2A) or (4)” there shall be substituted the words “section 15(3)(a)”.
- (2) In subsection (2)(b) of that section—
- (a) in sub-paragraph (i), after the word “from” there shall be inserted the words “subsection (4A) of section 18 and”; and
 - (b) in sub-paragraph (ii), for the words “subsection (6)” there shall be substituted the words “subsection (4B) of section 18 and subsection (6) of section 19”.
- 8 In section 34(1)(c) of the 1969 Act (power of Secretary of State to amend references to young person), the words “7(7), 7(8),” shall cease to have effect.
- 9 Section 69(5) of the 1969 Act (power to include in commencement order certain consequential provisions) shall cease to have effect.
- 10 In section 70 of the 1969 Act (interpretation), for subsections (1A) and (1B) there shall be substituted the following subsections—
- “(1A) In the case of a child or young person—

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- (a) whose father and mother were not married to each other at the time of his birth, and
- (b) with respect to whom a residence order is in force in favour of the father,

any reference in this Act to the parent of the child or young person includes (unless the contrary intention appears) a reference to the father.

(1B) In subsection (1A) of this section, the reference to a child or young person whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987 and “residence order” has the meaning given by section 8(1) of the Children Act 1989.”

- 11 In Schedule 6 to the 1969 Act (repeals), the entries relating to sections 55, 56(1) and 59(1) of the 1933 Act (which entries have never come into force or are spent) are hereby repealed.

Criminal Justice Act 1972 (c. 71)

- 12 Section 49 of the Criminal Justice Act 1972 (community service order in lieu of warrant of commitment for failure to pay fine etc.) shall cease to have effect.

Powers of Criminal Courts Act 1973 (c. 62)

- 13 (1) In subsection (6) of section 1 of the 1973 Act (deferment of sentence), for the words “13(1), (2) and (5)” there shall be substituted the words “13(1) to (3) and (5)”.
- (2) In subsection (8) of that section, for paragraph (a) there shall be substituted the following paragraph—
- “(a) is power to deal with him, in respect of the offence for which passing of sentence has been deferred, in any way in which the court which deferred passing sentence could have dealt with him; and”.
- 14 (1) In subsection (9) of section 1B of the 1973 Act (commission of further offence by person conditionally discharged), for the words from “those which” to the end there shall be substituted the words “powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
 - (b) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.”
- (2) Subsection (10) of that section (which is superseded by provision inserted by this Schedule in section 57 of the 1973 Act) shall cease to have effect.
- 15 In section 1C(1) of the 1973 Act (effect of absolute or conditional discharge)—
- (a) in paragraph (a), for the words “the following provisions” there shall be substituted the words “section 1B”; and
 - (b) paragraph (b) and the word “and” immediately preceding it shall cease to have effect.

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- 16 In section 2(1) of the 1973 Act (probation orders), the words from “For the purposes” to “available evidence” (which are superseded by provision inserted by this Schedule in section 57 of the 1973 Act) shall cease to have effect.
- 17 Section 11 of the 1973 Act (which is superseded by the paragraph 8A inserted by this Schedule in Schedule 2 to the 1991 Act) shall cease to have effect.
- 18 (1) For subsection (2) of section 12 of the 1973 Act (supplementary provision as to probation and discharge) there shall be substituted the following subsection—
- “(2) Where an order for conditional discharge has been made on appeal, for the purposes of this Act it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.”
- (2) In subsection (3) of that section, for the words from “any question whether a probationer” to “period of conditional discharge,” there shall be substituted the words “any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge”.
- (3) For subsection (4) of that section there shall be substituted the following subsection—
- “(4) Nothing in section 1A of this Act shall be construed as preventing a court, on discharging an offender absolutely or conditionally in respect of any offence, from making an order for costs against the offender or imposing any disqualification on him or from making in respect of the offence an order under section 35 or 43 of this Act or section 28 of the Theft Act 1968.”
- 19 (1) In subsection (1) of section 14 of the 1973 Act (community service orders in respect of convicted persons), after the word “imprisonment”, in the first place where it occurs, there shall be inserted the words “(not being an offence the sentence for which is fixed by law or falls to be imposed under section 2(2), 3(2) or 4(2) of the Crime (Sentences) Act 1997)”.
- (2) In that subsection, after the words “young offenders” there shall be inserted the words “; and for the purposes of this subsection a sentence falls to be imposed under section 2(2), 3(2) or 4(2) of the Crime (Sentences) Act 1997 if it is required by that provision and the court is not of the opinion there mentioned”.
- (3) In subsection (7) of that section, for the words “paragraph (b)(i) or (ii)” there shall be substituted the words “paragraph (b)”.
- (4) Subsection (8) of that section shall cease to have effect.
- 20 For subsection (3) of section 15 of the 1973 Act (obligations of person subject to community service order) there shall be substituted the following subsection—
- “(3) The instructions given by the relevant officer under this section shall, as far as practicable, be such as to avoid—
- (a) any conflict with the offender’s religious beliefs or with the requirements of any other community order (within the meaning of

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- Part I of the Criminal Justice Act 1991) to which he may be subject;
and
- (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.”
- 21 In section 21(3)(b) of the 1973 Act (meaning of “sentence of imprisonment” for purposes of restriction on imposing sentences of imprisonment on persons not legally represented), after the words “contempt of court” there shall be inserted the words “or any kindred offence”.
- 22 In subsection (3) of section 22 of the 1973 Act (suspended sentences of imprisonment)—
- (a) for the words “make a probation order in his case in respect of another offence” there shall be substituted the words “impose a community sentence in his case in respect of that offence or any other offence”; and
- (b) at the end there shall be inserted the words “; and in this subsection “community sentence” has the same meaning as in Part I of the Criminal Justice Act 1991.”
- 23 (1) In section 31 of the 1973 Act (powers etc. of Crown Court in relation to fines and forfeited recognizances), the following provisions shall cease to have effect—
- (a) in subsection (3A), the words “Subject to subsections (3B) and (3C) below,”;
- (b) subsections (3B) and (3C); and
- (c) in subsection (4), the words “4 or”.
- (2) In subsection (6) of that section—
- (a) the words “about committal by a magistrates' court to the Crown Court” shall cease to have effect; and
- (b) after the words “dealt with him” there shall be inserted the words “or could deal with him”.
- (3) In subsection (8) of that section, for the words “(2) to (3C)” there shall be substituted the words “(2) to (3A)”.
- 24 (1) In subsection (2) of section 32 of the 1973 Act (enforcement etc. of fines imposed and recognizances forfeited by Crown Court), for the words “section 85(1)” there shall be substituted the words “section 85(2)”.
- (2) In subsection (3) of that section, after the words “to the Crown Court” there shall be inserted the words “(except the reference in subsection (1)(b) above)”.
- (3) For subsection (4) of that section there shall be substituted the following subsection—
- “(4) A magistrates' court shall not, under section 85(1) or 120 of the Magistrates' Courts Act 1980 as applied by subsection (1) above, remit the whole or any part of a fine imposed by, or sum due under a recognizance forfeited by—
- (a) the Crown Court,
- (b) the criminal division of the Court of Appeal, or
- (c) the House of Lords on appeal from that division,
- without the consent of the Crown Court.”
- (4) Subsection (5) of that section shall cease to have effect.

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- 25 In section 46 of the 1973 Act (reports of probation officers), after subsection (2) there shall be added the following subsection—
- “(3) For the purposes of this section—
- (a) references to an offender’s parent shall be construed in accordance with section 1 of the Family Law Reform Act 1987; and
 - (b) “guardian” has the same meaning as in the Children and Young Persons Act 1933.”
- 26 (1) For subsection (5) of section 57 of the 1973 Act (interpretation) there shall be substituted the following subsection—
- “(5) Where a compensation order or supervision order has been made on appeal, for the purposes of this Act (except section 26(5)) it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
 - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.”
- (2) After subsection (6) of that section there shall be added the following subsection—
- “(7) For the purposes of any provision of this Act which requires the determination of the age of a person by the court, his age shall be deemed to be that which it appears to the court to be after considering any available evidence.”
- 27 (1) In paragraph 2 of Schedule 1A to the 1973 Act (additional requirements in probation orders), for sub-paragraph (7) there shall be substituted the following sub-paragraph—
- “(7) Instructions given by a probation officer under sub-paragraph (4) or (6) above shall, as far as practicable, be such as to avoid—
- (a) any conflict with the offender’s religious beliefs or with the requirements of any other community order (within the meaning of Part I of the Criminal Justice Act 1991) to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.”
- (2) In paragraph 3 of that Schedule, for sub-paragraph (4) there shall be substituted the following sub-paragraph—
- “(4) Instructions given by a probation officer under sub-paragraph (3) above shall, as far as practicable, be such as to avoid—
- (a) any conflict with the offender’s religious beliefs or with the requirements of any other community order (within the meaning of Part I of the Criminal Justice Act 1991) to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.”
- (3) In paragraph 5 of that Schedule, for the words “duly qualified medical practitioner”, wherever they occur, there shall be substituted the words “registered medical practitioner”.

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- (4) In that paragraph (both as amended by subsection (3) of section 38 of the 1997 Act and so far as that paragraph has effect without that amendment), in sub-paragraph (4), after the words “have been” there shall be inserted the words “or can be”.
- (5) In sub-paragraph (10) of that paragraph, before the definition of “chartered psychologist” there shall be inserted the following definition—
- ““registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;”.
- (6) In paragraph 6 of that Schedule (both as amended by subsection (4) of section 38 of the 1997 Act and so far as that paragraph has effect without that amendment), in sub-paragraph (4), after the words “have been” there shall be inserted the words “or can be”.
- (7) Sub-paragraph (7) of that paragraph shall cease to have effect.

Magistrates' Courts Act 1980 (c. 43)

- 28 In section 30(2)(a) of the 1980 Act (remand for medical examination), for the words “duly qualified medical practitioner” there shall be substituted the words “registered medical practitioner”.
- 29 (1) In subsection (2) of section 38 of the 1980 Act (committal for sentence on summary trial of offence triable either way), the words “, in accordance with section 56 of the Criminal Justice Act 1967,” shall cease to have effect.
- (2) After that subsection there shall be inserted the following subsection—
- “(2A) Where the court commits a person under subsection (2) above, section 56 of the Criminal Justice Act 1967 (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.”
- 30 (1) In subsection (2) of section 38A of the 1980 Act (committal for sentence on indication of guilty plea to offence triable either way), the words “, in accordance with section 56 of the Criminal Justice Act 1967,” shall cease to have effect.
- (2) In subsection (5) of that section, for the words “the court might have dealt with him” there shall be substituted the words “the magistrates' court could deal with him if it had just convicted him of the offence”.
- (3) After that subsection there shall be inserted the following subsection—
- “(5A) Where the court commits a person under subsection (2) above, section 56 of the Criminal Justice Act 1967 (which enables a magistrates' court, where it commits a person under this section in respect of an offence, also to commit him to the Crown Court to be dealt with in respect of certain other offences) shall apply accordingly.”
- 31 In section 39(6)(b) of the 1980 Act (cases where magistrates' court may remit offender to another such court for sentence), for the words “section 34 or 36” there shall be substituted the words “section 34, 35 or 36”.
- 32 In section 85(1)(a) of the 1980 Act (power to remit fine), for the words “section 74” there shall be substituted the words “section 77”.

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Criminal Justice Act 1982 (c. 48)

- 33 In section 3(1) of the 1982 Act (restriction on imposing custodial sentences on persons under 21 not legally represented)—
- (a) in paragraph (a), the words “under section 1A above” shall cease to have effect;
 - (b) in paragraph (c), for the words “section 8(2)” there shall be substituted the words “section 8(1) or (2)”; and
 - (c) in paragraph (d), for the words “section 53(2)” there shall be substituted the words “section 53(1) or (3)”.
- 34 (1) In subsection (3) of section 13 of the 1982 Act (conversion of sentence of detention in a young offender institution to sentence of imprisonment), for the words “section 15 below” there shall be substituted the words “section 65 of the Criminal Justice Act 1991 (supervision of young offenders after release)”.
- (2) In subsection (6) of that section, for the words “section 8(2)” there shall be substituted the words “section 8(1) or (2)”.
- 35 In subsection (2) of section 16 of the 1982 Act (meaning of “attendance centre”), for the words from “of orders made” to the end there shall be substituted the words “of orders made under section 17 below.”
- 36 (1) In subsection (1) of section 17 of the 1982 Act (attendance centre orders), for the words “Subject to subsections (3) and (4) below,” there shall be substituted the words “Where a person under 21 years of age is convicted by or before a court of an offence punishable with imprisonment (not being an offence the sentence for which is fixed by law or falls to be imposed under section 2(2), 3(2) or 4(2) of the Crime (Sentences) Act 1997), or”.
- (2) In that subsection, for paragraph (a) there shall be substituted the following paragraph—
- “(a) would have power, but for section 1 above, to commit a person under 21 years of age to prison in default of payment of any sum of money or for failing to do or abstain from doing anything required to be done or left undone, or”.
- (3) In that subsection, in paragraph (b), for the words “any such person” there shall be substituted the words “a person under 21 years of age” and after that paragraph there shall be inserted the following paragraph—
- “(bb) has power to deal with a person under 16 years of age under that Part of that Schedule for failure to comply with any of the requirements of a curfew order, or”.
- (4) After that subsection there shall be inserted the following subsection—
- “(1A) For the purposes of subsection (1) above—
- (a) the reference to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders; and
 - (b) a sentence falls to be imposed under section 2(2), 3(2) or 4(2) of the Crime (Sentences) Act 1997 if it is required by that provision and the court is not of the opinion there mentioned.”

- (5) For subsection (8) of that section there shall be substituted the following subsection—
- “(8) The times at which an offender is required to attend at an attendance centre shall, as far as practicable, be such as to avoid—
- (a) any conflict with the offender’s religious beliefs or with the requirements of any other community order (within the meaning of Part I of the Criminal Justice Act 1991) to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.”
- 37 (1) In section 18 of the 1982 Act (discharge and variation of attendance centre orders), for subsection (4A) there shall be substituted the following subsections—
- “(4A) Any power conferred by this section—
- (a) on a magistrates' court to discharge an attendance centre order made by such a court, or
 - (b) on the Crown Court to discharge an attendance centre order made by the Crown Court,
- includes power to deal with the offender, for the offence in respect of which the order was made, in any manner in which he could have been dealt with for that offence by the court which made the order if the order had not been made.
- (4B) A person sentenced by a magistrates' court under subsection (4A) above for an offence may appeal to the Crown Court against the sentence.”
- (2) Subsection (7) of that section shall cease to have effect.
- (3) In that section, after subsection (9) there shall be added the following subsections—
- “(10) Where an offender has been ordered to attend at an attendance centre in default of the payment of a sum of money or for such a failure or abstention as is mentioned in section 17(1)(a) above, subsection (4A) above shall have effect in relation to the order as if the words “, for the offence in respect of which the order was made,” and “for that offence” were omitted.
- (11) Where an attendance centre order has been made on appeal, for the purposes of this section it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
 - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court;
- and subsection (4A) above shall have effect in relation to an attendance centre order made on appeal as if the words “if the order had not been made” were omitted.”
- 38 (1) In subsection (1) of section 19 of the 1982 Act (breaches of attendance centre orders or attendance centre rules), for the words “has been made” there shall be substituted the words “is in force”.

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- (2) In subsection (5) of that section, after the word “failed” there shall be inserted the words “without reasonable excuse”.
- (3) After subsection (7) of that section there shall be added the following subsections—
- “(8) Where an offender has been ordered to attend at an attendance centre in default of the payment of a sum of money or for such a failure or abstention as is mentioned in section 17(1)(a) above, subsections (3) and (5) above shall have effect in relation to the order as if the words “, for the offence in respect of which the order was made,” and “for that offence” were omitted.
- (9) Where an attendance centre order has been made on appeal, for the purposes of this section it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court;
- and, in relation to an attendance centre order made on appeal, subsection (3) (a) above shall have effect as if the words “if the order had not been made” were omitted and subsection (5) above shall have effect as if the words “if it had not made the order” were omitted.”

Criminal Justice Act 1988 (c. 33)

- 39 Paragraph 40 of Schedule 15 to the Criminal Justice Act 1988 (minor and consequential amendments) shall cease to have effect.

Criminal Justice Act 1991 (c. 53)

- 40 In section 11 of the 1991 Act (orders combining probation and community service), after subsection (1) there shall be inserted the following subsection—
- “(1A) The reference in subsection (1) above to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.”
- 41 (1) In subsection (5)(c) of section 12 of the 1991 Act (curfew orders), for the words “supervising officer” there shall be substituted the words “responsible officer”.
- (2) After subsection (6A) of that section there shall be inserted the following subsection—
- “(6B) The court by which a curfew order is made shall give a copy of the order to the offender and to the person responsible for monitoring the offender’s whereabouts during the curfew periods specified in the order.”
- (3) After subsection (7) of that section there shall be added the following subsection—
- “(8) References in this section to the offender’s being under the age of sixteen years are references to his being under that age on conviction.”

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- 42 In section 31(1) of the 1991 Act (interpretation of Part I), in paragraph (b) of the definition of “custodial sentence”, for the words “section 53” there shall be substituted the words “section 53(3)”.
- 43 (1) In subsection (3) of section 40 of the 1991 Act (convictions during currency of original sentences), for the words from “for sentence” to the end there shall be substituted the words “to be dealt with under subsection (3A) below”.
- (2) After that subsection there shall be inserted the following subsections—
- “(3A) Where a person is committed to the Crown Court under subsection (3) above, the Crown Court may order him to be returned to prison for the whole or any part of the period which—
- (a) begins with the date of the order; and
- (b) is equal in length to the period between the date on which the new offence was committed and the date mentioned in subsection (1) above.
- (3B) Subsection (3)(b) above shall not be taken to confer on the magistrates' court a power to commit the person to the Crown Court for sentence for the new offence, but this is without prejudice to any such power conferred on the magistrates' court by any other enactment.”
- (3) In subsection (4) of that section, for the words “subsection (2)” there shall be substituted the words “subsection (2) or (3A)”.
- 44 In each of subsections (3)(b) and (4)(a) of section 57 of the 1991 Act (responsibility of parent or guardian for financial penalties), for the words “section 35(4)(a)” there shall be substituted the words “section 35(4)”.
- 45 In section 58 of the 1991 Act (binding over of parent or guardian), after subsection (8) there shall be added the following subsection—
- “(9) For the purposes of this section—
- (a) “guardian” has the same meaning as in the 1933 Act; and
- (b) taking “care” of a person includes giving him protection and guidance and “control” includes discipline.”
- 46 (1) In paragraph 1 of Schedule 2 to the 1991 Act (enforcement etc. of community orders), after sub-paragraph (4) there shall be added the following sub-paragraph—
- “(5) Where a probation order, community service order, combination order or curfew order has been made on appeal, for the purposes of this Schedule it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by a magistrates' court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.”
- (2) In each of paragraphs 3(1) and 4(1) of that Schedule, for paragraph (c) there shall be substituted the following paragraph—
- “(c) where—
- (i) the relevant order is a probation order and the offender is under the age of twenty-one years, or

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(ii) the relevant order is a curfew order and the offender is under the age of sixteen years,

and the court has been notified as required by subsection (1) of section 17 of the 1982 Act, it may (subject to paragraph 6(6) below) make in respect of him an order under that section (attendance centre orders); or”.

(3) In paragraph 4(1) of that Schedule—

- (a) after the word “failed” there shall be inserted the words “without reasonable excuse”; and
- (b) in paragraph (d), for the words “by or before the court” there shall be substituted the words “before the Crown Court”.

(4) In paragraph 6 of that Schedule, in sub-paragraph (1), for the words “or (b)” there shall be substituted the words “, (b) or (c)”.

(5) After sub-paragraph (3) of that paragraph there shall be inserted the following sub-paragraph—

“(3A) A community service order shall not be made under paragraph 3(1)(b) or 4(1)(b) above in respect of a person who is under the age of sixteen years.”

(6) For sub-paragraph (5) of that paragraph there shall be substituted the following sub-paragraph—

“(5) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (4) above in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) above—

- (a) the power conferred on the court by each of paragraphs 3(1)(d) and 4(1)(d) above and paragraph 7(2)(a)(ii) below to deal with the offender for the offence in respect of which the order was made shall be construed as a power to deal with the offender, for his failure to comply with the original order, in any manner in which the court could deal with him if that failure to comply had just been proved to the satisfaction of the court;
- (b) the reference in paragraph 7(1)(b) below to the offence in respect of which the order was made shall be construed as a reference to the failure to comply in respect of which the order was made; and
- (c) the power conferred on the court by paragraph 8(2)(b) below to deal with the offender for the offence in respect of which the order was made shall be construed as a power to deal with the offender, for his failure to comply with the original order, in any manner in which the court which made the original order could deal with him if that failure had just been proved to the satisfaction of that court;

and in this sub-paragraph “the original order” means the relevant order the failure to comply with whose requirements led to the making of the community service order under paragraph 3(1)(b) or 4(1)(b).”

(7) After sub-paragraph (5) of that paragraph there shall be added the following sub-paragraph—

“(6) The provisions of sections 17 to 19 of the 1982 Act (making, discharge, variation and breach of attendance centre order) shall apply for the

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purposes of paragraphs 3(1)(c) and 4(1)(c) above but as if there were omitted—

- (a) subsection (13) of section 17;
- (b) from subsection (4A) of section 18 and subsections (3) and (5) of section 19, the words “, for the offence in respect of which the order was made,” and “for that offence”.”

(8) After paragraph 6 of that Schedule there shall be inserted the following paragraph—

“6A (1) Where a relevant order was made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under paragraph 3(1)(d) above by that or any other court in respect of the offender after he has attained the age of 18 years shall be powers to do either or both of the following—

- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
- (b) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

(2) In sub-paragraph (1)(b) above any reference to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.”

(9) In paragraph 7(5) of that Schedule, after the word “above” there shall be inserted the words “for an offence”.

(10) In paragraph 8(2) of that Schedule, for paragraph (b) there shall be substituted the following paragraph—

“(b) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which the court which made the order could deal with him if he had just been convicted of that offence by or before the court which made the order.”

(11) After paragraph 8 of that Schedule there shall be inserted the following paragraph—

“8A (1) This paragraph applies where a probation order is in force in respect of any offender and on the application of the offender or the responsible officer it appears to a magistrates' court acting for the petty sessions area concerned that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) for the probation order to be revoked; and
- (b) for an order to be made under section 1A(1)(b) of the 1973 Act discharging the offender conditionally for the offence for which the probation order was made.

(2) No application may be made under paragraph 7 above for a probation order to be revoked and replaced with an order for conditional discharge under section 1A(1)(b) of the 1973 Act; but otherwise nothing in this paragraph shall affect the operation of paragraphs 7 and 8 above.

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- (3) Where this paragraph applies and the probation order was made by a magistrates' court—
- (a) the magistrates' court dealing with the application may revoke the probation order and make an order under section 1A(1)(b) of the 1973 Act discharging the offender in respect of the offence for which the probation order was made, subject to the condition that he commits no offence during the period specified in the order under section 1A(1)(b); and
 - (b) the period specified in the order under section 1A(1)(b) shall be the period beginning with the making of that order and ending with the date when the probation period specified in the probation order would have ended.
- (4) Where this paragraph applies and the probation order was made by the Crown Court, the magistrates' court may send the application to the Crown Court to be heard by that court, and if it does so shall also send to the Crown Court such particulars of the case as may be desirable.
- (5) Where an application under this paragraph is heard by the Crown Court by virtue of sub-paragraph (4) above—
- (a) the Crown Court may revoke the probation order and make an order under section 1A(1)(b) of the 1973 Act discharging the offender in respect of the offence for which the probation order was made, subject to the condition that he commits no offence during the period specified in the order under section 1A(1)(b); and
 - (b) the period specified in the order under section 1A(1)(b) shall be the period beginning with the making of that order and ending with the date when the probation period specified in the probation order would have ended.
- (6) For the purposes of sub-paragraphs (3) and (5) above, subsection (1) of section 1A of the 1973 Act shall apply as if—
- (a) for the words from the beginning to “may make an order either” there were substituted the words “Where paragraph 8A of Schedule 2 to the Criminal Justice Act 1991 applies, the court which under sub-paragraph (3) or (5) of that paragraph has power to dispose of the application may (subject to the provisions of that sub-paragraph) make an order in respect of the offender”; and
 - (b) paragraph (a) of that subsection were omitted.
- (7) An application under this paragraph may be heard in the offender's absence if—
- (a) the application is made by the responsible officer; and
 - (b) that officer produces to the court a statement by the offender that he understands the effect of an order for conditional discharge and consents to the making of the application;
- and where the application is so heard section 1A(3) of the 1973 Act shall not apply.

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- (8) No application may be made under this paragraph while an appeal against the probation order is pending.
- (9) Without prejudice to paragraph 11 below, on the making of an order under section 1A(1)(b) of the 1973 Act by virtue of this paragraph the court shall forthwith give copies of the order to the responsible officer, and the responsible officer shall give a copy to the offender.
- (10) Each of sections 1(11), 2(9) and 66(4) of the Crime and Disorder Act 1998 (which prevent a court from making an order for conditional discharge in certain cases) shall have effect as if the reference to the court by or before which a person is convicted of an offence there mentioned included a reference to a court dealing with an application under this paragraph in respect of the offence.”
- (12) After paragraph 11 of that Schedule there shall be inserted the following paragraphs—
- “11A Paragraph 6A above shall apply for the purposes of paragraphs 7 and 8 above as it applies for the purposes of paragraph 3 above, but as if in paragraph 6A(1) for the words “powers exercisable under paragraph 3(1)(d) above” there were substituted the words “powers to deal with the offender which are exercisable under paragraph 7(2)(a)(ii) or 8(2) (b) below”.
- 11B Where under this Part of this Schedule a relevant order is revoked and replaced by an order for conditional discharge under section 1A(1)(b) of the 1973 Act and—
- (a) the order for conditional discharge is not made in the circumstances mentioned in section 1B(9) of the 1973 Act (order made by magistrates' court in the case of an offender under eighteen in respect of offence triable only on indictment in the case of an adult), but
- (b) the relevant order was made in those circumstances, section 1B(9) of the 1973 Act shall apply as if the order for conditional discharge had been made in those circumstances.”

Crime (Sentences) Act 1997 (c. 43)

- 47 Section 1 of the 1997 Act (conditions relating to mandatory and minimum custodial sentences) shall cease to have effect.
- 48 (1) In subsection (2) of section 3 of the 1997 Act (minimum of seven years for third class A drug trafficking offence)—
- (a) for the words “specific circumstances” there shall be substituted the words “particular circumstances”; and
- (b) for the words “the prescribed custodial sentence unjust” there shall be substituted the words “it unjust to do so”.
- (2) In subsection (3) of that section, for the words “specific circumstances” there shall be substituted the words “particular circumstances”.
- 49 (1) In subsection (2) of section 4 of the 1997 Act (minimum of three years for third domestic burglary)—

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- (a) for the words “specific circumstances” there shall be substituted the words “particular circumstances”; and
 - (b) for the words “the prescribed custodial sentence unjust” there shall be substituted the words “it unjust to do so”.
- (2) In subsection (3) of that section, for the words “specific circumstances” there shall be substituted the words “particular circumstances”.
- 50 (1) In subsection (2)(a) of section 35 of the 1997 Act (community sentences for fine defaulters), for the words “and (11)” there shall be substituted the words “, (10) and (11)”.
- (2) In subsection (5) of that section, paragraph (c) shall cease to have effect.
- (3) In that subsection, the word “and” at the end of paragraph (d) shall cease to have effect and after paragraph (e) there shall be added the following paragraphs—
 - “(f) the reference in paragraph 7(1)(b) of that Schedule to the offence in respect of which the order was made shall be construed as a reference to the default in respect of which the order was made;
 - (g) the power conferred by paragraph 7(2)(a)(ii) of that Schedule to deal with an offender for the offence in respect of which the order was made shall be construed as a power to deal with the person in respect of whom the order was made for his default in paying the sum in question; and
 - (h) paragraph 8(2)(b) of that Schedule shall not apply.”
- (4) In subsection (7) of that section, for the words “section 12(5)” there shall be substituted the words “section 12(6)”.
- (5) In subsection (8) of that section, the word “and” at the end of paragraph (a) shall cease to have effect and after paragraph (b) there shall be added the following paragraphs—
 - “(c) the reference in paragraph 7(1)(b) of that Schedule to the offence in respect of which the order was made shall be construed as a reference to the default in respect of which the order was made;
 - (d) the power conferred by paragraph 7(2)(a)(ii) of that Schedule to deal with an offender for the offence in respect of which the order was made shall be construed as a power to deal with the person in respect of whom the order was made for his default in paying the sum in question; and
 - (e) paragraph 8(2)(b) of that Schedule shall not apply.”
- (6) In subsection (10) of that section, for the words “subsection (2)(b)” there shall be substituted the words “subsection (2)(a) or (b)”.
- 51 (1) In subsection (3) of section 37 of the 1997 Act (community sentences for persistent petty offenders)—
 - (a) in paragraph (a), for the words “(4) and (6)” there shall be substituted the words “(4), (5A) and (6)”; and
 - (b) in paragraph (b), for the words “(5) and (6)” there shall be substituted the words “(5), (5A) and (6)”.
- (2) For subsections (4) and (5) of that section there shall be substituted the following subsections—

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“(4) In this section “community service order” has the same meaning as in the 1973 Act and—

- (a) section 14(2) of that Act; and
- (b) so far as applicable, the other provisions of that Act relating to community service orders and the provisions of Part I of the 1991 Act so relating,

shall have effect in relation to an order under subsection (3)(a) above as they have effect in relation to a community service order made under the 1973 Act in respect of an offender.

(5) In this section “curfew order” has the same meaning as in Part I of the 1991 Act and—

- (a) section 12(6) of that Act; and
- (b) so far as applicable, the other provisions of that Part relating to curfew orders,

shall have effect in relation to an order under subsection (3)(b) above as they have effect in relation to a curfew order made under that Act in respect of an offender.

(5A) A court shall not make an order under subsection (3)(a) or (b) above in respect of a person who on conviction is under 16.”

52 In section 50 of the 1997 Act (disclosure of pre-sentence reports), after subsection (6) there shall be added the following subsection—

“(7) In this section “guardian” has the same meaning as in the 1933 Act.”

53 In section 54 of the 1997 Act (general interpretation), after subsection (3) there shall be added the following subsection—

“(4) For the purposes of any provision of this Act which requires the determination of the age of a person by the court, his age shall be deemed to be that which it appears to the court to be after considering any available evidence.”

54 In section 55(2) of the 1997 Act (interpretation of minor and consequential amendments), for the words “in any case where” (in both places where they occur) there shall be substituted the word “and”.