

SCHEDULES

SCHEDULE 1

Section 4

ENFORCEMENT ORDERS

Before Schedule 1 to the Children Act 1989 (c. 41) insert—

“SCHEDULE A1

ENFORCEMENT ORDERS

PART 1

UNPAID WORK REQUIREMENT

General

- 1 Subject to the modifications in paragraphs 2 and 3, Chapter 4 of Part 12 of the Criminal Justice Act 2003 has effect in relation to an enforcement order as it has effect in relation to a community order (within the meaning of Part 12 of that Act).

References to an offender

- 2 Subject to paragraph 3, references in Chapter 4 of Part 12 of the Criminal Justice Act 2003 to an offender are to be treated as including references to a person subject to an enforcement order.

Specific modifications

- 3 (1) The power of the Secretary of State by order under section 197(3) to amend the definition of “responsible officer” and to make consequential amendments includes power to make any amendments of this Part (including further modifications of Chapter 4 of Part 12 of the Criminal Justice Act 2003) that appear to the Secretary of State to be necessary or expedient in consequence of any amendment made by virtue of section 197(3)(a) or (b).
- (2) In section 198 (duties of responsible officer)—
 - (a) in subsection (1)—
 - (i) at the end of paragraph (a) insert “and”, and
 - (ii) omit paragraph (c) and the word “and” immediately preceding it, and
 - (b) after subsection (1) insert—

“(1A) Subsection (1B) applies where—

 - (a) an enforcement order is in force, and

Status: This is the original version (as it was originally enacted).

- (b) an officer of the Children and Family Court Advisory and Support Service or a Welsh family proceedings officer (as defined in section 35 of the Children Act 2004) is required under section 11M of the Children Act 1989 to report on matters relating to the order.
- (1B) The officer of the Service or the Welsh family proceedings officer may request the responsible officer to report to him on such matters relating to the order as he may require for the purpose of making a report under section 11M(1)(c) or (d); and it shall be the duty of the responsible officer to comply with such a request.”
- (3) In section 199 (unpaid work requirement)—
- (a) in subsection (2) (minimum and maximum hours of unpaid work) for paragraph (b) substitute—
 - “(b) not more than 200.”,
 - (b) omit subsections (3) and (4), and
 - (c) in subsection (5) for the words from the beginning to “of them” substitute “Where on the same occasion and in relation to the same person the court makes more than one enforcement order imposing an unpaid work requirement”.
- (4) In section 200 (obligations of person subject to unpaid work requirement), for subsection (2) substitute—
- “(2) Subject to paragraphs 7 and 9 of Schedule A1 to the Children Act 1989, the work required to be performed under an unpaid work requirement imposed by an enforcement order must be performed during a period of twelve months.
- (2A) But the period of twelve months is not to run while the enforcement order is suspended under section 11J(9) of the Children Act 1989.”
- (5) Section 217 (requirement to avoid conflict with religious beliefs, etc) is omitted.
- (6) In section 218 (availability of arrangements in local area), subsection (1) (condition for imposition of unpaid work requirement) is omitted.
- (7) Section 219 (provision of copies of relevant order) is omitted.
- (8) The power of the Secretary of State to make rules under section 222 in relation to persons subject to relevant orders may also be exercised in relation to persons subject to enforcement orders.
- (9) The power of the Secretary of State by order under section 223(1) to amend the provision mentioned in section 223(1)(a) includes power to amend this Part so as to make such modifications of Chapter 4 of Part 12 of the Criminal Justice Act 2003 as appear to the Secretary of State to be necessary or expedient in consequence of any amendment of the provision mentioned in section 223(1)(a).

PART 2

REVOCATION, AMENDMENT OR BREACH OF ENFORCEMENT ORDER

Power to revoke

- 4 (1) This paragraph applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order and the enforcement order is in force.
- (2) The court may revoke the enforcement order if it appears to the court that—
- (a) in all the circumstances no enforcement order should have been made,
 - (b) having regard to circumstances which have arisen since the enforcement order was made, it would be appropriate for the enforcement order to be revoked, or
 - (c) having regard to the person's satisfactory compliance with the contact order or any contact order that has effect in its place, it would be appropriate for the enforcement order to be revoked.
- (3) The enforcement order may be revoked by the court under sub-paragraph (2) of its own motion or on an application by the person subject to the enforcement order.
- (4) In deciding whether to revoke the enforcement order under sub-paragraph (2)(b), the court is to take into account—
- (a) the extent to which the person subject to the enforcement order has complied with it, and
 - (b) the likelihood that the person will comply with the contact order or any contact order that has effect in its place in the absence of an enforcement order.
- (5) In deciding whether to revoke the enforcement order under sub-paragraph (2)(c), the court is to take into account the likelihood that the person will comply with the contact order or any contact order that has effect in its place in the absence of an enforcement order.

Amendment by reason of change of residence

- 5 (1) This paragraph applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order and the enforcement order is in force.
- (2) If the court is satisfied that the person has changed, or proposes to change, his residence from the local justice area specified in the order to another local justice area, the court may amend the order by substituting the other area for the area specified.
- (3) The enforcement order may be amended by the court under sub-paragraph (2) of its own motion or on an application by the person subject to the enforcement order.

Amendment of hours specified under unpaid work requirement

- 6 (1) This paragraph applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order and the enforcement order is in force.

Status: This is the original version (as it was originally enacted).

- (2) If it appears to the court that, having regard to circumstances that have arisen since the enforcement order was made, it would be appropriate to do so, the court may reduce the number of hours specified in the order (but not below the minimum specified in section 199(2)(a) of the Criminal Justice Act 2003).
- (3) In amending the enforcement order under sub-paragraph (2), the court must be satisfied that the effect on the person of the enforcement order as proposed to be amended is no more than is required to secure his compliance with the contact order or any contact order that has effect in its place.
- (4) The enforcement order may be amended by the court under sub-paragraph (2) of its own motion or on an application by the person subject to the enforcement order.

Amendment to extend unpaid work requirement

- 7 (1) This paragraph applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order and the enforcement order is in force.
- (2) If it appears to the court that, having regard to circumstances that have arisen since the enforcement order was made, it would be appropriate to do so, the court may, in relation to the order, extend the period of twelve months specified in section 200(2) of the Criminal Justice Act 2003 (as substituted by paragraph 3).
- (3) The period may be extended by the court under sub-paragraph (2) of its own motion or on an application by the person subject to the enforcement order.

Warning and report following breach

- 8 (1) This paragraph applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order.
- (2) If the responsible officer is of the opinion that the person has failed without reasonable excuse to comply with the unpaid work requirement imposed by the enforcement order, the officer must give the person a warning under this paragraph unless—
 - (a) the person has within the previous twelve months been given a warning under this paragraph in relation to a failure to comply with the unpaid work requirement, or
 - (b) the responsible officer reports the failure to the appropriate person.
- (3) A warning under this paragraph must—
 - (a) describe the circumstances of the failure,
 - (b) state that the failure is unacceptable, and
 - (c) inform the person that, if within the next twelve months he again fails to comply with the unpaid work requirement, the warning and the subsequent failure will be reported to the appropriate person.
- (4) The responsible officer must, as soon as practicable after the warning has been given, record that fact.
- (5) If—
 - (a) the responsible officer has given a warning under this paragraph to a person subject to an enforcement order, and

- (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the person has since that date failed without reasonable excuse to comply with the unpaid work requirement imposed by the enforcement order, the officer must report the failure to the appropriate person.
- (6) A report under sub-paragraph (5) must include a report of the warning given to the person subject to the enforcement order.
- (7) The appropriate person, in relation to an enforcement order, is the officer of the Service or the Welsh family proceedings officer who is required under section 11M to report on matters relating to the enforcement order.
- (8) “Responsible officer”, in relation to a person subject to an enforcement order, has the same meaning as in section 197 of the Criminal Justice Act 2003 (as modified by paragraph 2).

Breach of an enforcement order

- 9 (1) This paragraph applies where a court has made an enforcement order (“the first order”) in respect of a person’s failure to comply with a contact order.
- (2) If the court is satisfied beyond reasonable doubt that the person has failed to comply with the unpaid work requirement imposed by the first order, the court may—
- (a) amend the first order so as to make the requirement more onerous, or
- (b) make an enforcement order (“the second order”) in relation to the person and (if the first order is still in force) provide for the second order to have effect either in addition to or in substitution for the first order.
- (3) But the court may not exercise its powers under sub-paragraph (2) if it is satisfied that the person had a reasonable excuse for failing to comply with the unpaid work requirement imposed by the first order.
- (4) The burden of proof as to the matter mentioned in sub-paragraph (3) lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities.
- (5) The court may exercise its powers under sub-paragraph (2) in relation to the first order only on the application of a person who would be able to apply under section 11J for an enforcement order if the failure to comply with the first order were a failure to comply with the contact order to which the first order relates.
- (6) Where the person proposing to apply to the court is the child with respect to whom the contact order was made, subsections (6) and (7) of section 11J have effect in relation to the application as they have effect in relation to an application for an enforcement order.
- (7) An application to the court to exercise its powers under sub-paragraph (2) may only be made while the first order is in force.
- (8) The court may not exercise its powers under sub-paragraph (2) in respect of a failure by the person to comply with the unpaid work requirement imposed by the first order unless it is satisfied that before the failure occurred the person had been given (in accordance with rules of court) a copy of, or otherwise informed of the terms of, a notice under section 11N relating to the first order.

Status: This is the original version (as it was originally enacted).

- (9) In dealing with the person under sub-paragraph (2)(a), the court may—
- (a) increase the number of hours specified in the first order (but not above the maximum specified in section 199(2)(b) of the Criminal Justice Act 2003, as substituted by paragraph 3);
 - (b) in relation to the order, extend the period of twelve months specified in section 200(2) of the Criminal Justice Act 2003 (as substituted by paragraph 3).
- (10) In exercising its powers under sub-paragraph (2), the court must be satisfied that, taking into account the extent to which the person has complied with the unpaid work requirement imposed by the first order, the effect on the person of the proposed exercise of those powers—
- (a) is no more than is required to secure his compliance with the contact order or any contact order that has effect in its place, and
 - (b) is no more than is proportionate to the seriousness of his failures to comply with the contact order and the first order.
- (11) Where the court exercises its powers under sub-paragraph (2) by making an enforcement order in relation to a person who has failed to comply with another enforcement order—
- (a) sections 11K(4), 11L(2) to (7), 11M and 11N have effect as regards the making of the order in relation to the person as they have effect as regards the making of an enforcement order in relation to a person who has failed to comply with a contact order;
 - (b) this Part of this Schedule has effect in relation to the order so made as if it were an enforcement order made in respect of the failure for which the other order was made.
- (12) Sub-paragraph (2) is without prejudice to section 63(3) of the Magistrates' Courts Act 1980 as it applies in relation to enforcement orders.

Provision relating to amendment of enforcement orders

- 10 Sections 11L(2) to (7) and 11M have effect in relation to the making of an order under paragraph 6(2), 7(2) or 9(2)(a) amending an enforcement order as they have effect in relation to the making of an enforcement order; and references in sections 11L(2) to (7) and 11M to an enforcement order are to be read accordingly.”

SCHEDULE 2

Section 15

MINOR AND CONSEQUENTIAL AMENDMENTS

Domicile and Matrimonial Proceedings Act 1973 (c. 45)

- 1 (1) In Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (c. 45) (staying of matrimonial proceedings: England and Wales), paragraph 11 (effect of staying matrimonial proceedings on court's power to make certain orders) is amended as follows.
- (2) After sub-paragraph (4) insert—

Status: This is the original version (as it was originally enacted).

“(4A) Sub-paragraph (4B) applies where—

- (a) proceedings are stayed as described in sub-paragraph (1) or (4), and
- (b) at the time when the stay is imposed, a contact order (within the meaning of the Children Act 1989) made in connection with the stayed proceedings is in force.

(4B) While the stay applies to the proceedings, the court may not—

- (a) make an enforcement order (within the meaning of the Children Act 1989) in relation to the contact order, or
- (b) as regards an enforcement order already made in relation to the contact order, exercise its powers under paragraph 9(2) of Schedule A1 to the Children Act 1989 in relation to the enforcement order.”

- (3) In sub-paragraph (5) (certain powers of court not affected) at the beginning insert “Except as provided in sub-paragraph (4B),”.

Family Law Act 1986 (c. 55)

2 The Family Law Act 1986 (c. 55) is amended as follows.

3 (1) Section 5 (power of court to refuse application or stay proceedings) is amended as follows.

(2) After subsection (2) (stay where more appropriate for matters to be determined in proceedings outside England and Wales) insert—

“(2A) If the proceedings on the application are proceedings in which a contact activity direction has been made under section 11A of the Children Act 1989 (or an enforcement order has been made under section 11J of that Act), the court may when granting a stay under or by virtue of subsection (2) also suspend the contact activity direction (or the enforcement order).”

(3) After subsection (3A) (removal of stay granted under Article 15) insert—

“(3B) If the stay removed under subsection (3) or (3A) is a stay in relation to which the court suspended a contact activity direction made under section 11A of the Children Act 1989 (or an enforcement order made under section 11J of that Act), the court may when removing the stay under subsection (3) or (3A) also bring the suspension to an end.”

4 In section 29 (enforcement), in subsection (1) after “enforcing the order” insert “(including, where an order with respect to contact is registered in England and Wales, the powers under section 11O of the Children Act 1989)”.

5 In section 30 (staying or sisting of enforcement proceedings), after subsection (1) insert—

“(1A) No application may be made under subsection (1) for proceedings to be stayed or sisted if the proceedings are proceedings on an application for an order under section 11O(2) of the Children Act 1989.”

6 In section 31 (dismissal of enforcement proceedings), after subsection (1) insert—

Status: This is the original version (as it was originally enacted).

“(1A) No application may be made under subsection (1) for proceedings to be dismissed if the proceedings are proceedings on an application for an order under section 11O(2) of the Children Act 1989.”

Children Act 1989 (c. 41)

- 7 The Children Act 1989 (c. 41) is amended as follows.
- 8 In section 14B (making of special guardianship orders), in subsection (1)—
- (a) omit the “and” at the end of paragraph (a), and
 - (b) after paragraph (b) insert—
 - “(c) where a contact order made with respect to the child is not discharged, any enforcement order relating to that contact order should be revoked, and
 - (d) where a contact activity direction has been made as regards contact with the child and is in force, that contact activity direction should be discharged.”
- 9 In section 91 (effect and duration of orders etc) after subsection (2) insert—
- “(2A) Where a contact activity direction has been made as regards contact with a child, the making of a care order with respect to the child discharges the direction.”
- 10 In section 104 (regulations and orders)—
- (a) in subsection (1) for “or the Secretary of State” substitute “, the Secretary of State or the National Assembly for Wales”;
 - (b) after subsection (2) insert—
 - “(2A) Subsection (2) does not apply to a statutory instrument made solely by the National Assembly for Wales.”
- 11 In section 105 (interpretation), in subsection (1) at the appropriate place insert—
- ““contact activity condition” has the meaning given by section 11C;”;
 - ““contact activity direction” has the meaning given by section 11A;”;
 - ““enforcement order” has the meaning given by section 11J;”.

Family Law Act 1996 (c. 27)

- 12 (1) Schedule 3 to the Family Law Act 1996 (c. 27) (stay of proceedings: amendments of Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (c. 45)) is amended as follows.
- (2) In paragraph 9 (amendments of paragraph 11 of Schedule 1) after sub-paragraph (6) insert—
- “(6A) In sub-paragraph (4A)(a) for “sub-paragraph (1) or (4)” substitute “sub-paragraph (1)”.”

Adoption and Children Act 2002 (c. 38)

- 13 The Adoption and Children Act 2002 (c. 38) is amended as follows.

Status: This is the original version (as it was originally enacted).

- 14 (1) Section 26 (effect on contact of placing a child for adoption) is amended as follows.
- (2) In subsection (1), after “have effect” insert “and any contact activity direction relating to contact with the child is discharged”.
- (3) In subsection (6), after “In this section,” insert ““contact activity direction” has the meaning given by section 11A of the 1989 Act and”.

SCHEDULE 3

Section 15

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Children Act 1989 (c. 41)	In section 14B(1), the word “and” at the end of paragraph (a). Section 16(3)(a).
