



# Criminal Justice Act 1991

## 1991 CHAPTER 53

### PART I

#### POWERS OF COURTS TO DEAL WITH OFFENDERS

##### Modifications etc. (not altering text)

- C1** Pt. I (ss. 1-31) applied (E.W.) (1.10.1997) by 1997 c. 43, **ss. 28(9)**, 33(3)-(5); S.I. 1997/2200, **art.2** (subject to savings in **art. 5**)
- Pt. I (ss. 1-31) modified (E.W.) (1.1.1998) by 1997 c. 43, **s. 35(4)(b)**; S.I. 1997/2200, **art.3** (subject to savings in **art. 5**)
- Pt. I (ss. 1-31) extended (with modifications) (E.W.) (1.1.1998) by 1997 c. 43, **s. 35(7)(b)**; S.I. 1997/2200, **art.3** (subject to savings in **art. 5**)
- Pt. I (ss. 1-31) extended (with modifications) (E.W.) (30.9.1998) by 1998 c. 37, **s. 61(4)** (with Sch. 9 para. 4); S.I. 1998/2327, **art.2(1)(n)**.
- Pt. I (ss. 1-31) extended (with modifications) (E.W.) (30.9.1998) by 1998 c. 37, **s. 69(11)**; S.I. 1998/2327, **art.2(1)(o)**
- Pt. I (ss. 1-31) applied (E.W.) (30.9.1998) by 1998 c. 37, **s. 18(2)**; S.I. 1998/2327, **art.2(1)(f)**.
- Pt. I (ss. 1-31) extended (E.W.) (1.4.2000) by 1998 c. 37, **ss. 73(4)**; S.I. 1999/3426, **art. 3(a)**
- Pt. I (ss. 1-31) applied (E.W.) (30.9.1998) by 1997 c. 43, **ss. 37(4)(5)** (as substituted (E.W.) (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 51(2)**; S.I. 1998/2327, **art.2(1)(w)**).
- Pt. I (ss. 1-31) extended (E.W.) (30.9.1998) by 1997 c. 43, **ss. 37(4)(5)** (as substituted (E.W.) (30.9.1998) by 1998 c. 37, s. 106, **Sch.7 para. 51(2)**; S.I. 1998/2327, **art.2(1)(w)**).
- Pt. I (ss. 1-31) restricted (E.W.) (26.6.2000) by 1999 c. 23, **s. 4(4)(a)**, (with Sch. 7 paras. 3(3), 5(2)); S.I. 2000/1587, **art. 2(a)**

#### *Custodial sentences*

### **1 Restrictions on imposing custodial sentences.**

- (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

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**Changes to legislation:** Criminal Justice Act 1991 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Subject to subsection (3) below, the court shall not pass a custodial sentence on the offender unless it is of the opinion—
- [<sup>F1</sup>(a) that the offence, or the combination of the offence and one or more offences associated with it, was so serious that only such a sentence can be justified for the offence; or]
  - (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from him.
- (3) Nothing in subsection (2) above shall prevent the court from passing a custodial sentence on the offender if he refuses to give his consent to a community sentence which is proposed by the court and requires that consent.
- (4) Where a court passes a custodial sentence, it shall be its duty—
- (a) in a case not falling within subsection (3) above, to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) above apply and why it is of that opinion; and
  - (b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on him.
- (5) A magistrates' court shall cause a reason stated by it under subsection (4) above to be specified in the warrant of commitment and to be entered in the register.

#### Textual Amendments

**F1** S. 1(2)(a) substituted (16.8.1993) by 1993 c. 36, s. 66(1)(9); S.I. 1993/1968, art. 2(1), Sch.1

#### Modifications etc. (not altering text)

**C2** Ss. 1-4 extended (*prosp.*) by 1994 c. 33, ss. 1(6), 172(2)

S. 1 excluded (*prosp.*) by 1997 c. 43, ss. 17(5), 57(2) (with s. 41, Sch. 1 para. 10(4)).

**C3** S. 1(1)(3) amended (*prosp.*) by 1997 c. 43, s. 55(2), 57(2).

#### Commencement Information

**I1** S. 1 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 2 Length of custodial sentences.

- (1) This section applies where a court passes a custodial sentence other than one fixed by law.
- (2) The custodial sentence shall be—
- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and [<sup>F2</sup>one or more] offences associated with it; or
  - (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.
- (3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and [<sup>F2</sup>one or more] offences associated with it, the court shall—
- (a) state in open court that it is of the opinion that subsection (2)(b) above applies and why it is of that opinion; and

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- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.
- (4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) above as a custodial sentence for a term longer than any actual term.

#### Textual Amendments

**F2** Words in s. 2(2)(a)(3) substituted (16.8.1993) by 1993 c. 36, s. 66(2)(9); S.I. 1993/1968, art. 2(1), Sch.1

#### Modifications etc. (not altering text)

**C4** Ss. 1-4 extended (*prosp.*) by 1994 c. 33, ss. 1(6), 172(2)  
S. 2 excluded (*prosp.*) by 1997 c. 43 ss. 17(5), 57(2) (with s. 41, Sch. 1 para. (4)).  
S. 2 amended (*prosp.*) 1997 c. 43, ss. 55(2), 57(2).

#### Commencement Information

**I2** S. 2 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

### 3 Procedural requirements for custodial sentences.

(1) Subject to subsection (2) below, a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above.

(2) <sup>F3</sup> . . . subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

[<sup>F4</sup>(2A) In the case of an offender under the age of eighteen years, save where the offence or any other offence associated with it is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (2) above or subsection (4A) below unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.]

(3) In forming any such opinion as is mentioned in subsection (2) of section 1 or 2 above a court—

- (a) shall take into account all such information about the circumstances of the offence [<sup>F5</sup>or (as the case may be) of the offence and the offence or offences associated with it,] (including any aggravating or mitigating factors) as is available to it; and
- (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before it.

(4) No custodial sentence <sup>F6</sup> . . . shall be invalidated by the failure of a court to [<sup>F7</sup>obtain and consider a pre-sentence report before forming an opinion referred to in subsection (1) above] but any court on an appeal against such a sentence—

- (a) shall [<sup>F8</sup>, subject to subsection (4A) below,] obtain a pre-sentence report if none was obtained by the court below; and
- (b) shall consider any such report obtained by it or by that court.

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- [<sup>F9</sup>(4A) Subsection (4)(a) above does not apply if the court is of the opinion—
- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
  - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.]
- (5) In this Part “pre-sentence report” means a report in writing which—
- (a) with a view to assisting the court in determining the most suitable method of dealing with an offender, is made or submitted by a probation officer or by a social worker of a local authority social services department; and
  - (b) contains information as to such matters, presented in such manner, as may be prescribed by rules made by the Secretary of State.

#### Textual Amendments

- F3** Words in s. 3(2) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 40(2)(a), Sch.11; S.I. 1995/127, art. 2(1), Sch. 1 AppendicesA,C
- F4** S. 3(2A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(b); S.I. 1995/127, art. 2(1), Sch. 1 AppendixA
- F5** Words in s. 3(3)(a) inserted (16.8.1993) by 1993 c. 36, s. 66(3)(9); S.I. 1993/1968, art. 2(1), Sch. 1
- F6** Words in s. 3(4) repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), Sch. 9 para. 40(2)(c)(i), Sch.11; S.I. 1995/127, art. 2(1), Sch. 1 AppendicesA,C
- F7** Words in s. 3(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(c)(ii); S.I. 1995/127, art. 2(1), Sch. 1 AppendixA
- F8** Words in s. 3(4)(a) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(c)(iii); S.I. 1995/127, art. 2(1), Sch. 1 AppendixA
- F9** S 3(4A) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 40(2)(d); S.I. 1995/127, art. (1), Sch. 1 AppendixA

#### Modifications etc. (not altering text)

- C5** Ss. 1-4 extended (1.3.1998) by 1994 c. 33, ss. 1(6); S.I. 1998/277, art.3(1) (with art. 4) (by 1998 c. 37, ss. 120(2), 121(2), Sch.10, the said s. 1 is repealed (*prosp.*)).  
Ss. 1-4 applied (*prosp.*) by 1998 c. 37, ss. 73(4), 121(2).

#### Commencement Information

- I3** S. 3 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 4 Additional requirements in the case of mentally disordered offenders.

- (1) Subject to subsection (2) below, in any case where section 3(1) above applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.
- (2) Subsection (1) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.
- (3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider—
  - (a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise); and

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- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.
- (4) No custodial sentence which is passed in a case to which subsection (1) above applies shall be invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—
  - (a) shall obtain a medical report if none was obtained by the court below; and
  - (b) shall consider any such report obtained by it or by that court.
- (5) In this section—
  - “duly approved”, in relation to a registered medical practitioner, means approved for the purposes of section 12 of the <sup>M1</sup>Mental Health Act 1983 (“the 1983 Act”) by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder;
  - “medical report” means a report as to an offender’s mental condition made or submitted orally or in writing by a registered medical practitioner who is duly approved.
- (6) Nothing in this section shall be taken as prejudicing the generality of section 3 above.

**Modifications etc. (not altering text)**

**C6** Ss. 1-4 extended (*prosp.*) by 1994 c. 33, ss. 1(6), 172(2)

**Commencement Information**

**I4** S. 4 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**Marginal Citations**

**M1** 1983 c. 20.

## 5 Suspended and extended sentences of imprisonment.

- (1) For subsection (2) of section 22 (suspended sentences of imprisonment) of the <sup>M2</sup>Powers of Criminal Courts Act 1973 (“the 1973 Act”) there shall be substituted the following subsections—
  - “(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion—
    - (a) that the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
    - (b) that the exercise of that power can be justified by the exceptional circumstances of the case.
  - (2A) A court which passes a suspended sentence on any person for an offence shall consider whether the circumstances of the case are such as to warrant in addition the imposition of a fine or the making of a compensation order.”
- (2) The following shall cease to have effect, namely—
  - (a) sections 28 and 29 of the 1973 Act (extended sentences of imprisonment for persistent offenders); and
  - (b) section 47 of the <sup>M3</sup>Criminal Law Act 1977 (sentence of imprisonment partly served and partly suspended).

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#### Commencement Information

**I5** S. 5 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

**M2** 1973 c. 62.

**M3** 1977 c. 45.

### Community sentences

## 6 Restrictions on imposing community sentences.

- (1) A court shall not pass on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of the opinion that the offence, or the combination of the offence and one [<sup>F10</sup>or more offences] associated with it, was serious enough to warrant such a sentence.
- (2) Subject to subsection (3) below, where a court passes a community sentence—
  - (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
  - (b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and [<sup>F11</sup>one or more] offences associated with it.
- (3) In consequence of the provision made by section 11 below with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.
- (4) In this Part “community order” means any of the following orders, namely—
  - (a) a probation order;
  - (b) a community service order;
  - (c) a combination order;
  - (d) a curfew order;
  - (e) a supervision order; and
  - (f) an attendance centre order.

#### Textual Amendments

**F10** Words in s. 6(1) substituted (16.8.1993) by 1993 c. 36, s. 66(4)(a)(9); S.I. 1993/1968, art. 2(1), **Sch.1**

**F11** Words in s. 6(2)(b) substituted (16.8.1993) by 1993 c. 36, s. 66(4)(b)(9); S.I. 1993/1968, art. 2(1), **Sch.1**

#### Modifications etc. (not altering text)

**C7** S. 6 excluded (*prosp.*) by 1997 c. 43, ss. 17(5), 41, 57(2) (with **Sch. 1 para. 10(4)**)

S. 6 excluded (1.1.1998) by 1997 c. 43, s. 37(3); S.I. 1997/2200, **art.3** (with savings in art. 5)

#### Commencement Information

**I6** S. 6 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

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## 7 Procedural requirements for community sentences.

- (1) In forming any such opinion as is mentioned in subsection (1) or (2)(b) of section 6 above, a court shall take into account all such information about the circumstances of the offence [<sup>F12</sup>or (as the case may be) of the offence and the offence or offences associated with it,] (including any aggravating or mitigating factors) as is available to it.
  - (2) In forming any such opinion as is mentioned in subsection (2)(a) of that section, a court may take into account any information about the offender which is before it.
  - (3) [<sup>F13</sup>Subject to subsection (3A) below,]A court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the following orders, namely—
    - (a) a probation order which includes additional requirements authorised by Schedule 1A to the 1973 Act;
    - (b) a community service order;
    - (c) a combination order; and
    - (d) a supervision order which includes requirements imposed under section 12, 12A, 12AA, 12B or 12C of the <sup>M4</sup>Children and Young Persons Act 1969 (“the 1969 Act”).
- [<sup>F14</sup>(3A) Subsection (3) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.
- (3B) In the case of an offender under the age of eighteen years, save where the offence or any other offence associated with it is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (3A) above or subsection (5) below unless there exists a previous pre-sentence report obtained in respect of the offender and the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.]
  - (4) No community sentence which consists of or includes such an order as is mentioned in subsection (3) above shall be invalidated by the failure of a court to [<sup>F15</sup>obtain and consider a pre-sentence report before forming an opinion referred to in] that subsection, but any court on an appeal against such a sentence—
    - (a) shall [<sup>F16</sup>, subject to subsection (5) below,] obtain a pre-sentence report if none was obtained by the court below; and
    - (b) shall consider any such report obtained by it or by that court.
- [<sup>F17</sup>(5) Subsection (4)(a) above does not apply if the court is of the opinion—
  - (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report, or
  - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.]

### Textual Amendments

- F12** Words in s. 7(1) inserted (16.8.1993) by 1993 c. 36, s. 66(5); S.I. 1993/1968, art. 2(1), **Sch. 1**
- F13** Words in s. 7(3) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(a)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A
- F14** S. 7(3A)(3B) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(b)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A

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- F15** Words in s. 7(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(c)(i)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A
- F16** Words in s. 7(4)(a) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(c)(ii)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A
- F17** S. 7(5) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 40(3)(d)**; S.I. 1995/127, art. 2(1), **Sch. 1** Appendix A

#### Commencement Information

- I7** S. 7 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M4** 1969 c. 54.

### *Probation and community service orders*

## 8 Probation orders.

(1) For section 2 of the 1973 Act there shall be substituted the following section—

### *“ Probation*

#### **2 Probation orders.**

- (1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law) is of the opinion that the supervision of the offender by a probation officer is desirable in the interests of—
- (a) securing the rehabilitation of the offender; or
  - (b) protecting the public from harm from him or preventing the commission by him of further offences,
- the court may make a probation order, that is to say, an order requiring him to be under the supervision of a probation officer for a period specified in the order of not less than six months nor more than three years.
- For the purposes of this subsection the age of a person shall be deemed to be that which it appears to the court to be after considering any available evidence.
- (2) A probation order shall specify the petty sessions area in which the offender resides or will reside; and the offender shall, subject to paragraph 12 of Schedule 2 to the Criminal Justice Act 1991 (offenders who change their residence), be required to be under the supervision of a probation officer appointed for or assigned to that area.
- (3) Before making a probation order, the court shall explain to the offender in ordinary language—
- (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 3 below);



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- (b) the consequences which may follow under Schedule 2 to the Criminal Justice Act 1991 if he fails to comply with any of the requirements of the order; and
    - (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,and the court shall not make the order unless he expresses his willingness to comply with its requirements.
  - (4) The court by which a probation order is made shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—
    - (a) to the offender;
    - (b) to the probation officer responsible for the offender’s supervision; and
    - (c) to the person in charge of any institution in which the offender is required by the order to reside.
  - (5) The court by which such an order is made shall also, except where it itself acts for the petty sessions area specified in the order, send to the clerk to the justices for that area—
    - (a) a copy of the order; and
    - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
  - (6) An offender in respect of whom a probation order is made shall keep in touch with the probation officer responsible for his supervision in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.
  - (7) The Secretary of State may by order direct that subsection (1) above shall be amended by substituting, for the minimum or maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.
  - (8) An order under subsection (7) above may make in paragraph 13(2)(a)(i) of Schedule 2 to the Criminal Justice Act 1991 any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.”
- (2) Section 13 of that Act (effect of probation and discharge) shall cease to have effect so far as relating to offenders placed on probation.
- (3) For the purpose of rearranging Part I of that Act in consequence of the amendments made by subsections (1) and (2) above, that Part shall have effect subject to the following amendments, namely—
- (a) after section 1 there shall be inserted as sections 1A to 1C the provisions set out in Part I of Schedule 1 to this Act;
  - (b) sections 7 and 9 (which are re-enacted with minor modifications by sections 1A and 1B) shall cease to have effect;
  - (c) sections 8 and 13 (which, so far as relating to discharged offenders, are re-enacted with minor modifications by sections 1B and 1C) shall cease to have effect so far as so relating; and
  - (d) immediately before section 11 there shall be inserted the following cross heading—

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*“ Probation and discharge ”.*

**Commencement Information**

**I8** S. 8 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**9 Additional requirements which may be included in such orders.**

(1) For sections 3 to 4B of the 1973 Act there shall be substituted the following section—

**“3 Additional requirements which may be included in such orders.**

(1) Subject to subsection (2) below, a probation order may in addition require the offender to comply during the whole or any part of the probation period with such requirements as the court, having regard to the circumstances of the case, considers desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.

(2) Without prejudice to the power of the court under section 35 of this Act to make a compensation order, the payment of sums by way of damages for injury or compensation for loss shall not be included among the additional requirements of a probation order.

(3) Without prejudice to the generality of subsection (1) above, the additional requirements which may be included in a probation order shall include the requirements which are authorised by Schedule 1A to this Act.”

(2) After Schedule 1 to that Act there shall be inserted as Schedule 1A the provisions set out in Part II of Schedule 1 to this Act.

**Commencement Information**

**I9** S. 9 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**10 Community service orders.**

(1) In subsection (1) of section 14 of the 1973 Act (community service orders in respect of offenders), the words “instead of dealing with him in any other way” shall cease to have effect.

(2) In subsection (1A) of that section, for paragraph (b) there shall be substituted the following paragraph—

“(b) not more than 240.”

(3) For subsections (2) and (2A) of that section there shall be substituted the following subsections—

“(2) A court shall not make a community service order in respect of any offender unless the offender consents and the court, after hearing (if the court thinks

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it necessary) a probation officer or social worker of a local authority social services department, is satisfied that the offender is a suitable person to perform work under such an order.

(2A) Subject to paragraphs 3 and 4 of Schedule 3 to the Criminal Justice Act 1991 (reciprocal enforcement of certain orders) a court shall not make a community service order in respect of an offender unless it is satisfied that provision for him to perform work under such an order can be made under the arrangements for persons to perform work under such orders which exist in the petty sessions area in which he resides or will reside.”

(4) In section 15(1) of that Act (obligations of persons subject to community service orders), for paragraph (a) there shall be substituted the following paragraph—

“(a) keep in touch with the relevant officer in accordance with such instructions as he may from time to time be given by that officer and notify him of any change of address;”.

#### Commencement Information

**I10** S. 10 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 11 Orders combining probation and community service.

(1) Where a court by or before which a person of or over the age of sixteen years is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is of the opinion mentioned in subsection (2) below, the court may make a combination order, that is to say, an order requiring him both—

- (a) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and
- (b) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 40 nor more than 100.

(2) The opinion referred to in subsection (1) above is that the making of a combination order is desirable in the interests of—

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from him or preventing the commission by him of further offences.

(3) Subject to subsection (1) above, Part I of the 1973 Act shall apply in relation to combination orders—

- (a) in so far as they impose such a requirement as is mentioned in paragraph (a) of that subsection, as if they were probation orders; and
- (b) in so far as they impose such a requirement as is mentioned in paragraph (b) of that subsection, as if they were community service orders.

#### Commencement Information

**I11** S. 11 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

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## *Curfew orders*

### **12 Curfew orders.**

- (1) Where a person of or over the age of sixteen years is convicted of an offence (not being an offence for which the sentence is fixed by law), the court by or before which he is convicted may make a curfew order, that is to say, an order requiring him to remain, for periods specified in the order, at a place so specified.
- (2) A curfew order may specify different places or different periods for different days, but shall not specify—
  - (a) periods which fall outside the period of six months beginning with the day on which it is made; or
  - (b) periods which amount to less than 2 hours or more than 12 hours in any one day.
- (3) The requirements in a curfew order 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 to which he may be subject; and
  - (b) any interference with the times, if any, at which he normally works or attends school or other educational establishment.
- (4) A curfew order shall include provision for making a person responsible for monitoring the offender’s whereabouts during the curfew periods specified in the order; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.
- [<sup>F18</sup>(4A) A court shall not make a curfew order unless the court has been notified by the Secretary of State that arrangements for monitoring the offender’s whereabouts are available in the area in which the place proposed to be specified in the order is situated and the notice has not been withdrawn.]
- (5) Before making a curfew order, the court shall explain to the offender in ordinary language—
  - (a) the effect of the order (including any additional requirements proposed to be included in the order in accordance with section 13 below);
  - (b) the consequences which may follow under Schedule 2 to this Act if he fails to comply with any of the requirements of the order; and
  - (c) that the court has under that Schedule power to review the order on the application either of the offender or of the supervising officer,
 and the court shall not make the order unless he expresses his willingness to comply with its requirements.
- (6) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).
- (7) The Secretary of State may by order direct—
  - (a) that subsection (2) above shall have effect with the substitution, for any period there specified, of such period as may be specified in the order; or
  - (b) that subsection (3) above shall have effect with such additional restrictions as may be so specified.

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**Textual Amendments**

**F18** S. 12(4A) inserted (9.1.1995) by 1994 c. 33, s. 168(1), Sch. 9 para.41; S.I. 1994/3192, art. 2, Sch.

**13 Electronic monitoring of curfew orders.**

- (1) Subject to subsection (2) below, a curfew order may in addition include requirements for securing the electronic monitoring of the offender’s whereabouts during the curfew periods specified in the order.
- (2) A court shall not make a curfew order which includes such requirements unless the court—
  - (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the area in which the place proposed to be specified in the order is situated; and
  - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) Electronic monitoring arrangements made by the Secretary of State under this section may include entering into contracts with other persons for the electronic monitoring by them of offenders’ whereabouts.

*Orders: supplemental*

**14 Enforcement etc. of community orders.**

- (1) Schedule 2 to this Act (which makes provision for dealing with failures to comply with the requirements of certain community orders, for amending such orders and for revoking them with or without the substitution of other sentences) shall have effect.
- (2) Sections 5, 6, 16 and 17 of, and Schedule 1 to, the 1973 Act (which are superseded by Schedule 2 to this Act) shall cease to have effect.

**Commencement Information**

**I12** S. 14 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**15 Regulation of community orders.**

- (1) The Secretary of State may make rules for regulating—
  - <sup>F19</sup>(a) .....
  - <sup>F19</sup>(b) .....
  - (c) the monitoring of the whereabouts of persons who are subject to curfew orders (including electronic monitoring in cases where arrangements for such monitoring are available); and
  - (d) without prejudice to the generality of [<sup>F20</sup>paragraph (c)] above, the functions of the responsible officers of such persons as are mentioned in [<sup>F20</sup>that paragraph].
- <sup>F19</sup>(2) .....

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- (3) In this Part “responsible officer” means—
- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for his supervision;
  - (b) in relation to an offender who is subject to a community service order, the relevant officer within the meaning of section 14(4) of the 1973 Act; and
  - (c) in relation to an offender who is subject to a curfew order, the person responsible for monitoring his whereabouts during the curfew periods specified in the order.

<sup>F19</sup>(4) .....

**Textual Amendments**

**F19** S. 15(1)(a)(b)(2)(4) repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), **Sch.4**

**F20** Words in s. 15(1)(d) substituted (5.2.1994) by 1993 c. 47, ss. 32, 33(2), **Sch. 3 para.10**

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**Commencement Information**

**I13** S. 15 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2.**

**16 Reciprocal enforcement of certain orders.**

- Schedule 3 to this Act shall have effect for making provision for and in connection with—
- (a) the making and amendment in England and Wales of community orders relating to persons residing in Scotland or Northern Ireland; and
  - (b) the making and amendment in Scotland or Northern Ireland of corresponding orders relating to persons residing in England and Wales.

**Commencement Information**

**I14** S. 16 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2.**

*Financial penalties*

**17 Increase of certain maxima.**

- (1) In section 37 (standard scale of fines) of the <sup>M5</sup>Criminal Justice Act 1982 (“the 1982 Act”) and section 289G of the <sup>M6</sup>Criminal Procedure (Scotland) Act 1975 (corresponding Scottish provision), for subsection (2) there shall be substituted the following subsection—

“(2) The standard scale is shown below—

<i>Level on the scale</i>	<i>Amount of fine</i>
1	£200
2	£500
3	£1,000

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4	£2,500
5	£5,000”.

(2) Part I of the <sup>M7</sup>Magistrates’ Courts Act 1980 (“the 1980 Act”) shall be amended as follows—

- (a) in section 24(3) and (4) (maximum fine on summary conviction of young person for indictable offence) and section 36(1) and (2) (maximum fine on conviction of young person by magistrates’ court), for “£400” there shall be substituted “£1,000”;
- (b) in section 24(4) (maximum fine on summary conviction of child for indictable offence) and section 36(2) (maximum fine on conviction of child by magistrates’ court), for “£100” there shall be substituted “£250”; and
- (c) in section 32(9) (maximum fine on summary conviction of offence triable either way), for “c£2,000” there shall be substituted “£5,000”;

and in section 289B(6) of the Criminal Procedure (Scotland) Act 1975 (interpretation), in the definition of “prescribed sum”, for “£2,000” there shall be substituted “£5,000”.

(3) Schedule 4 to this Act shall have effect as follows—

- (a) in each of the provisions mentioned in column 1 of Part I (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the amount specified in column 4;
- (b) in each of the provisions mentioned in column 1 of Part II (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted the level on the standard scale specified in column 4;
- (c) in each of the provisions mentioned in column 1 of Part III (the general description of which is given in column 2), for the amount specified in column 3 there shall be substituted a reference to the statutory maximum;
- (d) the provisions set out in Part IV shall be substituted for Schedule 6A to the 1980 Act (fines that may be altered under section 143); and
- (e) <sup>F21</sup> .....

**Extent Information**

**E1** S. 17 extends to England and Wales; s. 17(1)(2) also extend to Scotland see s. 102(4)(5)

**Textual Amendments**

**F21** S. 17(3)(e) repealed (20.9.1993) by 1993 c. 36, ss. 65(3), 79(14), Sch. 3 para. 1(1), **Sch. 6 Pt.I**; S.I. 1993/1968, art. 2(2), **Sch.2**, Appendix.

**Modifications etc. (not altering text)**

**C8** S. 17(1)(2) restricted (S.) (1.9.1992) by S.I. 1992/333, **art. 4A** (as inserted by S.I. 1992/2118, **art. 4**)

**Commencement Information**

**I15** S. 17 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**

**Marginal Citations**

- M5** 1982 c. 48.
- M6** 1975 c. 21.
- M7** 1980 c. 43.

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**[<sup>F22</sup>18 Fixing of fines.**

[ Before fixing the amount of any fine to be imposed on an offender who is an individual,  
<sup>F23</sup>(1) a court shall inquire into his financial circumstances.]

(2) The amount of any fine fixed by a court shall be such as, in the opinion of the court, reflects the seriousness of the offence.

(3) In fixing the amount of any fine [<sup>F24</sup>to be imposed on an offender (whether an individual or other person)], a court shall take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.

(4) Where—

- (a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates’ Courts Act 1980 (non-appearance of accused),
- (b) an offender—
  - (i) has failed to comply with an order under section 20(1) below; or
  - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances, or
- (c) the parent or guardian of an offender who is a child or young person—
  - (i) has failed to comply with an order under section 20(1B) below; or
  - (ii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

(5) Subsection (3) above applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.]

**Textual Amendments**

**F22** S. 18 substituted (20.9.1993) by 1993 c. 36, s. 65(1)(4); S.I. 1993/1968, art. 2(2), Sch. 2

**F23** S. 18(1) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 42(2)(a); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A

**F24** Words in s. 18(3) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 42(2)(b); S.I. 1995/127, art. 2(1), Sch. 1 Appendix A

**<sup>F25</sup>19 .....**

**Textual Amendments**

**F25** S. 19 repealed (20.9.1993) by 1993 c. 36, ss. 65(2)(4), 79(14), Sch. 6 Pt.1; S.I. 1993/1968, art. 2(2), Sch.2, Appendix.

**20 Statements as to offenders’ means.**

[<sup>F26</sup>(1) Where [<sup>F27</sup>an individual] has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.



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- (1A) Where a magistrates' court has been notified in accordance with [F28 section 12(4)] of the M8 Magistrates' Courts Act 1980 that [F27 an individual] desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.
- (1B) Before exercising its powers under section 55 of the M9 Children and Young Persons Act 1933 against the parent or guardian of [F27 any individual] who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.
- (1C) In this section “a financial circumstances order” means, in relation to [F27 any individual], an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his financial circumstances as the court may require.]
- (2) [F27 an individual] who without reasonable excuse fails to comply with [F29 a financial circumstances order] shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) If [F27 an individual] in furnishing any statement in pursuance of [F29 a financial circumstances order]—
- (a) makes a statement which he knows to be false in a material particular;
  - (b) recklessly furnishes a statement which is false in a material particular; or
  - (c) knowingly fails to disclose any material fact,
- he shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.
- (4) Proceedings in respect of an offence under subsection (3) above may, notwithstanding anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.
- F30 (5) .....

#### Textual Amendments

- F26** S. 20(1)(1A)(1B)(1C) substituted (20.9.1993) for s. 20(1) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 2(1)**; S.I. 1993/1968, art. 2(2), **Sch. 2**
- F27** Words in s. 20(1)(1A)(1B)(1C)(2) and (3) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 42(3)(5)**; S.I. 1995/127, art. 2(1), Sch. Appendix A
- F28** Words in s. 20(1A) substituted (4.9.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para.65**; S.I. 1995/1957, **art.4**
- F29** Words in s. 20(2)(3) substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 2(2)**; S.I. 1993/1968, art. 2(2), **Sch. 2**
- F30** S. 20(5) repealed (20.9.1993) by 1993 c 36, ss. 65(3)(4), 79(14), Sch. 3 para. 2(3), Sch. 6 Pt. I; S.I. 1993/1968, art. 2(2), **Sch. 2**, Appendix.

#### Commencement Information

- I16** S. 20 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M8** 1980 c. 43.

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**M9** 1933 c. 12.

[<sup>F31</sup>**20A False statements as to financial circumstances.**

- (1) A person who is charged with an offence who, in furnishing a statement of his financial circumstances in response to an official request—
  - (a) makes a statement which he knows to be false in a material particular;
  - (b) recklessly furnishes a statement which is false in a material particular; or
  - (c) knowingly fails to disclose any material fact,
 shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 4 on the standard scale or both.
- (2) For the purposes of this section an official request is a request which—
  - (a) is made by the clerk of the magistrates' court or the appropriate officer of the Crown Court, as the case may be; and
  - (b) is expressed to be made for informing the court, in the event of his being convicted, of his financial circumstances for the purpose of determining the amount of any fine the court may impose.
- (3) Proceedings in respect of an offence under this section may, notwithstanding anything in section 127(1) of the 1980 Act (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.]

**Textual Amendments**

**F31** S. 20A inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para.43**; S.I. 1995/127, art. 2(1), **Sch. 1**Appendix A

*Financial penalties: supplemental*

[<sup>F32</sup>**21 Remission of fines.**

- (1) This section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 18(4) above.
- (2) If, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—
  - (a) have fixed a smaller amount; or
  - (b) not have fined him,
 it may remit the whole or any part of the fine.
- (3) Where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 82(5) of the <sup>M10</sup>Magistrates' Courts Act 1980 (issue of warrant of commitment for default) or section 31 of the <sup>M11</sup>Powers of Criminal Courts Act 1973 (powers of Crown Court in relation to fines), it shall reduce the term by the corresponding proportion.
- (4) In calculating any reduction required by subsection (3) above, any fraction of a day shall be ignored.]

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**Textual Amendments**

**F32** S. 21 substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para.3**; S.I. 1993/1968, art. 2(2), **Sch.2**

**Marginal Citations**

**M10** 1980 c. 43.

**M11** 1973 c. 62.

<sup>F33</sup>**22** .....

**Textual Amendments**

**F33** S. 22 repealed (20.9.1993) by 1993 c. 36, ss. 65(3)(4), 79(14), Sch. 3 para. 4, **Sch. 6 Pt.I**; S.I. 1993/1968, art. 2(2), **Sch.2**, Appendix.

**23 Default in other cases.**

(1) In the Tables in section 31(3A) of the 1973 Act and paragraph 1 of Schedule 4 to the 1980 Act (maximum periods of imprisonment for default in paying fines etc.), for the entries relating to amounts not exceeding £5,000 there shall be substituted the following entries—

“An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months”.

(2) For the Table in section 407(1A) of the <sup>M12</sup>Criminal Procedure (Scotland) Act 1975 (maximum period of imprisonment for failure to pay fine or find caution) there shall be substituted the following Table—

<i>“Amount of fine or caution</i>	<i>Maximum period of imprisonment</i>
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days

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An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years.”

- (3) In Schedule 16 (repeals) to the 1988 Act, the entry relating to subsection (8) of section 41 of the <sup>M13</sup>Administration of Justice Act 1970 shall cease to have effect; and that subsection (discretion of Crown Court to specify extended period of imprisonment in default of payment of compensation) shall have effect as if that entry had not been enacted.

#### Extent Information

**E2** S. 23 extends to England and Wales only except as mentioned in s. 102(4) - (6).

#### Commencement Information

**I17** S. 23 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### Marginal Citations

**M12** 1975 c. 21.

**M13** 1970 c. 31.

## 24 Recovery of fines etc. by deductions from income support.

- (1) The Secretary of State may by regulations provide that where a fine has been imposed on an offender by a magistrates' court, or a sum is required to be paid by a compensation order which has been made against an offender by such a court, and (in either case) the offender is entitled to income support—
- (a) the court may apply to the Secretary of State asking him to deduct sums from any amounts payable to the offender by way of income support, in order to secure the payment of any sum which is or forms part of the fine or compensation; and
  - (b) the Secretary of State may deduct sums from any such amounts and pay them to the court towards satisfaction of any such sum.
- (2) The regulations may include—

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- (a) provision that, before making an application, the court shall make an enquiry as to the offender's means;
  - (b) provision allowing or requiring adjudication as regards an application, and provision as to appeals and reviews;
  - (c) provision as to the circumstances and manner in which and the times at which sums are to be deducted and paid;
  - (d) provision as to the calculation of such sums (which may include provision to secure that amounts payable to the offender by way of income support do not fall below prescribed figures);
  - (e) provision as to the circumstances in which the Secretary of State is to cease making deductions;
  - (f) provision requiring the Secretary of State to notify the offender, in a prescribed manner and at any prescribed time, of the total amount of sums deducted up to the time of notification; and
  - (g) provision that, where the whole amount to which the application relates has been paid, the court shall give notice of that fact to the Secretary of State.
- (3) In subsection (1) above—
- (a) the reference to a fine having been imposed by a magistrates' court includes a reference to a fine being treated, by virtue of section 32 of the 1973 Act, as having been so imposed; and
  - (b) the reference to a sum being required to be paid by a compensation order which has been made by a magistrates' court includes a reference to a sum which is required to be paid by such an order being treated, by virtue of section 41 of the <sup>M14</sup>Administration of Justice Act 1970, as having been adjudged to be paid on conviction by such a court.
  - <sup>F34</sup>(c) the reference in paragraph (a) to "the court" includes a reference to a court to which the function in that paragraph has been transferred by virtue of a transfer of fine order under section 89(1) or (3) or 90(1)(a) of the 1980 Act (power of magistrates' court to make transfer of fine order) or under section 403(1)(a) or (b) of the <sup>M15</sup>Criminal Procedure (Scotland) Act 1975 (analogous provision as respects Scotland) and a reference to a court to which that function has been remitted by virtue of section 196(2) of the said Act of 1975 (enforcement of fine imposed by High Court of Judiciary).]
- (4) In this section—
- "fine" includes—
- (a) a penalty imposed under [<sup>F35</sup>section 29 or 37 of the Vehicle Excise and Registration Act 1994] or section 102(3)(aa) of the <sup>M16</sup>Customs and Excise Management Act 1979 (penalties imposed for certain offences in relation to vehicle excise licences);
  - (b) an amount ordered to be paid, in addition to any penalty so imposed, under [<sup>F35</sup>section 30, 36 or 38 of the Vehicle Excise and Registration Act 1994] (liability to additional duty);
  - (c) an amount ordered to be paid by way of costs which is, by virtue of section 41 of the <sup>M17</sup>Administration of Justice Act 1970, treated as having been adjudged to be paid on a conviction by a magistrates' court;
- "income support" means income support within the meaning of the <sup>M18</sup>Social Security Act 1986, either alone or together with any unemployment, [<sup>F36</sup>or incapacity] benefit, retirement pension or severe disablement allowance which is paid by means of the same instrument of payment;

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“prescribed” means prescribed by regulations made by the Secretary of State.

- (5) In the application of this section to Scotland—
- (a) references in subsections (1) and (2) above to a magistrates’ court shall be construed as references to a court; and
  - (b) in subsection (3) above, for paragraphs (a) and (b) there shall be substituted the following paragraphs—
    - “(a) the reference to a fine having been imposed by a court includes a reference to a fine being treated, by virtue of section 196(2) of the Criminal Procedure (Scotland) Act 1975, as having been so imposed; and
    - (b) the reference to a compensation order having been made by a court includes a reference to such an order being treated, by virtue of section 66 of the Criminal Justice (Scotland) Act 1980, as having been so made.”

#### Textual Amendments

- F34** S. 24(3)(c) inserted (3.2.1995) by 1994 c. 33, s. 47(3); S.I. 1995/127, art. 2(1), **Sch. 1**  
**F35** Words in s. 24(4) substituted (1.9.1994) by 1994 c. 22, ss. 63, 66(1), **Sch. 3 para. 30** (with s. 57(4))  
**F36** Words in definition in s. 24(4) substituted (13.4.1995) by 1994 c. 18, s. 11(1), **Sch. 1 Pt. II para.55**; S.I. 1994/2926, art. 2, **Sch. Pt.IV**

#### Commencement Information

- I18** S. 24 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M14** 1970 c. 31.  
**M15** 1975 c. 21.  
**M16** 1979 c. 2.  
**M17** 1970 c. 31.  
**M18** 1986 c. 50.

### *Miscellaneous*

## 25 Committals for sentence.

- (1) For section 38 of the 1980 Act there shall be substituted the following section—

**“38 Committal for sentence on summary trial of offence triable either way.**

- (1) This section applies where on the summary trial of an offence triable either way (not being an offence as regards which this section is excluded by section 33 above) a person who is not less than 18 years old is convicted of the offence.
- (2) If the court is of opinion—

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- (a) that the offence or the combination of the offence and other offences associated with it was so serious that greater punishment should be inflicted for the offence than the court has power to impose; or
- (b) in the case of a violent or sexual offence committed by a person who is not less than 21 years old, that a sentence of imprisonment for a term longer than the court has power to impose is necessary to protect the public from serious harm from him,

the court may, in accordance with section 56 of the Criminal Justice Act 1967, commit the offender in custody or on bail to the Crown Court for sentence in accordance with the provisions of section 42 of the Powers of Criminal Courts Act 1973.

- (3) Paragraphs (a) and (b) of subsection (2) above shall be construed as if they were contained in Part I of the Criminal Justice Act 1991.
- (4) The preceding provisions of this section shall apply in relation to a corporation as if—
  - (a) the corporation were an individual who is not less than 18 years old; and
  - (b) in subsection (2) above, paragraph (b) and the words “in custody or on bail” were omitted.”

(2) In Schedule 3 to the 1980 Act, paragraph 5 (provisions relating to committal to Crown Court for sentence not to apply to a corporation) shall cease to have effect.

**Commencement Information**

**I19** S. 25 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**26 Alteration of certain penalties.**

(1) In section 7 of the <sup>M19</sup>Theft Act 1968 (theft), for the words “ten years” there shall be substituted the words “seven years”.

(2) For subsections (3) and (4) of section 9 of that Act (burglary) there shall be substituted the following subsections—

“(3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding—

- (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
- (b) in any other case, ten years.

(4) References in subsections (1) and (2) above to a building, and the reference in subsection (3) above to a building which is a dwelling, shall apply also to an inhabited vehicle or vessel, and shall apply to any such vehicle or vessel at times when the person having a habitation in it is not there as well as at times when he is.”

<sup>F37</sup>(3) .....

(4) In section 51(4) of the <sup>M20</sup>Criminal Law Act 1977 (penalties for bomb hoaxes)—

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- (a) in paragraph (a), for the words “three months” there shall be substituted the words “six months”; and
  - (b) in paragraph (b), for the words “five years” there shall be substituted the words “seven years”.
- (5) The power saved by subsection (1) of section 70 of the 1982 Act (vagrancy offences) shall not include, in the case of an offence mentioned in paragraph (b)(i) of that subsection (sleeping rough), power to impose a fine which exceeds level 1 on the standard scale.

#### Extent Information

**E3** S. 26 extends to England and Wales; s. 26(3)(4) also extend to Scotland see s. 102(4)(5)

#### Textual Amendments

**F37** S. 26(3) repealed (16.10.1992) by Protection of Badgers Act 1992 (c. 51), s. 15(2)(3), Sch.

#### Commencement Information

**I20** S. 26 wholly in force; s. 26(3) in force (E.W.) at 25.10.1991, s. 26(4)(5) in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(2)(3)(4), Schs. 2, 3; s. 26(3) in force (S.) at 9.12.1991 see s. 102(2)(3) and S.I. 1991/2706, art. 2(1)(2); s. 26 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2

#### Marginal Citations

**M19** 1968 c. 60.  
**M20** 1977 c. 45.

## 27 Treatment of offenders under 1983 Act.

(1) After section 39 of the 1983 Act there shall be inserted the following section—

### “39A Information to facilitate guardianship orders.

Where a court is minded to make a guardianship order in respect of any offender, it may request the local social services authority for the area in which the offender resides or last resided, or any other local social services authority that appears to the court to be appropriate—

- (a) to inform the court whether it or any other person approved by it is willing to receive the offender into guardianship; and
- (b) if so, to give such information as it reasonably can about how it or the other person could be expected to exercise in relation to the offender the powers conferred by section 40(2) below;

and that authority shall comply with any such request.”

(2) After section 54 of that Act there shall be inserted the following section—

### “54A Reduction of period for making hospital orders.

- (1) The Secretary of State may by order reduce the length of the periods mentioned in sections 37(4) and (5) and 38(4) above.



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- (2) An order under subsection (1) above may make such consequential amendments of sections 40(1) and 44(3) above as appear to the Secretary of State to be necessary or expedient.”
- (3) In section 143(2) of that Act (general provisions as to regulations, orders and rules), after the words “this Act” there shall be inserted the words “or any order made under section 54A above”.

**Commencement Information**

**I21** S. 27 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

*Supplemental*

**28 Savings for mitigation and mentally disordered offenders.**

- (1) Nothing in this Part shall prevent a court from mitigating an offender’s sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation of sentence.
- (2) Without prejudice to the generality of subsection (1) above, nothing in this Part shall prevent a court—
  - (a) from mitigating any penalty included in an offender’s sentence by taking into account any other penalty included in that sentence; or
  - (b) in a case of an offender who is convicted of one or more other offences, from mitigating his sentence by applying any rule of law as to the totality of sentences.

<sup>F38</sup>(3) . . . . .

- (4) Nothing in this Part shall be taken—
  - (a) as requiring a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
  - (b) as restricting any power (whether under the 1983 Act or otherwise) which enables a court to deal with such an offender in the manner it considers to be most appropriate in all the circumstances.

**Textual Amendments**

**F38** S.28(3) repealed (20.9.1993) by 1993 c. 36, s. 79(14), Sch. 6 Pt.I; S.I. 1993/1968, art. 2(2), Sch.2, Appendix.

**Commencement Information**

**I22** S. 28 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

<sup>F39</sup>**29 Effect of previous convictions and of offending while on bail.**

- (1) In considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences.

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- (2) In considering the seriousness of any offence committed while the offender was on bail, the court shall treat the fact that it was committed in those circumstances as an aggravating factor.
- (3) A probation order or conditional discharge order made before 1st October 1992 (which, by virtue of section 2 or 7 of the <sup>M21</sup>Powers of Criminal Courts Act 1973, would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (4) A conviction in respect of which a probation order or [<sup>F40</sup>an order discharging the offender absolutely or conditionally] was made before that date (which, by virtue of section 13 of that Act, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.]
- [<sup>F41</sup>(5) A conditional discharge order made after 30th September 1992 (which, by virtue of section 1A of the Powers of Criminal Courts Act 1973, would otherwise not be a sentence for the purposes of this section) is to be treated as a sentence for those purposes.
- (6) A conviction in respect of which an order discharging the offender absolutely or conditionally was made after 30th September 1992 (which, by virtue of section 1C of the Powers of Criminal Courts Act 1973, would otherwise not be a conviction for those purposes) is to be treated as a conviction for those purposes.]

#### Textual Amendments

- F39** S. 29 substituted (16.8.1993) by 1993 c. 36, s. 66(6); S.I. 1993/1968, art. 2(1), Sch. 1
- F40** Words in s. 29(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 44(2)(4); S.I. 1995/127, art. 2(1), Sch. 1Appendix A
- F41** S 29(5)(6) inserted (3.2.1995) by 1994 c. 33, s. 168(1), Sch. 9 para. 44(3)(4); S.I. 1995/127, art. 2(1), Sch. 1Appendix A

#### Marginal Citations

- M21** 1973 c. 62.

### 30 Rules, regulations and orders.

- (1) Any power of the Secretary of State <sup>F42</sup>. . . to make rules, regulations or orders under this Part—
- shall be exercisable by statutory instrument; and
  - shall include power to make different provision for different cases or classes of case.
- (2) A statutory instrument containing any rules, regulations or order under this Part (other than an order under section 12(4) above) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F42** Words in s. 30(1) repealed (20.9.1993) by 1993 c. 36, s. 79(14), Sch. 6 Pt.I; S.I. 1993/1968, art. 2(2), Sch.2, Appendix.

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### Commencement Information

**I23** S. 30 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 31 Interpretation of Part I.

(1) In this Part—

“attendance centre order” means an order under section 17 of the 1982 Act;

“combination order” means an order under section 11 above;

“community order” has the meaning given by section 6(4) above;

“community sentence” has the meaning given by section 6(1) above;

“curfew order” means an order under section 12 above;

“custodial sentence” means—

(a) in relation to an offender of or over the age of twenty-one years, a sentence of imprisonment; and

(b) in relation to an offender under that age, a sentence of detention in a young offender institution or under section 53 of the <sup>M22</sup>Children and Young Persons Act 1933 (“the 1933 Act”), or a sentence of custody for life under section 8(2) of the 1982 Act;

“mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the 1983 Act;

“pre-sentence report” has the meaning given by section 3(5) above;

“responsible officer” has the meaning given by section 15(3) above;

“sentence of imprisonment” does not include a committal or attachment for contempt of court;

[<sup>F43</sup>“sexual offence” means any of the following—

(a) an offence under the <sup>M23</sup>Sexual Offences Act 1956, other than an offence under section 30, 31 or 33 to 36 of that Act;

(b) an offence under section 128 of the <sup>M24</sup>Mental Health Act 1959;

(c) an offence under the <sup>M25</sup>Indecency with Children Act 1960;

(d) an offence under section 9 of the <sup>M26</sup>Theft Act 1968 of burglary with intent to commit rape;

(e) an offence under section 54 of the <sup>M27</sup>Criminal Law Act 1977;

(f) an offence under the <sup>M28</sup>Protection of Children Act 1978;

(g) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (a) to (f) above;

(h) an offence under section 1 of the <sup>M29</sup>Criminal Attempts Act 1981 of attempting to commit any of those offences;

(i) an offence of inciting another to commit any of those offences;]

“supervision order” means a supervision order under the 1969 Act;

“violent offence” means an offence which leads, or is intended or likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).

(2) For the purposes of this Part, an offence is associated with another if—

(a) the offender is convicted of it in the proceedings in which he is convicted of the other offence, or (although convicted of it in earlier proceedings) is sentenced for it at the same time as he is sentenced for that offence; or

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- (b) the offender admits the commission of it in the proceedings in which he is sentenced for the other offence and requests the court to take it into consideration in sentencing him for that offence.
- (3) In this Part any reference, in relation to an offender convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.

#### Textual Amendments

**F43** Definition of "sexual offence" substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 45(1)(2)**; S.I. 1995/127, art. 2(1), **Sch. 1A** Appendix A

#### Commencement Information

**I24** S. 31 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 2**.

#### Marginal Citations

**M22** 1933 c. 12.  
**M23** 1956 c. 69.  
**M24** 1959 c. 72.  
**M25** 1960 c. 33.  
**M26** 1968 c. 60.  
**M27** 1977 c. 45.  
**M28** 1978 c. 37.  
**M29** 1981 c. 47.

## PART II

### EARLY RELEASE OF PRISONERS

#### Modifications etc. (not altering text)

**C9** Pt. II (ss. 32-51) applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(4), **9(5)**, Sch. 5 paras. 9(1)(c)(2)(c), 10(1)(d)(2)(c); S.I. 1997/2200, **art. 2(1)**.  
Pt. II (ss. 32-51) modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para. 2(3)** (by 1998 c. 37, s. 120(2), **Sch. 10** in the said Sch. 5, paras. 1-4 are repealed (30.9.1998); S.I. 1998/2327, **art. 2(1)(aa)(3)(x)**).  
Pt. II (ss. 32-51) applied (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para. 2(6)** (by 1998 c. 37, s. 120(2), **Sch. 10** in the said Sch. 5, paras. 1-4 are repealed (30.9.1998); S.I. 1998/2327, **art. 2(1)(aa)(3)(x)**).  
Pt. II (ss. 32-51) excluded (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), Sch. 5 paras. 2(7), **3(6)** (by 1998 c. 37, s. 120(2), **Sch. 10** in the said Sch. 5, paras. 1-4 are repealed (30.9.1998); S.I. 1998/2327, **art. 2(1)(aa)(3)(x)**).  
Pt. II (ss. 32-51) modified (1.4.2000) by 1998 c. 37, **s. 79(3)(4)**; S.I. 1999/3426, **art. 3** (subject to art. 4 of the said S.I.)  
Pt. II (ss. 32-51) applied (30.9.1998) by 1998 c. 37, **s. 102**; S.I. 1998/2327, **art. 2(1)(v)**.  
Pt. II (ss. 32-51) modified (25.8.2000) by 2000 c. 6, **ss. 116(6)(a)**, 168  
Pt. II (ss. 32-51) excluded (1.9.2001) by 2001 c. 17, s. 42, **Sch. 7 para. 3(1)** (with s. 78); S.I. 2001/2161, **art. 2**

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#### Commencement Information

**I25** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2** (as repealed (30.9.1998) by 1998 c. 37, s. 120(2), **Sch. 10**; S.I. 1998/2327, art. 2(1)(aa)(3)(x)).

### *Preliminary*

## **32 The Parole Board.**

- (1) There shall continue to be a body to be known as the Parole Board (“the Board”) which shall discharge the functions conferred on it by this Part.
- (2) It shall be the duty of the Board to advise the Secretary of State with respect to any matter referred to it by him which is connected with the early release or recall of prisoners.
- (3) The Board shall deal with cases as respects which it makes recommendations under this Part on consideration of—
  - (a) any documents given to it by the Secretary of State; and
  - (b) any other oral or written information obtained by it,and if in any particular case the Board thinks it necessary to interview the person to whom the case relates before reaching a decision, the Board may authorise one of its members to interview him and shall consider the report of the interview made by that member.
- (4) The Board shall deal with cases as respects which it gives directions under this Part on consideration of all such evidence as may be adduced before it.
- (5) Without prejudice to subsections (3) and (4) above, the Secretary of State may make rules with respect to the proceedings of the Board, including provision authorising cases to be dealt with by a prescribed number of its members or requiring cases to be dealt with at prescribed times.
- (6) The Secretary of State may also give to the Board directions as to the matters to be taken into account by it in discharging any functions under this Part; and in giving any such directions the Secretary of State shall in particular have regard to—
  - (a) the need to protect the public from serious harm from offenders; and
  - (b) the desirability of preventing the commission by them of further offences and of securing their rehabilitation.
- (7) Schedule 5 to this Act shall have effect with respect to the Board.

#### Commencement Information

**I26** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

### *New arrangements for early release*

## **33 Duty to release short-term and long-term prisoners.**

- (1) As soon as a short-term prisoner has served one-half of his sentence, it shall be the duty of the Secretary of State—

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- (a) to release him unconditionally if that sentence is for a term of less than twelve months; and
  - (b) to release him on licence if that sentence is for a term of twelve months or more.
- (2) As soon as a long-term prisoner has served two-thirds of his sentence, it shall be the duty of the Secretary of State to release him on licence.
- (3) As soon as a short-term or long-term prisoner who—
- (a) has been released on licence under subsection (1)(b) or (2) above or section 35 or 36(1) below; and
  - (b) has been recalled to prison under section 38(2) or 39(1) below,
- would (but for his release) have served three-quarters of his sentence, it shall be the duty of the Secretary of State to release him unconditionally.
- (4) Where a prisoner whose sentence is for a term of less than twelve months has been released on licence under section 36(1) below and recalled to prison under section 38(2) below, subsection (3) above shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half of that sentence.
- (5) In this Part—
- “long-term prisoner” means a person serving a sentence of imprisonment for a term of four years or more;
  - “short-term prisoner” means a person serving a sentence of imprisonment for a term of less than four years.

#### Modifications etc. (not altering text)

- C10** S. 33 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(2), 9(2), Sch. 5 paras. 9(1) (a), **10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.
- C11** S. 33(1)(b) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, **art. 2(1)**.  
S. 33(1)(b) amended (1.10.1997) by 1984 c. 47, **Sch. para. 2** as modified (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 3(1)(2)**; S.I. 1997/2200, **art. 2(1)**.
- C12** S. 33(2) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, **art. 2(1)**.  
S. 33(2) amended (1.10.1997) by 1984 c. 47, **Sch. para. 2** as modified (1.10.1997) by 1997 c. 43, s. 42, **Sch. 2 para. 3(1)(2)**; S.I. 1997/2200, **art. 2(1)**.

#### Commencement Information

- I27** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

VALID FROM 30/09/1998

#### <sup>F44F44</sup>**33** Duty to release prisoners: special cases.

- (1) As soon as a prisoner—
- (a) whose sentence is for a term of less than twelve months; and

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** Criminal Justice Act 1991 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(b) who has been released on licence under section 34A(3) or 36(1) below and recalled to prison under section 38A(1) or 39(1) or (2) below, would (but for his release) have served one-half of his sentence, it shall be the duty of the Secretary of State to release him unconditionally.

(2) As soon as a prisoner—

(a) whose sentence is for a term of twelve months or more; and

(b) who has been released on licence under section 34A(3) below and recalled to prison under section 38A(1) below,

would (but for his release) have served one-half of his sentence, it shall be the duty of the Secretary of State to release him on licence.

(3) In the case of a prisoner who—

(a) has been released on licence under this Part and recalled to prison under section 39(1) or (2) below; and

(b) has been subsequently released on licence under section 33(3) or (3A) above and recalled to prison under section 39(1) or (2) below,

section 33(3) above shall have effect as if for the words “three-quarters” there were substituted the words “the whole” and the words “on licence” were omitted.]

#### Textual Amendments

**F44** S. 33A inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para.81**; S.I. 1998/2327, **art.2(1)(y)(2)(y)**.

#### Modifications etc. (not altering text)

**C13** S. 33A modified (30.9.1998) by 1998 c. 37, s. 120(1), **Sch. 9 para. 12(4)(9)**; S.I. 1998/2327, **art.2(1)(z)**.

S. 33A modified by S.I. 1998/2327, **art. 5(3)(c)**.

### 34 Duty to release discretionary life prisoners.

(1) A life prisoner is a discretionary life prisoner for the purposes of this Part if—

(a) his sentence was imposed for a violent or sexual offence the sentence for which is not fixed by law; and

(b) the court by which he was sentenced for that offence ordered that this section should apply to him as soon as he had served a part of his sentence specified in the order.

(2) A part of a sentence so specified shall be such part as the court considers appropriate taking into account—

(a) the seriousness of the offence, or the combination of the offence and other offences associated with it; and

(b) the provisions of this section as compared with those of section 33(2) above and section 35(1) below.

(3) As soon as, in the case of a discretionary life prisoner—

(a) he has served the part of his sentence specified in the order (“the relevant part”); and

(b) the Board has directed his release under this section,

it shall be the duty of the Secretary of State to release him on licence.

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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- (4) The Board shall not give a direction under subsection (3) above with respect to a discretionary life prisoner unless—
- (a) the Secretary of State has referred the prisoner’s case to the Board; and
  - (b) the Board is satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined.
- (5) A discretionary life prisoner may require the Secretary of State to refer his case to the Board at any time—
- (a) after he has served the relevant part of his sentence; and
  - (b) where there has been a previous reference of his case to the Board, after the end of the period of two years beginning with the disposal of that reference; and
  - (c) where he is also serving a sentence of imprisonment for a term, after he has served one-half of that sentence;
- and in this subsection “previous reference” means a reference under subsection (4) above or section 39(4) below made after the prisoner had served the relevant part of his sentence.
- (6) In determining for the purpose of subsection (3) or (5) above whether a discretionary life prisoner has served the relevant part of his sentence,
- <sup>F45</sup>(a) account shall be taken of any corresponding relevant period; but
  - (b) no account shall be taken of any time during which the prisoner was unlawfully at large within the meaning of section 49 of the Prison Act 1952 (“the 1952 Act”).]
- <sup>F46</sup>(6A) In subsection (6)(a) above, “corresponding relevant period” means the period corresponding to the period by which a determinate sentence of imprisonment imposed on the offender would fall to be reduced under section 67 of the Criminal Justice Act 1967 (reduction of sentences to take account of police detention or remands in custody).]
- (7) In this Part “life prisoner” means a person serving one or more sentences of life imprisonment; but—
- (a) a person serving two or more such sentences shall not be treated as a discretionary life prisoner for the purposes of this Part unless the requirements of subsection (1) above are satisfied as respects each of those sentences; and
  - (b) subsections (3) and (5) above shall not apply in relation to such a person until after he has served the relevant part of each of those sentences.

#### Textual Amendments

**F45** S. 34(6)(a)(b) substituted (3.11.1994) by 1994 c. 33, s. 168(1), **Sch. 9 para. 46(1)(a)**.

**F46** S. 34(6A) inserted (3.11.1994) by 1994 c. 33, s. 168(1), **Sch. 9 para. 46(1)(b)**.

#### Modifications etc. (not altering text)

**C14** S. 34 modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch.5 para.4**.

Ss. 34-37 applied (*prosp.*) by 1997 c. 43, ss. 41, 56(1), 57(2), Sch. 1 Pt. II paras. 8, 9(2)(a), Sch. 5 paras. 9(2)(a), **10(2)(a)**.

**C15** S. 34(3)(5) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, art. 2(1).



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S. 34(3)(5) amended (*prosp.*) by 1984 c. 47, **Sch. para. 2** as modified (*prosp.*) by 1997 c. 43, ss. 42, 57(2), **Sch. 2 para. 3(1)(2)**.

#### Commencement Information

**I28** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

### [<sup>F47</sup>34A Power to release short-term prisoners on licence.

- (1) Subject to subsection (2) below, subsection (3) below applies where a short-term prisoner <sup>F48</sup> . . . is serving a sentence of imprisonment for a term of three months or more.
- (2) Subsection (3) below does not apply where—
  - (a) the sentence is an extended sentence within the meaning of [<sup>F49</sup>section 85 of the Powers of Criminal Courts (Sentencing) Act 2000];
  - (b) the sentence is for an offence under section 1 of the <sup>M30</sup>Prisoners (Return to Custody) Act 1995;
  - (c) the sentence was imposed under [<sup>F49</sup> paragraph [<sup>F50</sup>4(1C)(d) or 5(1C)(d)] of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000] in a case where the prisoner had failed to comply with a requirement of a curfew order;
  - (d) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the <sup>M31</sup>Mental Health Act 1983;
  - [<sup>F51</sup>(da) the prisoner is subject to the notification requirements of [<sup>F52</sup>Part 2 of the Sexual Offences Act 2003] ;]
  - (e) the prisoner is liable to removal from the United Kingdom for the purposes of section 46 below;
  - (f) the prisoner has been released on licence under this section at any time and has been recalled to prison under section 38A(1)(a) below;
  - (g) the prisoner has been released on licence under this section or section 36 below during the currency of the sentence, and has been recalled to prison under section 39(1) or (2) below;
  - (h) the prisoner has been returned to prison under [<sup>F49</sup> section 116 of the Powers of Criminal Courts (Sentencing) Act 2000]at any time; or
  - (j) the interval between—
    - (i) the date on which the prisoner will have served the requisite period for the term of the sentence; and
    - (ii) the date on which he will have served one-half of the sentence, is less than 14 days.
- (3) After the prisoner has served the requisite period for the term of his sentence, the Secretary of State may, subject to section 37A below, release him on licence.
- (4) In this section “the requisite period” means—
  - (a) for a term of three months or more but less than four months, a period of 30 days;
  - (b) for a term of four months or more but less than [<sup>F53</sup>eighteen months] , a period equal to one-quarter of the term;
  - (c) for a term of [<sup>F54</sup>eighteen months] or more, a period that is [<sup>F55</sup>135 days] less than one-half of the term.
- (5) The Secretary of State may by order made by statutory instrument—

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- (a) repeal the words “aged 18 or over” in subsection (1) above;
  - (b) amend the definition of “the requisite period” in subsection (4) above; and
  - (c) make such transitional provision as appears to him necessary or expedient in connection with the repeal or amendment.
- (6) No order shall be made under subsection (5) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

- F47** S. 34A inserted (28.01.1999) by 1998 c. 37, s. 99 (with Sch. 9 para. 10); S.I. 1998/3263, art. 3.
- F48** Words in s. 34A(1) repealed (14.7.2003) by The Release of Short-Term Prisoners on Licence (Repeal of Age Restriction) Order 2003 (S.I. 2003/1691), art. 2
- F49** Words in s. 34A(2)(a)(c)(h) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), Sch. 9
- F50** Words in s. 34A(2)(c) substituted (*prosp.*) by 2000 c. 43, ss. 75, 80(1), Sch. 7 Pt. II para. 104
- F51** S. 34A(2)(da) inserted (1.3.2001) by 2000 c. 43, s. 65; S.I. 2001/340, art. 2
- F52** Words in s. 34A(2)(da) substituted (1.5.2004) by Sexual Offences Act 2003 (c. 42), ss. 139, 141; Sch. 6 para. 30; S.I. 2004/874, art. 2
- F53** Words in s. 34A(4)(b) substituted (14.7.2003) by The Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2003 (S.I. 2003/1602), art. 3(1)
- F54** Words in s. 34A(4)(c) substituted (14.7.2003) by The Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2003 (S.I. 2003/1602), art. 3(2)
- F55** Words in s. 34A(4)(c) substituted (14.7.2003) by The Release of Short-Term Prisoners on Licence (Amendment of Requisite Period) Order 2003 (S.I. 2003/1602), art. 3(2)

#### Modifications etc. (not altering text)

- C16** S. 34A modified (30.9.1998) by 1998 c. 37, s. 120(1), Sch. 9 para. 12(5)(9); S.I. 1998/2327, art. 2(1)(z).
- C17** S. 34A modified (temp. from 24.3.2005) by The Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Saving Provisions) Order 2005 (S.I. 2005/950), arts. 2, 4, Sch. 2 para. 22

#### Marginal Citations

- M30** 1995 c.16.
- M31** 1983 c.20.

### 35 Power to release long-term and life prisoners.

- (1) After a long-term prisoner has served one-half of his sentence, the Secretary of State may, if recommended to do so by the Board, release him on licence.
- (2) If recommended to do so by the Board, the Secretary of State may, after consultation with the Lord Chief Justice together with the trial judge if available, release on licence a life prisoner who is not a discretionary life prisoner.
- (3) The Board shall not make a recommendation under subsection (2) above unless the Secretary of State has referred the particular case, or the class of case to which that case belongs, to the Board for its advice.

#### Modifications etc. (not altering text)

- C18** S. 35 modified (1.10.1992) by S.I. 1992/1829, art.3.

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**C19** S. 35(1) amended (retrospectively) by 1984 c. 47, **Sch. para. 2** as modified (retrospectively) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, art. 2(1).

**Commencement Information**

**I29** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

**36 Power to release prisoners on compassionate grounds.**

- (1) The Secretary of State may at any time release a prisoner on licence if he is satisfied that exceptional circumstances exist which justify the prisoner's release on compassionate grounds.
- (2) Before releasing a long-term or life prisoner under subsection (1) above, the Secretary of State shall consult the Board, unless the circumstances are such as to render such consultation impracticable.

**Commencement Information**

**I30** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

**37 Duration and conditions of licences.**

- (1) Subject to subsection (2) below, where a short-term or long-term prisoner is released on licence, the licence shall, subject to any suspension under section 38(2) below or, as the case may be, any revocation under section 39(1) or (2) below, remain in force until the date on which he would (but for his release) have served three-quarters of his sentence.
- (2) Where a prisoner whose sentence is for a term of less than twelve months is released on licence under section 36(1) above, subsection (1) above shall have effect as if for the reference to three-quarters of his sentence there were substituted a reference to one-half of that sentence.
- (3) Where a life prisoner is released on licence, the licence shall, unless previously revoked under section 39(1) or (2) below, remain in force until his death.
- (4) A person subject to a licence shall comply with such conditions (which shall include on his release conditions as to his supervision by a probation officer) as may for the time being be specified in the licence; and the Secretary of State may make rules for regulating the supervision of any description of such persons.
- (5) The Secretary of State shall not include on release, or subsequently insert, a condition in the licence of a long-term or life prisoner, or vary or cancel any such condition, except—
  - (a) in the case of the inclusion of a condition in the licence of a discretionary life prisoner, in accordance with recommendations of the Board; and
  - (b) in any other case, after consultation with the Board.
- (6) For the purposes of subsection (5) above, the Secretary of State shall be treated as having consulted the Board about a proposal to include, insert, vary or cancel a condition in any case if he has consulted the Board about the implementation of proposals of that description generally or in that class of case.

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- (7) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

**C20** S. 37 modified (1.10.1992) by S.I. 1992/1829, art.3.

**C21** S. 37(1)(2) amended (*retrospectively*) by 1984 c. 47, **Sch. para. 2** as modified (*retrospectively*) by 1997 c. 43, s. 42, **Sch. 2 para. 2(1)(2)**; S.I. 1997/2200, art. 2(1).

#### Commencement Information

**I31** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

VALID FROM 30/09/1998

#### <sup>F56F56</sup>37A Curfew condition to be included in licence under section 34A.

- (1) A person shall not be released under section 34A(3) above unless the licence includes a condition (“the curfew condition”) which—
- (a) requires the released person to remain, for periods for the time being specified in the condition, at a place for the time being so specified (which may be an approved probation hostel); and
  - (b) includes requirements for securing the electronic monitoring of his whereabouts during the periods for the time being so specified.
- (2) The curfew condition may specify different places or different periods for different days, but shall not specify periods which amount to less than 9 hours in any one day (excluding for this purpose the first and last days of the period for which the condition is in force).
- (3) The curfew condition shall remain in force until the date when the released person would (but for his release) have served one-half of his sentence.
- (4) The curfew condition shall include provision for making a person responsible for monitoring the released person’s whereabouts during the periods for the time being specified in the condition; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.
- (5) The power conferred by subsection (4) above—
- (a) shall be exercisable by statutory instrument; and
  - (b) shall include power to make different provision for different cases or classes of case or for different areas.
- (6) Nothing in this section shall be taken to require the Secretary of State to ensure that arrangements are made for the electronic monitoring of released persons’ whereabouts in any particular part of England and Wales;
- (7) In this section “approved probation hostel” has the same meaning as in the Probation Service Act 1993.]

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### Textual Amendments

**F56** S. 37A inserted (30.9.1998 for certain purposes by S.I. 1998/2327 and 28.1.1999 to the extent that it is not already in force by S.I. 1998/3263) by 1998 c. 37, s. 100(1); S.I. 1998/2327, art.2(1)(u); S.I. 1998/3263, art.3.

### Misbehaviour after release

## 38 Breach of licence conditions by short-term prisoners.

- (1) A short-term prisoner—
- (a) who is released on licence under this Part; and
  - (b) who fails to comply with such conditions as may for the time being be specified in the licence,
- shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (2) The magistrates' court by which a person is convicted of an offence under subsection (1) above may, whether or not it passes any other sentence on him—
- (a) suspend the licence for a period not exceeding six months; and
  - (b) order him to be recalled to prison for the period during which the licence is so suspended.
- (3) On the suspension of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

### Modifications etc. (not altering text)

**C22** Ss. 35-39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II, para. 8(2), Sch. 5 para. 9(1) (a); S.I. 1997/2200, art. 2(1).  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), Sch. 5 para. 10(1) (b); S.I. 1997/2200, art. 2(1).  
Ss. 37-39 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(4), Sch. 5 para. 9(1) (b); S.I. 1997/2200, art. 2(1).  
Ss. 37-40 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para.9(4), Sch. 5 para. 10(1) (c); S.I. 1997/2200, art. 2(1).

### Commencement Information

**I32** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

VALID FROM 28/01/1999

### <sup>F57F57</sup> 38A Breach of curfew condition.

- (1) If it appears to the Secretary of State, as regards a person released on licence under section 34A(3) above—
- (a) that he has failed to comply with the curfew condition;

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(b) that his whereabouts can no longer be electronically monitored at the place for the time being specified in that condition; or

(c) that it is necessary to do so in order to protect the public from serious harm from him,

the Secretary of State may, if the curfew condition is still in force, revoke the licence and recall the person to prison.

(2) A person whose licence under section 34A(3) above is revoked under this section—

(a) may make representations in writing with respect to the revocation;

(b) on his return to prison, shall be informed of the reasons for the revocation and of his right to make representations.

(3) The Secretary of State, after considering any representations made under subsection (2)(b) above or any other matters, may cancel a revocation under this section.

(4) Where the revocation of a person's licence is cancelled under subsection (3) above, the person shall be treated for the purposes of sections 34A(2)(f) and 37(1B) above as if he had not been recalled to prison under this section.

(5) On the revocation under this section of a person's licence under section 34A(3) above, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

(6) In this section “the curfew condition” has the same meaning as in section 37A above.]

#### Textual Amendments

F57 S. 38A inserted (28.1.1999) by 1998 c. 37, s. 100(2); S.I. 1998/3263, art.3.

### 39 Recall of long-term and life prisoners while on licence.

(1) If recommended to do so by the Board in the case of a long-term or life prisoner who has been released on licence under this Part, the Secretary of State may revoke his licence and recall him to prison.

(2) The Secretary of State may revoke the licence of any such person and recall him to prison without a recommendation by the Board, where it appears to him that it is expedient in the public interest to recall that person before such a recommendation is practicable.

(3) A person recalled to prison under subsection (1) or (2) above—

(a) may make representations in writing with respect to his recall; and

(b) on his return to prison, shall be informed of the reasons for his recall and of his right to make representations.

(4) The Secretary of State shall refer to the Board—

(a) the case of a person recalled under subsection (1) above who makes representations under subsection (3) above; and

(b) the case of a person recalled under subsection (2) above.

(5) Where on a reference under subsection (4) above the Board—

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- (a) directs in the case of a discretionary life prisoner; or
  - (b) recommends in the case of any other person,
- his immediate release on licence under this section, the Secretary of State shall give effect to the direction or recommendation.
- (6) On the revocation of the licence of any person under this section, he shall be liable to be detained in pursuance of his sentence and, if at large, shall be deemed to be unlawfully at large.

**Modifications etc. (not altering text)**

**C23** S. 39 modified (1.10.1992) by S.I. 1992/1829, art.3.

**Commencement Information**

**I33** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**40 Convictions during currency of original sentences.**

- (1) This section applies to a short-term or long-term prisoner who is released under this Part if—
- (a) before the date on which he would (but for his release) have served his sentence in full, he commits an offence punishable with imprisonment; and
  - (b) whether before or after that date, he is convicted of that offence (“the new offence”).
- (2) Subject to subsection (3) below, the court by or before which a person to whom this section applies is convicted of the new offence may, whether or not it passes any other sentence on him, 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.
- (3) A magistrates’ court—
- (a) shall not have power to order a person to whom this section applies to be returned to prison for a period of more than six months; but
  - (b) [<sup>F58</sup>subject to section 25 of the Criminal Justice and Public Order Act 1994,] may commit him in custody or on bail to the Crown Court for sentence [<sup>F59</sup>; and the Crown Court to which he has been so committed may make such an order with regard to him as is mentioned in subsection (2) above.]
- (4) The period for which a person to whom this section applies is ordered under subsection (2) above to be returned to prison—
- (a) shall be taken to be a sentence of imprisonment for the purposes of this Part;
  - (b) shall, as the court may direct, either be served before and be followed by, or be served concurrently with, the sentence imposed for the new offence; and
  - (c) in either case, shall be disregarded in determining the appropriate length of that sentence.

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### Textual Amendments

- F58** Words in s. 40(3)(b) inserted (10.4.1995) by 1994 c. 33, s. 168(1), **Sch. 10 para.67**; S.I. 1995/721, art. 2, **Sch.1**, Appendix A.
- F59** Words in s. 40(3)(b) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 47**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix 1.

### Modifications etc. (not altering text)

- C24** Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**

### Commencement Information

- I34** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

VALID FROM 30/09/1998

## [<sup>F60</sup>F60] **40 Release on licence following return to prison.**

- (1) This section applies (in place of sections 33, 33A, 37(1) and 39 above) where a court passes on a person a sentence of imprisonment which—
  - (a) includes, or consists of, an order under section 40 above; and
  - (b) is for a term of twelve months or less.
- (2) As soon as the person has served one-half of the sentence, it shall be the duty of the Secretary of State to release him on licence.
- (3) Where the person is so released, the licence shall remain in force for a period of three months.
- (4) If the person fails to comply with such conditions as may for the time being be specified in the licence, he shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; or
  - (b) to a sentence of imprisonment for a term not exceeding the relevant period, but not liable to be dealt with in any other way.
- (5) In subsection (4) above “the relevant period” means a period which is equal in length to the period between the date on which the failure occurred or began and the date of the expiry of the licence.
- (6) As soon as a person has served one-half of a sentence passed under subsection (4) above, it shall be the duty of the Secretary of State to release him, subject to the licence if it is still subsisting.]

### Textual Amendments

- F60** S. 40A inserted (30.9.1998) by 1998 c. 37, s.105 (with Sch. 9 para. 14(1)); S.I. 1998/2327, **art.2(1)(w)**.

### Modifications etc. (not altering text)

- C25** S. 40A modified (30.9.1998) by 1998 c. 37, s. 120(1), **Sch. 9 para. 12(6)(9)**; S.I. 1998/2327, **art.2(1)(z)**



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### Remand time and additional days

#### 41 Remand time to count towards time served.

- (1) This section applies to any person whose sentence falls to be reduced under section 67 of the <sup>M32</sup>Criminal Justice Act 1967 (“the 1967 Act”) by any relevant period within the meaning of that section (“the relevant period”).
- (2) For the purpose of determining for the purposes of this Part—
  - (a) whether a person to whom this section applies has served one-half or two-thirds of his sentence; or
  - (b) whether such a person would (but for his release) have served three-quarters of that sentence,the relevant period shall, subject to subsection (3) below, be treated as having been served by him as part of that sentence.
- (3) Nothing in subsection (2) above shall have the effect of reducing the period for which a licence granted under this Part to a short-term or long-term prisoner remains in force to a period which is less than—
  - (a) one-quarter of his sentence in the case of a short-term prisoner; or
  - (b) one-twelfth of his sentence in the case of a long-term prisoner.

#### Modifications etc. (not altering text)

- C26** Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)** (a); S.I. 1997/2200, **art. 2(1)**.  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)** (b); S.I. 1997/2200, **art. 2(1)**.  
S. 41 modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para.4** (by 1998 c. 37, s. 120(2), **Sch. 10** and S.I. 1998/2327, **art. 2(1)(aa)(3)(x)** the said Sch. 5 paras. 1-4 were repealed (30.9.1998).

#### Commencement Information

- I35** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

#### Marginal Citations

- M32** 1967 c. 80.

#### 42 Additional days for disciplinary offences.

- (1) Prison rules, that is to say, rules made under section 47 of the 1952 Act, may include provision for the award of additional days—
  - (a) to short-term or long-term prisoners; or
  - (b) conditionally on their subsequently becoming such prisoners, to persons on remand,who (in either case) are guilty of disciplinary offences.
- (2) Where additional days are awarded to a short-term or long-term prisoner, or to a person on remand who subsequently becomes such a prisoner, and are not remitted in accordance with prison rules—
  - (a) any period which he must serve before becoming entitled to or eligible for release under this Part; and

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(b) any period for which a licence granted to him under this Part remains in force, shall be extended by the aggregate of those additional days.

**Modifications etc. (not altering text)**

**C27** Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

**Commencement Information**

**I36** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

*Special cases*

**43 Young offenders.**

- (1) Subject to subsections (4) and (5) below, this Part applies to persons serving sentences of detention in a young offender institution, or determinate sentences of detention under section 53 of the 1933 Act, as it applies to persons serving equivalent sentences of imprisonment.
- (2) Subject to subsection (5) below, this Part applies to persons serving—
  - (a) sentences of detention during Her Majesty's pleasure or for life under section 53 of the 1933 Act; or
  - (b) sentences of custody for life under section 8 of the 1982 Act, as it applies to persons serving sentences of imprisonment for life.
- (3) References in this Part to prisoners (whether short-term, long-term or life prisoners), or to prison or imprisonment, shall be construed in accordance with subsections (1) and (2) above.
- (4) In relation to a short-term prisoner under the age of 18 years to whom subsection (1) of section 33 above applies, that subsection shall have effect as if it required the Secretary of State—
  - (a) to release him unconditionally if his sentence is for a term of twelve months or less; and
  - (b) to release him on licence if that sentence is for a term of more than twelve months.
- (5) In relation to a person under the age of 22 years who is released on licence under this Part, section 37(4) above shall have effect as if the reference to supervision by a probation officer included a reference to supervision by a social worker of a local authority social services department.

**Commencement Information**

**I37** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

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#### 44 Sexual offenders.

Where, in the case of a long-term or short-term prisoner—

- (a) the whole or any part of his sentence was imposed for a sexual offence; and
- (b) the court by which he was sentenced for that offence, having had regard to the matters mentioned in section 32(6)(a) and (b) above, ordered that this section should apply,

sections 33(3) and 37(1) above shall each have effect as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of that sentence.

##### Modifications etc. (not altering text)

**C28** Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), **Sch. 5 paras. 9(1)(b), 10(1)(c)(2)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

##### Commencement Information

**I38** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(3), **Sch. 2**.

VALID FROM 30/09/1998

#### [<sup>F61</sup>44A Re-release of prisoners serving extended sentences.

- (1) This section applies to a prisoner serving an extended sentence within the meaning of section 58 of the Crime and Disorder Act 1998 who is recalled to prison under section 39(1) or (2) above.
- (2) Subject to subsection (3) below, the prisoner may require the Secretary of State to refer his case to the Board at any time.
- (3) Where there has been a previous reference of the prisoner's case to the Board (whether under this section or section 39(4) above), the Secretary of State shall not be required to refer the case until after the end of the period of one year beginning with the disposal of that reference.
- (4) On a reference—
  - (a) under this section; or
  - (b) under section 39(4) above,the Board shall direct the prisoner's release if satisfied that it is no longer necessary for the protection of the public that he should be confined (but not otherwise).
- (5) If the Board gives a direction under subsection (4) above it shall be the duty of the Secretary of State to release the prisoner on licence.]

##### Textual Amendments

**F61** S. 44A inserted (30.9.1998) by 1998 c. 37, s.60; S.I. 1998/2327, **art.2(1)(n)**.

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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**F62 45 Fine defaulters and contemnors.**

- (1) Subject to subsection (2) below, this Part (except sections 35 and 40 above) applies to persons committed to prison or to be detained under section 9 of the 1982 Act—
- (a) in default of payment of a sum adjudged to be paid by a conviction; or
  - (b) for contempt of court or any kindred offence,
- as it applies to persons serving equivalent sentences of imprisonment; and references in this Part to short-term or long-term prisoners, or to prison or imprisonment, shall be construed accordingly.
- (2) In relation to persons committed as mentioned in subsection (1) above, the provisions specified in subsections (3) and (4) below shall have effect subject to the modifications so specified.
- (3) In section 33 above, for subsections (1) to (4) there shall be substituted the following subsections—
- “(1) As soon as a person committed as mentioned in section 45(1) below has served the appropriate proportion of his term, that is to say—
    - (a) one-half, in the case of a person committed for a term of less than twelve months;
    - (b) two-thirds, in the case of a person committed for a term of twelve months or more,
 it shall be the duty of the Secretary of State to release him unconditionally.
  - (2) As soon as a person so committed who—
    - (a) has been released on licence under section 36(1) below; and
    - (b) has been recalled under section 38(2) or 39(1) below,
 would (but for his release) have served the appropriate proportion of his term, it shall be the duty of the Secretary of State to release him unconditionally.”
- (4) In section 37 above, for subsections (1) to (3) there shall be substituted the following subsection—
- “(1) Where a person committed as mentioned in section 45(1) below is released on licence under section 36(1) above, the licence shall, subject to—
    - (a) any suspension under section 38(2) below; or
    - (b) any revocation under section 39(1) below,
 continue in force until the date on which he would (but for his release) have served the appropriate proportion of his term; and in this subsection “appropriate proportion” has the meaning given by section 33(1) above.”

**Textual Amendments**

- F62** Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), **Sch. 5 paras. 9(1)(b), 10(1)(c)(2)(a)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.  
Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

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**Modifications etc. (not altering text)**

**C29** S. 45 modified (19.9.1998) by 1998 S.I. 1998/2327, **art.5(3)(e)**.

**Commencement Information**

**I39** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

**46 Persons liable to removal from the United Kingdom.**

- (1) In relation to a long-term prisoner who is liable to removal from the United Kingdom, section 35 above shall have effect as if the words “if recommended to do so by the Board” were omitted.
- (2) In relation to a person who is liable to removal from the United Kingdom, section 37(4) above shall have effect as if the words in parentheses were omitted.
- (3) A person is liable to removal from the United Kingdom for the purposes of this section if—
  - (a) he is liable to deportation under section 3(5) of the <sup>M33</sup>Immigration Act 1971 and has been notified of a decision to make a deportation order against him;
  - (b) he is liable to deportation under section 3(6) of that Act;
  - (c) he has been notified of a decision to refuse him leave to enter the United Kingdom; or
  - (d) he is an illegal entrant within the meaning of section 33(1) of that Act.

**Modifications etc. (not altering text)**

**C30** Ss. 43-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8(4), 9(2)(a)(4), **Sch. 5 paras. 9(1)(b), 10(1)(c)(2)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 41-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 8(2), **Sch. 5 para. 9(1)(a)**; S.I. 1997/2200, **art. 2(1)**.

Ss. 35-46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II para. 9(2), **Sch. 5 para. 10(1)(b)**; S.I. 1997/2200, **art. 2(1)**.

S. 46 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1 Pt. II paras. 8, 9(4), Sch. 5 paras. 9(2)(a)(b), **10(2)(b)**; S.I. 1997/2200, **art. 2(1)**.

**Commencement Information**

**I40** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

**Marginal Citations**

**M33** 1971 c. 77.

VALID FROM 14/06/2004

**46A Early removal of persons liable to removal from United Kingdom**

- (1) Subject to subsection (2) below, where a short-term or long-term prisoner is liable to removal from the United Kingdom, the Secretary of State may under this section remove him from prison at any time after he has served the requisite period.
- (2) Subsection (1) above does not apply where—

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- (a) the sentence is an extended sentence within the meaning of section 85 of the Powers of Criminal Courts (Sentencing) Act 2000,
  - (b) the sentence is for an offence under section 1 of the Prisoners (Return to Custody) Act 1995,
  - (c) the prisoner is subject to a hospital order, hospital direction or transfer direction under section 37, 45A or 47 of the Mental Health Act 1983,
  - (d) the prisoner is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003, or
  - (e) the interval between—
    - (i) the date on which the prisoner will have served the requisite period for the term of the sentence, and
    - (ii) the date on which he will have served one-half of the sentence,is less than 14 days.
- (3) A prisoner removed from prison under this section—
- (a) is so removed only for the purpose of enabling the Secretary of State to remove him from the United Kingdom under powers conferred by—
    - (i) Schedule 2 or 3 to the Immigration Act 1971, or
    - (ii) section 10 of the Immigration and Asylum Act 1999, and
  - (b) so long as remaining in the United Kingdom, remains liable to be detained in pursuance of his sentence until he falls to be released under section 33 or 35 above.
- (4) So long as a prisoner removed from prison under this section remains in the United Kingdom but has not been returned to prison, any duty or power of the Secretary of State under section 33, 35 or 36 is exercisable in relation to him as if he were in prison.
- (5) In this section “the requisite period” means—
- (a) for a term of three months or more but less than four months, a period of 30 days;
  - (b) for a term of four months or more but less than 18 months, a period equal to one-quarter of the term;
  - (c) for a term of 18 months or more, a period that is 135 days less than one-half of the term.
- (6) The Secretary of State may by order made by statutory instrument—
- (a) amend the definition of “the requisite period” in subsection (5) above,
  - (b) make such transitional provision as appears to him necessary or expedient in connection with the amendment.
- (7) No order shall be made under subsection (6) above unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.
- (8) In relation to any time before the commencement of sections 80 and 81 of the Sexual Offences Act 2003, the reference in subsection (2)(d) above to Part 2 of that Act is to be read as a reference to Part 1 of the Sex Offenders Act 1997.

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VALID FROM 14/06/2004

#### **46B Re-entry into United Kingdom of offender removed early from prison**

- (1) This section applies in relation to a person who, after being removed from prison under section 46A above, has been removed from the United Kingdom before he has served one-half of his sentence.
- (2) If a person to whom this section applies enters the United Kingdom at any time before his sentence expiry date, he is liable to be detained in pursuance of his sentence from the time of his entry into the United Kingdom until whichever is the earlier of the following—
  - (a) the end of a period (“the further custodial period”) beginning with that time and equal in length to the outstanding custodial period, and
  - (b) his sentence expiry date.
- (3) A person who is liable to be detained by virtue of subsection (2) above is, if at large, to be taken for the purposes of section 49 of the Prison Act 1952 (persons unlawfully at large) to be unlawfully at large.
- (4) Subsection (2) above does not prevent the further removal from the United Kingdom of a person falling within that subsection.
- (5) Where, in the case of a person returned to prison by virtue of subsection (2) above, the further custodial period ends before the sentence expiry date, subsections (1) and (2) of section 33 above apply in relation to him as if any reference to one-half or two-thirds of the prisoner’s sentence were a reference to the further custodial period.
- (6) If a person returned to prison by virtue of subsection (2) above falls by virtue of subsection (5) above to be released on licence under section 33(1) or (2) above after the date on which (but for his removal from the United Kingdom) he would have served three-quarters of his sentence, section 37(1) above has effect in relation to him as if for the reference to three-quarters of his sentence there were substituted a reference to the whole of his sentence.
- (7) If a person who is released on licence under section 33(1) or (2) above at the end of the further custodial period is recalled to prison under section 39(1) or (2) above, section 33A(3) above shall not apply, but it shall be the duty of the Secretary of State—
  - (a) if the person is recalled before the date on which (but for his removal from the United Kingdom) he would have served three-quarters of his sentence, to release him on licence on that date, and
  - (b) if he is recalled after that date, to release him on the sentence expiry date.
- (8) A licence granted by virtue of subsection (7)(a) above shall remain in force until the sentence expiry date.
- (9) In this section—
  - “further custodial period” has the meaning given by subsection (2)(a) above;
  - “outstanding custodial period”, in relation to a person to whom this section applies, means the period beginning with the date on which he was

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removed from the United Kingdom and ending with the date on which (but for his removal) he would have served one-half of his sentence;  
“sentence expiry date”, in relation to a person to whom this section applies, means the date on which (but for his removal from the United Kingdom) he would have served the whole of this sentence.

#### 47 Persons extradited to the United Kingdom.

- (1) A short-term or long-term prisoner is an extradited prisoner for the purposes of this section if—
- (a) he was tried for the offence in respect of which his sentence was imposed—
    - (i) after having been extradited to the United Kingdom; and
    - (ii) without having first been restored or had an opportunity of leaving the United Kingdom; and
  - (b) he was for any period kept in custody while awaiting his extradition to the United Kingdom as mentioned in paragraph (a) above.
- (2) If, in the case of an extradited prisoner, the court by which he was sentenced so ordered, section 67 of the 1967 Act (computation of sentences of imprisonment) shall have effect in relation to him as if a period specified in the order were a relevant period for the purposes of that section.
- (3) The period that may be so specified is such period as in the opinion of the court is just in all the circumstances and does not exceed the period of custody mentioned in subsection (1)(b) above.
- (4) In this section—
- “extradited to the United Kingdom” means returned to the United Kingdom—
- (i) in pursuance of extradition arrangements;
  - (ii) under any law of a designated Commonwealth country corresponding to the <sup>M34</sup>Extradition Act 1989;
  - (iii) under that Act as extended to a colony or under any corresponding law of a colony; or
  - (iv) in pursuance of a warrant of arrest endorsed in the Republic of Ireland under the law of that country corresponding to the <sup>M35</sup>Backing of Warrants (Republic of Ireland) Act 1965;
  - (v) [<sup>F63</sup>in pursuance of arrangements with a foreign state in respect of which an Order in Council under section 2 of the Extradition Act 1870 is in force;]
- “extradition arrangements” has the meaning given by section 3 of the <sup>M36</sup>Extradition Act 1989;
- “designated Commonwealth country” has the meaning given by section 5(1) of that Act.

#### Textual Amendments

**F63** Para. (v) inserted (3.2.1995) in the definition of "extradited to the United Kingdom" in s. 47(4) by 1994 c. 33, s. 168(1), **Sch. 9 para. 48(1)**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix 1.



**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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#### Modifications etc. (not altering text)

**C31** S. 47 modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(2), **Sch. 5 para.4** (by 1998 c. 37, s. 120(2), **Sch. 10** and S.I. 1998/2327, **art. 2(1)(aa)(3)(x)**) the said Sch. 5 paras. 1-4 were repealed (30.9.1998).

#### Commencement Information

**I41** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

#### Marginal Citations

**M34** 1989 c. 33.

**M35** 1965 c. 45.

**M36** 1989 c. 33.

## 48 Life prisoners transferred to England and Wales.

- (1) This section applies where, in the case of a transferred life prisoner, the Secretary of State, after consultation with the Lord Chief Justice, certifies his opinion that, if—
- (a) he had been sentenced for his offence in England and Wales after the commencement of section 34 above; and
  - (b) the reference in subsection (1)(a) of that section to a violent or sexual offence the sentence for which is not fixed by law were a reference to any offence the sentence for which is not so fixed,
- the court by which he was so sentenced would have ordered that that section should apply to him as soon as he had served a part of his sentence specified in the certificate.
- (2) In a case to which this section applies, this Part except section 35(2) above shall apply as if—
- (a) the transferred life prisoner were a discretionary life prisoner for the purposes of this Part; and
  - (b) the relevant part of his sentence within the meaning of section 34 of this Act were the part specified in the certificate.
- (3) In this section “transferred life prisoner” means a person—
- (a) on whom a court in a country or territory outside England and Wales has imposed one or more sentences of imprisonment or detention for an indeterminate period; and
  - (b) who has been transferred to England and Wales, in pursuance of—
    - (i) an order made by the Secretary of State under section 26 of the <sup>M37</sup>Criminal Justice Act 1961 or section 2 of the <sup>M38</sup>Colonial Prisoners Removal Act 1884; or
    - (ii) a warrant issued by the Secretary of State under the <sup>M39</sup>Repatriation of Prisoners Act 1984,there to serve his sentence or sentences or the remainder of his sentence or sentences.
- (4) A person who is required so to serve the whole or part of two or more such sentences shall not be treated as a discretionary life prisoner for the purposes of this Part unless the requirements of subsection (1) above are satisfied as respects each of those sentences; and subsections (3) and (5) of section 34 above shall not apply in relation to such a person until after he has served the relevant part of each of those sentences.

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#### Commencement Information

**I42** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

**M37** 1961 c. 39.

**M38** 1884 c. 31.

**M39** 1984 c. 47.

### *Supplemental*

#### **49 Alteration by order of relevant proportions of sentences.**

- (1) The Secretary of State may by order made by statutory instrument provide—
  - (a) that the references in section 33(5) above to four years shall be construed as references to such other period as may be specified in the order;
  - (b) that any reference in this Part to a particular proportion of a prisoner’s sentence shall be construed as a reference to such other proportion of a prisoner’s sentence as may be so specified.
- (2) An order under this section may make such transitional provisions as appear to the Secretary of State necessary or expedient in connection with any provision made by the order.
- (3) No order shall be made under this section unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

#### Commencement Information

**I43** Pt. II (ss. 32-51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### **50 Transfer by order of certain functions to Board.**

- (1) The Secretary of State, after consultation with the Board, may by order made by statutory instrument provide that, in relation to such class of case as may be specified in the order, the provisions of this Part specified in subsections [<sup>F64</sup>(2) or (3)] below shall have effect subject to the modifications so specified.
- (2) In section 35 above, in subsection (1) for the word “may” there shall be substituted the word “shall”; but nothing in this subsection shall affect the operation of that subsection as it has effect in relation to a long-term prisoner who is liable to removal from the United Kingdom (within the meaning of section 46 above).
- (3) In section 37 above, in subsection (5)(a) after the words “in the case of” there shall be inserted the words “the licence of a long-term prisoner or”, and subsection (6) shall be omitted.

<sup>F65</sup>(4) .....

- (5) No order shall be made under this section unless a draft of the order has been laid before and approved by resolution of each House of Parliament.

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**Textual Amendments**

- F64** Words in s. 50(1) substituted (3.11.1994) by 1994 c. 33, s.150.  
**F65** S. 50(4) repealed (3.11.1994) by 1994 c. 33, s. 150, 168(3), Sch.11.

**Commencement Information**

- I44** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**51 Interpretation of Part II.**

(1) In this Part—

“the Board” means the Parole Board;

“discretionary life prisoner” has the meaning given by section 34 above (as extended by section 43(2) above);

“life prisoner” has the meaning given by section 34(7) above (as extended by section 43(2) above);

“long-term prisoner” and “short-term prisoner” have the meanings given by section 33(5) above (as extended by sections 43(1) and 45(1) above);

“sentence of imprisonment” does not include a committal in default of payment of any sum of money, or for want of sufficient distress to satisfy any sum of money, or for failure to do or abstain from doing anything required to be done or left undone.

“sexual offence” and “violent offence” have the same meanings as in Part I of this Act.

(2) For the purposes of any reference in this Part, however expressed, to the term of imprisonment to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(3) Nothing in this Part shall require the Secretary of State to release a person who is serving—

- (a) a sentence of imprisonment for a term; and
- (b) one or more sentences of imprisonment for life,

unless and until he is entitled under this Part to be released in respect of each of those sentences.

(4) Subsections (2) and (3) of section 31 above shall apply for the purposes of this Part as they apply for the purposes of Part I of this Act.

**Commencement Information**

- I45** Pt. II (ss. 32 - 51) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

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## PART III

### CHILDREN AND YOUNG PERSONS

#### *Children's evidence*

#### **52 Competence of children as witnesses.**

(1) After section 33 of the 1988 Act there shall be inserted the following section—

**“33A Evidence given by children.**

- (1) A child's evidence in criminal proceedings shall be given unsworn.
- (2) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.
- (3) In this section “child” means a person under fourteen years of age.”

<sup>F66</sup>(2) . . . . .

#### **Textual Amendments**

**F66** S. 52(2) repealed (3.2.1995) by 1994 c. 33, s. 168(3), Sch.11; S.I. 1995/127, art. 2(1), Sch. 1, Appendix C.

#### **Commencement Information**

**I46** S. 52 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### **53 Notices of transfer in certain cases involving children.**

(1) If a person has been charged with an offence to which section 32(2) of the 1988 Act applies (sexual offences and offences involving violence or cruelty) and the Director of Public Prosecutions is of the opinion—

- (a) that the evidence of the offence would be sufficient for the person charged to be committed for trial;
- (b) that a child who is alleged—
  - (i) to be a person against whom the offence was committed; or
  - (ii) to have witnessed the commission of the offence,
 will be called as a witness at the trial; and
- (c) that, for the purpose of avoiding any prejudice to the welfare of the child, the case should be taken over and proceeded with without delay by the Crown Court,

a notice (“notice of transfer”) certifying that opinion may be [<sup>F67</sup>given] by or [<sup>F67</sup>to] behalf of the Director on the magistrates' court in whose jurisdiction the offence has been charged.

(2) A notice of transfer shall be [<sup>F68</sup>given] before the magistrates' court begins to inquire into the case as examining justices.

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- (3) On the [<sup>F69</sup>giving]of a notice of transfer the functions of the magistrates’ court shall cease in relation to the case except as provided by paragraphs 2 and 3 of Schedule 6 to this Act or by section 20(4) of the <sup>M40</sup>Legal Aid Act 1988.
- (4) The decision to [<sup>F70</sup>give]a notice of transfer shall not be subject to appeal or liable to be questioned in any court.
- (5) Schedule 6 to this Act (which makes further provision in relation to notices of transfer) shall have effect.
- (6) In this section “child” means a person who—
  - (a) in the case of an offence falling within section 32(2)(a) or (b) of the 1988 Act, is under fourteen years of age or, if he was under that age when any such video recording as is mentioned in section 32A(2) of that Act was made in respect of him, is under fifteen years of age; or
  - (b) in the case of an offence falling within section 32(2)(c) of that Act, is under seventeen years of age or, if he was under that age when any such video recording was made in respect of him, is under eighteen years of age.
- (7) Any reference in subsection (6) above to an offence falling within paragraph (a), (b) or (c) of section 32(2) of that Act includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.

#### Textual Amendments

- F67** Words in s. 53(1) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 49(a)**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix A.
- F68** Words in s. 53(2) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 49(b)**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix A.
- F69** Words in s. 53(3) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 49(c)**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix A.
- F70** Words in s. 53(4) substituted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para. 49(d)**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix A.

#### Commencement Information

- I47** S. 53 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M40** 1988 c. 34.

## 54 Video recordings of testimony from child witnesses.

After section 32 of the 1988 Act (evidence through television links) there shall be inserted the following section—

### “32A Video recordings of testimony from child witnesses.

- (1) This section applies in relation to the following proceedings, namely—
  - (a) trials on indictment for any offence to which section 32(2) above applies;

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- (b) appeals to the criminal division of the Court of Appeal and hearings of references under section 17 of the Criminal Appeal Act 1968 in respect of any such offence; and
  - (c) proceedings in youth courts for any such offence and appeals to the Crown Court arising out of such proceedings.
- (2) In any such proceedings a video recording of an interview which—
- (a) is conducted between an adult and a child who is not the accused or one of the accused (“the child witness”); and
  - (b) relates to any matter in issue in the proceedings,
- may, with the leave of the court, be given in evidence in so far as it is not excluded by the court under subsection (3) below.
- (3) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give leave under subsection (2) above unless—
- (a) it appears that the child witness will not be available for cross-examination;
  - (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
  - (c) the court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the recording ought not to be admitted;
- and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.
- (4) In considering whether any part of a recording ought to be excluded under subsection (3) above, the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.
- (5) Where a video recording is admitted under this section—
- (a) the child witness shall be called by the party who tendered it in evidence;
  - (b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with in his recorded testimony.
- (6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly—
- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
  - (b) no such statement shall be capable of corroborating any other evidence given by him;
- and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).
- (7) In this section “child” means a person who—

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- (a) in the case of an offence falling within section 32(2)(a) or (b) above, is under fourteen years of age or, if he was under that age when the video recording was made, is under fifteen years of age; or
  - (b) in the case of an offence falling within section 32(2)(c) above, is under seventeen years of age or, if he was under that age when the video recording was made, is under eighteen years of age.
- (8) Any reference in subsection (7) above to an offence falling within paragraph (a), (b) or (c) of section 32(2) above includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within that paragraph.
- (9) In this section—  
“statement” includes any representation of fact, whether made in words or otherwise;  
“video recording” means any recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.
- (10) A magistrates’ court inquiring into an offence as examining justices under section 6 of the Magistrates’ Courts Act 1980 may consider any video recording as respects which leave under subsection (2) above is to be sought at the trial, notwithstanding that the child witness is not called at the committal proceedings.
- (11) Without prejudice to the generality of any enactment conferring power to make rules of court, such rules may make such provision as appears to the authority making them to be necessary or expedient for the purposes of this section.
- (12) Nothing in this section shall prejudice the admissibility of any video recording which would be admissible apart from this section.”

#### Commencement Information

**I48** S. 54 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

## 55 Further amendments of enactments relating to children’s evidence.

- (1) In section 103 of the 1980 Act (evidence of children in committal proceedings) subsection (3)(a) shall cease to have effect and for subsection (5) there shall be substituted the following subsection—
- “(5) In this section “child” has the same meaning as in section 53 of the Criminal Justice Act 1991.”
- (2) In subsection (1) of section 32 of the 1988 Act (evidence through television links)—
- (a) for the words from “on a trial” to “1968” there shall be substituted the words “in proceedings to which subsection (1A) below applies”; and
  - (b) for paragraph (b) there shall be substituted the following paragraph—  
“(b) the witness is a child, or is to be cross-examined following the admission under section 32A below of a video recording

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of testimony from him, and the offence is one to which subsection (2) below applies.”.

(3) After that subsection there shall be inserted the following subsection—

“(1A) This subsection applies—

- (a) to trials on indictment, appeals to the criminal division of the Court of Appeal and hearings of references under section 17 of the Criminal Appeal Act 1968; and
- (b) to proceedings in youth courts and appeals to the Crown Court arising out of such proceedings.”

(4) After subsection (3) of that section there shall be inserted the following subsections—

“(3A) Where, in the case of any proceedings before a youth court—

- (a) leave is given by virtue of subsection (1)(b) above for evidence to be given through a television link; and
- (b) suitable facilities for receiving such evidence are not available at any petty-sessional court-house in which the court can (apart from this subsection) lawfully sit,

the court may sit for the purposes of the whole or any part of those proceedings at any place at which such facilities are available and which has been appointed for the purposes of this subsection by the justices acting for the petty sessions area for which the court acts.

(3B) A place appointed under subsection (3) above may be outside the petty sessions area for which it is appointed; but it shall be deemed to be in that area for the purpose of the jurisdiction of the justices acting for that area.”

(5) In subsection (5) of that section, for paragraphs (a) and (b) there shall be substituted the words “Magistrates’ Courts Rules, Crown Court Rules and Criminal Appeal Rules”.

(6) After subsection (5) of that section there shall be inserted the following subsection—

“(6) Subsection (7) of section 32A below shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the references to a person being, in the cases there mentioned, under the age of fifteen years or under the age of eighteen years.”

(7) After section 34 of the 1988 Act there shall be inserted the following section—

**“34A Cross-examination of alleged child victims.**

(1) No person who is charged with an offence to which section 32(2) above applies shall cross-examine in person any witness who—

- (a) is alleged—
  - (i) to be a person against whom the offence was committed; or
  - (ii) to have witnessed the commission of the offence; and
- (b) is a child, or is to be cross-examined following the admission under section 32A above of a video recording of testimony from him.

(2) Subsection (7) of section 32A above shall apply for the purposes of this section as it applies for the purposes of that section, but with the omission of the



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references to a person being, in the cases there mentioned, under the age of fifteen years or under the age of eighteen years.”

**Commencement Information**

**I49** S. 55 wholly in force at 1.10.1992, see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

*Responsibilities of parent or guardian*

**56 Attendance at court of parent or guardian.**

Subsection (1) of section 34 (attendance at court of parent or guardian) of the 1933 Act shall cease to have effect and after that section there shall be inserted the following section—

**“34A Attendance at court of parent or guardian.**

(1) Where a child or young person is charged with an offence or is for any other reason brought before a court, the court—

- (a) may in any case; and
- (b) shall in the case of a child or a young person who is under the age of sixteen years,

require a person who is a parent or guardian of his to attend at the court during all the stages of the proceedings, unless and to the extent that the court is satisfied that it would be unreasonable to require such attendance, having regard to the circumstances of the case.

(2) In relation to a child or young person for whom a local authority have parental responsibility and who—

- (a) is in their care; or
- (b) is provided with accommodation by them in the exercise of any functions (in particular those under the Children Act 1989) which stand referred to their social services committee under the Local Authority Social Services Act 1970,

the reference in subsection (1) above to a person who is a parent or guardian of his shall be construed as a reference to that authority or, where he is allowed to live with such a person, as including such a reference.

In this subsection “local authority” and “parental responsibility” have the same meanings as in the Children Act 1989.”

**Commencement Information**

**I50** S. 56 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**57 Responsibility of parent or guardian for financial penalties.**

(1) After subsection (1A) of section 55 of the 1933 Act (power to order parent or guardian to pay fine etc. instead of child or young person) there shall be inserted the following subsection—

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“(1B) In the case of a young person who has attained the age of sixteen years, subsections (1) and (1A) above shall have effect as if, instead of imposing a duty, they conferred a power to make such an order as is mentioned in those subsections.”

(2) After subsection (4) of that section there shall be inserted the following subsection—

“(5) In relation to a child or young person for whom a local authority have parental responsibility and who—

- (a) is in their care; or
- (b) is provided with accommodation by them in the exercise of any functions (in particular those under the Children Act 1989) which stand referred to their social services committee under the Local Authority Social Services Act 1970,

references in this section to his parent or guardian shall be construed as references to that authority.

In this subsection “local authority” and “parental responsibility” have the same meanings as in the Children Act 1989.”

[<sup>F71</sup>(3) For the purposes of any order under that section made against the parent or guardian of a child or young person—

- (a) sections 18 and 21 above; and
- (b) section 35(4)(a) of the 1973 Act (fixing amount of compensation order),

shall have effect (so far as applicable) as if any reference to the financial circumstances of the offender, or (as the case may be) to the means of the person against whom the compensation order is made, were a reference to the financial circumstances of the parent or guardian.

(4) For the purposes of any such order made against a local authority (as defined for the purposes of the <sup>M41</sup>Children Act 1989)—

- (a) section 18(1) above, and section 35(4)(a) of the 1973 Act, shall not apply,

<sup>F72</sup>(b) .....]

#### Textual Amendments

**F71** S. 57(3)(4) substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 5**; S.I. 1993/1968, art. 2(2), **Sch. 2**

**F72** S. 57(4)(b) together with the word "and" preceding it repealed (3.2.1995) by 1994 c. 33, s. 168(1)(3), **Sch. 9 para. 42(4)(5)**, **Sch.11**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix A, Appendix C.

#### Commencement Information

**I51** S. 57 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

**M41** 1989 c. 41.

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**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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## 58 Binding over of parent or guardian.

- (1) Where a child or young person (“the relevant minor”) is convicted of an offence, the powers conferred by this section shall be exercisable by the court by which he is sentenced for that offence; and it shall be the duty of the court, in a case where the relevant minor has not attained the age of 16 years—
  - (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences; and
  - (b) where it does not exercise them, to state in open court that it is not satisfied as mentioned in paragraph (a) above and why it is not so satisfied.
- (2) The powers conferred by this section are as follows—
  - (a) with the consent of the relevant minor’s parent or guardian, to order the parent or guardian to enter into a recognisance to take proper care of him and exercise proper control over him; and
  - (b) if the parent or guardian refuses consent and the court considers the refusal unreasonable, to order the parent or guardian to pay a fine not exceeding £1,000.

[<sup>F73</sup>Where the court has passed on the relevant minor a community sentence (within the meaning of section 6 above) it may include in the recognisance a provision that the minor’s parent or guardian ensure that the minor complies with the requirements of that sentence.]

- (3) An order under this section shall not require the parent or guardian to enter into a recognisance—
  - (a) for an amount exceeding £1,000; or
  - (b) for a period exceeding three years or, where the relevant minor will attain the age of 18 years in a period shorter than three years, for a period exceeding that shorter period;

and section 120 of the 1980 Act (which relates to the forfeiture of recognisances) shall apply in relation to a recognisance entered into in pursuance of such an order as it applies to a recognisance to keep the peace.

[<sup>F74</sup>(4) A fine imposed under subsection (2)(b) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.]

- (5) In fixing the amount of a recognisance under this section, the court shall take into account among other things the means of the parent or guardian so far as they appear or are known to the court; and this subsection applies whether taking into account the means of the parent or guardian has the effect of increasing or reducing the amount of the recognisance.
- (6) A parent or guardian may appeal to the Crown Court against an order under this section made by a magistrates’ court.
- (7) A parent or guardian may appeal to the Court of Appeal against an order under this section made by the Crown Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction.
- (8) A court may vary or revoke an order made by it under this section if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

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#### Textual Amendments

- F73** Words in s. 58(2) inserted (3.2.1995) by 1994 c. 33, s. 168(1), **Sch. 9 para.50**; S.I. 1995/127, art. 2(1), **Sch. 1**, Appendix A.
- F74** S. 58(4) substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 6(6)**; S.I. 1993/1968, art. 2(2), **Sch. 2**

#### Commencement Information

- I52** S. 58 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

### *Detention etc. pending trial*

## 59 Detention at a police station.

In section 38 of the <sup>M42</sup>Police and Criminal Evidence Act 1984 (duties of custody officer after charge), for subsections (6) and (6A) there shall be substituted the following subsections—

“(6) Where a custody officer authorises an arrested juvenile to be kept in police detention under subsection (1) above, the custody officer shall, unless he certifies—

- (a) that, by reason of such circumstances as are specified in the certificate, it is impracticable for him to do so; or
- (b) in the case of an arrested juvenile who has attained the age of 15 years, that no secure accommodation is available and that keeping him in other local authority accommodation would not be adequate to protect the public from serious harm from him,

secure that the arrested juvenile is moved to local authority accommodation.

(6A) In this section—

“local authority accommodation” means accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989);

“secure accommodation” means accommodation provided for the purpose of restricting liberty;

“sexual offence” and “violent offence” have the same meanings as in Part I of the Criminal Justice Act 1991;

and any reference, in relation to an arrested juvenile charged with a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.”

#### Commencement Information

- I53** S. 59 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

- M42** 1984 c. 60.

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*Status:* Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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## **60 Remands and committals to local authority accommodation.**

(1) For section 23 of the 1969 Act there shall be substituted the following section—

### **“23 Remands and committals to local authority accommodation.**

(1) Where—

- (a) a court remands a child or young person charged with or convicted of one or more offences or commits him for trial or sentence; and
- (b) he is not released on bail,

the remand or committal shall be to local authority accommodation; and in the following provisions of this section, any reference (however expressed) to a remand shall be construed as including a reference to a committal.

(2) A court remanding a person to local authority accommodation shall designate the local authority who are to receive him; and that authority shall be—

- (a) in the case of a person who is being looked after by a local authority, that authority; and
- (b) in any other case, the local authority in whose area it appears to the court that he resides or the offence or one of the offences was committed.

(3) Where a person is remanded to local authority accommodation, it shall be lawful for any person acting on behalf of the designated authority to detain him.

(4) Subject to subsection (5) below, a court remanding a person to local authority accommodation may, after consultation with the designated authority, require that authority to comply with a security requirement, that is to say, a requirement that the person in question be placed and kept in secure accommodation.

(5) A court shall not impose a security requirement except in respect of a young person who has attained the age of fifteen, and then only if—

- (a) he is charged with or has been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or
- (b) he has a recent history of absconding while remanded to local authority accommodation, and is charged with or has been convicted of an imprisonable offence alleged or found to have been committed while he was so remanded,

and (in either case) the court is of opinion that only such a requirement would be adequate to protect the public from serious harm from him.

(6) Where a court imposes a security requirement in respect of a person, it shall be its duty—

- (a) to state in open court that it is of such opinion as is mentioned in subsection (5) above; and
- (b) to explain to him in open court and in ordinary language why it is of that opinion;

and a magistrates' court shall cause a reason stated by it under paragraph (b) above to be specified in the warrant of commitment and to be entered in the register.

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- (7) A court remanding a person to local authority accommodation without imposing a security requirement may, after consultation with the designated authority, require that person to comply with any such conditions as could be imposed under section 3(6) of the Bail Act 1976 if he were then being granted bail.
- (8) Where a court imposes on a person any such conditions as are mentioned in subsection (7) above, it shall be its duty to explain to him in open court and in ordinary language why it is imposing those conditions; and a magistrates' court shall cause a reason stated by it under this subsection to be specified in the warrant of commitment and to be entered in the register.
- (9) A court remanding a person to local authority accommodation without imposing a security requirement may, after consultation with the designated authority, impose on that authority requirements—
- (a) for securing compliance with any conditions imposed on that person under subsection (7) above; or
  - (b) stipulating that he shall not be placed with a named person.
- (10) Where a person is remanded to local authority accommodation, a relevant court—
- (a) may, on the application of the designated authority, impose on that person any such conditions as could be imposed under subsection (7) above if the court were then remanding him to such accommodation; and
  - (b) where it does so, may impose on that authority any requirements for securing compliance with the conditions so imposed.
- (11) Where a person is remanded to local authority accommodation, a relevant court may, on the application of the designated authority or that person, vary or revoke any conditions or requirements imposed under subsection (7), (9) or (10) above.
- (12) In this section—
- “court” and “magistrates’ court” include a justice;
- “imprisonable offence” means an offence punishable in the case of an adult with imprisonment;
- “relevant court”, in relation to a person remanded to local authority accommodation, means the court by which he was so remanded, or any magistrates’ court having jurisdiction in the place where he is for the time being;
- “secure accommodation” means accommodation which is provided in a community home for the purpose of restricting liberty, and is approved for that purpose by the Secretary of State;
- “sexual offence” and “violent offence” have the same meanings as in Part I of the Criminal Justice Act 1991;
- “young person” means a person who has attained the age of fourteen years and is under the age of seventeen years.
- (13) In this section—

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- (a) any reference to a person who is being looked after by a local authority shall be construed in accordance with section 22 of the Children Act 1989;
  - (b) any reference to consultation shall be construed as a reference to such consultation (if any) as is reasonably practicable in all the circumstances of the case; and
  - (c) any reference, in relation to a person charged with or convicted of a violent or sexual offence, to protecting the public from serious harm from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.
- (14) This section has effect subject to—
- (a) section 37 of the Magistrates’ Courts Act 1980 (committal to the Crown Court with a view to a sentence of detention in a young offender institution); and
  - (b) section 128(7) of that Act (remands to the custody of a constable for periods of not more than three days),
- but section 128(7) shall have effect in relation to a child or young person as if for the reference to three clear days there were substituted a reference to twenty-four hours.”
- (2) In section 37 of the 1980 Act (committal of young person to Crown Court for sentence)
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- (a) in subsection (1), for the words “17 years old” there shall be substituted the words “18 years old”;
  - (b) in subsection (2), for the words “A person committed in custody under subsection (1) above” there shall be substituted the words “Where a person committed in custody under subsection (1) above is not less than 17 years old, he”;
  - (c) after that subsection there shall be inserted the following subsection—
- “(3) Where a person committed in custody under subsection (1) above is less than 17 years old—
- (a) he shall be committed to accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989) and
  - (b) the court by which he is so committed shall impose a security requirement within the meaning of section 23 of the Children and Young Persons Act 1969.”
- (3) In the case of a child or young person who has been remanded or committed to local authority accommodation by a youth court or a magistrates’ court other than a youth court, any application under section 25 of the <sup>M43</sup>Children Act 1989 (use of accommodation for restricting liberty) shall, notwithstanding anything in section 92(2) of that Act or section 65 of the 1980 Act, be made to that court.

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#### Commencement Information

**I54** S. 60 wholly in force at 1.6.1999; s. 60(3) in force at 14.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(1), **Sch. 1**; s. 60(1)(2)(a) in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**; s. 60(2)(b)(c) in force at 1.6.1999 by S.I. 1999/1280, art. 3, **Sch. 2**.  
S. 60(2)(b)(c) shall come into force on the day appointed by the Secretary of State by order under s. 62(1) see S.I. 1992/333, art. 2(5), Sch. 3(which art. 2(5), Sch. 3 was revoked (16.1999) by S.I. 1999/1280, **art. 2**)

#### Marginal Citations

**M43** 1989 c. 41.

### 61 Provision by local authorities of secure accommodation.

- (1) It shall be the duty of every local authority to secure that they are in a position to comply with any security requirement which may be imposed on them under—
  - (a) section 23(4) of the 1969 Act (remands and committals to local authority accommodation); or
  - (b) section 37(3) of the 1980 Act (committal of young person to Crown Court for sentence).
- (2) A local authority may discharge their duty under subsection (1) above either by providing secure accommodation themselves or by making arrangements with other local authorities for the provision by them of such accommodation [<sup>F75</sup>or by making arrangements with voluntary organisations or persons carrying on a registered childrens' home for the provision or use by them of such accommodation or by making arrangements with the Secretary of State for the use by them of a home provided by him under section 82(5) of the Children Act 1989].
- (3) The Secretary of State may by regulations make provision as to the co-operation required of local authorities in the provision of secure accommodation.
- (4) The power to make regulations under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In this section expressions used in section 23 of the 1969 Act have the same meanings as in that section [<sup>F76</sup>and expressions, other than “local authority”, used in the <sup>M44</sup>Children Act 1989 have the same meanings as in that Act.].

#### Textual Amendments

**F75** Words in s. 61(2) inserted (30.5.1995) by 1994 c. 33, s. 19(3)(a); S.I. 1995/1378, **art.2**.

**F76** Words in s. 61(5) inserted (30.5.1995) by 1994 c. 33, s. 19(3)(b); S.I. 1995/1378, **art.2**.

#### Commencement Information

**I55** S. 61 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

#### Marginal Citations

**M44** 1989 c. 41.



*Status: Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.*

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## [<sup>F77</sup>61A Cost of secure accommodation.

- (1) The Secretary of State may, in relation to any costs incurred by a local authority in discharging their duty under section 61(1) above—
  - (a) defray such costs to such extent as he considers appropriate in any particular case;
  - (b) defray a proportion to be determined by him from time to time of such costs; and
  - (c) defray or contribute to such costs in accordance with a tariff to be determined by him from time to time.
- (2) The Secretary of State may require any person providing secure accommodation to transmit to him, at such times and in such form as he may direct, such particulars as he may require with respect to any costs to which this section applies.
- (3) Payments under this section shall be made out of money provided by Parliament.]

### Textual Amendments

**F77** S. 61A inserted (3.2.1995) by 1994 c. 33, ss.21, 172(2); S.I. 1995/127, art. 2(1), Sch. 1.

### Modifications etc. (not altering text)

**C32** S. 61A: transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(f)

## 62 Transitory provisions pending provision of secure accommodation.

- (1) In relation to any time before such day as the Secretary of State may by order made by statutory instrument appoint, section 23 of the 1969 Act as substituted by section 60(1) above shall have effect with the following modifications.
- (2) In subsection (1), immediately before the words “the remand” there shall be inserted the words “then, unless he is declared by the court, after consultation with a probation officer or a social worker of a local authority social services department, to be a person to whom subsection (5) below applies”.
- (3) For subsections (4) and (5) there shall be substituted the following subsections—
  - “(4) Where a court declares a person to be one to whom subsection (5) below applies, it shall remand him—
    - (a) to a remand centre, if it has been notified that such a centre is available for the reception from the court of such persons; and
    - (b) to a prison, if it has not been so notified.
  - (4A) A court shall not declare a person who is not legally represented in the court to be a person to whom subsection (5) below applies unless—
    - (a) he applied for legal aid and the application was refused on the ground that it did not appear his means were such that he required assistance; or
    - (b) having been informed of his right to apply for legal aid and had the opportunity to do so, he refused or failed to apply.
- (5) This subsection applies to a young person who is male and has attained the age of fifteen, but only if—

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- (a) he is charged with or has been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or
- (b) he has a recent history of absconding while remanded to local authority accommodation, and is charged with or has been convicted of an imprisonable offence alleged or found to have been committed while he was so remanded,

and (in either case) the court is of opinion that only remanding him to a remand centre or prison would be adequate to protect the public from serious harm from him.”

(4) In subsection (6)—

- (a) for the words “imposes a security requirement in respect of a young person” there shall be substituted the words “declares a person to be one to whom subsection (5) above applies”; and
- (b) for the words “subsection (5) above” there shall be substituted the words “that subsection”.

(5) In subsections (7) and (9), the words “without imposing a security requirement” shall be omitted.

(6) After subsection (9) there shall be inserted the following subsection—

“(9A) Where a person is remanded to local authority accommodation, a relevant court may, on the application of the designated authority, declare him to be a person to whom subsection (5) above applies; and on its doing so, he shall cease to be remanded to local authority accommodation and subsection (4) above shall apply.”

(7) In subsection (12), the definition of “secure accommodation” shall be omitted.

#### **Commencement Information**

**I56** S. 62 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

### *Young offenders*

#### **63 Custodial sentences under 1982 Act.**

(1) Part I of the 1982 Act (treatment of young offenders) shall be amended as follows.

(2) In section 1A (detention in a young offender institution)—

- (a) in subsection (1), for the words “a male offender under 21 but not less than 14 years of age or a female offender under 21 but not less than 15 years of age” there shall be substituted the words “an offender under 21 but not less than 15 years of age”;
- (b) in subsection (2), for the words “section 1B(1) and (2)” there shall be substituted the words “section 1B(2)”;
- (c) in subsection (3), the words “and section 1B(3) below” shall cease to have effect and for the words “21 days” there shall be substituted the words “the minimum period applicable to the offender under subsection (4A) below”;

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- (d) in subsection (4), for the words “21 days” there shall be substituted the words “the minimum period applicable”; and
  - (e) after subsection (4) there shall be inserted the following subsection—
    - “(4A) For the purposes of subsections (3) and (4) above, the minimum period of detention applicable to an offender is—
      - (a) in the case of an offender under 21 but not less than 18 years of age, the period of 21 days; and
      - (b) in the case of an offender under 18 years of age, the period of two months.”
- (3) In section 1B (special provision for offenders under 17)—
- (a) subsections (1) and (3) shall cease to have effect;
  - (b) in subsection (2), for the words “aged 15 or 16” there shall be substituted the words “aged 15, 16 or 17”; and
  - (c) for subsections (4) and (5) there shall be substituted the following subsections—
    - “(4) A court shall not pass on an offender aged 15, 16 or 17 a sentence of detention in a young offender institution whose effect would be that the offender would be sentenced to a total term which exceeds 12 months.
    - (5) Where the total term of detention in a young offender institution to which an offender aged 15, 16 or 17 is sentenced exceeds 12 months, so much of the term as exceeds 12 months shall be treated as remitted.”
- (4) In section 1C (accommodation of offenders in a young offender institution), for the words “under 17” there shall be substituted the words “under 18”.
- (5) In section 8 (custody for life) and section 9 (detention of persons aged 17 to 20 for default or contempt), for the words “17 years” there shall be substituted the words “18 years”.

**Commencement Information**

**I57** S. 63 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

<sup>F78</sup>**64** .....

**Textual Amendments**

**F78** S. 64 repealed (9.1.1995) by 1993 c. 33, s. 168(3), Sch.11; S.I. 1994/3192, art.2, Sch.

**65 Supervision of young offenders after release.**

- (1) Where a person under the age of 22 years (“the offender”) is released from a term of detention in a young offender institution or under section 53 of the 1933 Act, he shall be under the supervision of a probation officer or a social worker of a local authority social services department.

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- (2) The supervision period ends on the offender’s 22nd birthday if it has not ended before.
- (3) Subject to subsection (2) above, where the offender is released otherwise than on licence under Part II of this Act, the supervision period begins on his release and ends three months from his release.
- (4) Subject to subsection (2) above, where the offender is released on licence under Part II of this Act and the licence expires less than three months from his release, the supervision period begins on the expiry of the licence and ends three months from his release.
- (5) Where a person is under supervision under this section, he shall comply with such requirements, if any, as may for the time being be specified in a notice from the Secretary of State.
- (6) A person who without reasonable excuse fails to comply with a requirement imposed under subsection (5) above shall be liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; or
  - (b) to an appropriate custodial sentence for a period not exceeding 30 days, but not liable to be dealt with in any other way.
- (7) In subsection (6) above “appropriate custodial sentence” means—
  - (a) a sentence of imprisonment, if the offender has attained the age of 21 years when he is sentenced; and
  - (b) a sentence of detention in a young offender institution, if he has not attained that age.
- (8) A person released from a custodial sentence passed under subsection (6) above shall not be liable to a period of supervision in consequence of his conviction under that subsection, but his conviction shall not prejudice any liability to supervision to which he was previously subject, and that liability shall accordingly continue until the end of the supervision period.

#### Modifications etc. (not altering text)

**C33** S. 65 applied (1.10.1997) by 1997 c. 43, ss. 41, 56(1), Sch. 1, Pt. II paras. 8(2)(4), 9(2)(4), Sch. 5 paras. 9(1)(a)(b), **10(1)(b)(c)**; S.I. 1997/2200, **art. 2(1)**.  
S. 65 modified (*prosp.*) by 1997 c. 43, ss. 56(1), 57(4), **Sch. 5**, para.2(3)(9).

#### Commencement Information

**I58** S. 65 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

## 66 Supervision orders.

For section 15 of the 1969 Act (variation and discharge of supervision orders) there shall be substituted the provisions set out in Schedule 7 to this Act.

#### Commencement Information

**I59** S. 66 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

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## 67 Attendance centre orders.

- (1) In section 17 of the 1982 Act (maximum number of hours at attendance centre for persons of different ages)—
  - (a) subsection (3) shall cease to have effect; and
  - (b) in subsection (5), for the words “17 years”, in both places where they occur, there shall be substituted the words “16 years”.
- (2) In section 18 of that Act (discharge and variation of attendance centre orders), after subsection (4) there shall be inserted the following subsection—

“(4A) The power to discharge an attendance centre order 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.”
- (3) In subsection (6)(b) of that section, the words “if the court is satisfied that the offender proposes to change or has changed his residence” shall cease to have effect.
- (4) In subsection (3) of section 19 of that Act (breaches of attendance centre orders or attendance centre rules), after the words “that court” there shall be inserted the words “may, without prejudice to the continuation of the order, impose on him a fine not exceeding £1,000 or”.
- (5) After that subsection there shall be inserted the following subsection—

“(3A) Section 18 of the Criminal Justice Act 1991 (fixing of certain fines by reference to units) shall apply for the purposes of subsection (3) above as if the failure to attend or the breach of the rules were a summary offence punishable by a fine not exceeding level 3 on the standard scale; and a fine imposed under that subsection shall be deemed for the purposes of any enactment to be a sum adjudged to be paid by a conviction.”
- (6) After subsection (5) of that section there shall be inserted the following subsection—

“(5A) In dealing with an offender under subsection (3)(a) or (5) above, the court concerned—

  - (a) shall take into account the extent to which the offender has complied with the requirements of the attendance centre order; and
  - (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.”

### Commencement Information

**I60** S. 67 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

### Miscellaneous

## 68 Persons aged 17 to be treated as young persons for certain purposes.

The following enactments, namely—

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- (a) the Children and Young Persons Acts 1933 to 1969;
- (b) section 43(3) of the 1952 Act (remand centres, young offender institutions etc.);
- (c) section 5(2) of the <sup>M45</sup>Rehabilitation of Offenders Act 1974 (which provides for rehabilitation periods to be reduced by half for young offenders); and
- (d) the 1980 Act,

shall have effect subject to the amendments specified in Schedule 8 to this Act, being amendments which, for certain purposes of those enactments, have the effect of substituting the age of 18 years for the age of 17 years.

#### Commencement Information

**I61** S. 68 wholly in force (except for specified purposes see S.I. 1992/333, art. 2(4)) at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**

#### Marginal Citations

**M45** 1974 c. 53.

### 69 Non-appearance of persons aged 16 or 17: plea of guilty.

In section 12 of the 1980 Act (non-appearance of accused: plea of guilty), after subsection (1) there shall be inserted the following subsection—

“(1A) The reference in subsection (1) above to the issue of a summons requiring a person to appear before a magistrates’ court other than a youth court includes a reference to the issue of a summons requiring a person who has attained the age of 16 at the time when it is issued to appear before a youth court.”

#### Commencement Information

**I62** S. 69 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

### 70 Renaming of juvenile courts etc.

- (1) Juvenile courts shall be renamed youth courts and juvenile court panels shall be renamed youth court panels.
- (2) Any reference to juvenile courts or juvenile court panels in any enactment passed or instrument made before the commencement of this section shall be construed in accordance with subsection (1) above.

#### Commencement Information

**I63** S. 70 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

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**71 Amendments to service law.**

The enactments mentioned in Schedule 9 to this Act shall have effect subject to the amendments there specified (being amendments to service law corresponding to certain provisions of this Act).

**Commencement Information**

**I64** S. 71 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

**72 Repeal of certain provisions not brought in force.**

The following provisions (none of which has been brought into force), namely—  
section 4 of the 1969 Act (prohibition of criminal proceedings for offences by children);  
in section 5 of that Act (restrictions on criminal proceedings for offences by young persons), subsections (1) to (7) and, in subsection (9), the definitions of “qualified informant” and “designated”;  
section 8 of that Act (fingerprinting of suspected young persons); and  
in section 37 of the <sup>M46</sup>Police and Criminal Evidence Act 1984, subsections (11) to (14) (duties of custody officer as respects young persons),  
shall cease to have effect.

**Commencement Information**

**I65** S. 72 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), Sch. 2.

**Marginal Citations**

**M46** 1984 c. 60.

**PART IV**

PROVISION OF SERVICES

**Modifications etc. (not altering text)**

**C34** Pt. IV (ss. 73-92) applied (30.6.1999) by 1999 c. 9, s. 1(2), Sch. 1 as added by 1991 c. 56, Sch. 4A para. 13(2)(a)

*Probation services*

<sup>F79</sup>**73** .....

**Textual Amendments**

**F79** S. 73 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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F8074 .....

**Textual Amendments**

**F80** S. 74 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

F8175 .....

**Textual Amendments**

**F81** S. 75 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

*Court security*

**76 Provision of court security officers.**

- (1) In relation to each petty sessions area, the committee shall from time to time determine—
    - (a) whether court security officers should be provided, that is to say, persons whose duty it is to maintain order in any court-house to which they are for the time being assigned by the committee; and
    - (b) if so, how many such officers should be provided, and whether they should be provided by the committee or by the [F82]paying authority or authorities].
  - (2) As soon as practicable after the making of a determination under subsection (1)(b) above, the committee or, as the case may be, the [F82]paying authority or authorities] shall provide the required number of court security officers, on such terms and conditions as they may determine—
    - (a) by employing persons to act as court security officers; or
    - (b) by entering into a contract with another person for the employment by him of persons to act as such officers.
  - (3) Before making any determination under subsection (1) or (2) above F83. . . , the committee shall consult with the [F84]paying authority or authorities].
  - (4) Where, [F85]any paying authority] is aggrieved by any determination made by the committee under subsection (1) or (2) above, the authority may, within one month from the receipt by the authority of written notice of the determination, appeal to the [F86]Lord Chancellor], whose decision shall be binding on the committee and the authority.
  - (5) Any determination which, in relation to a petty sessions area which consists of or forms part of the inner London area, is made by the committee under subsection (1) or (2) above, other than a determination that court security officers should not be provided for that area, shall not have effect unless it is confirmed, with or without modifications, by the [F86]Lord Chancellor].
- [F87](6) In this section—



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“the committee”, in relation to a petty sessions area, means the magistrates’ courts committee whose area consists of or includes that petty sessions area, and

“paying authority”, in relation to a committee, has the same meaning as in section 55 of the 1979 Act.]

#### Textual Amendments

- F82** Words in s. 76(1)(b)(2) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. II para. 33(2)**; S.I. 1995/685, **arts. 4(l), 7(2)(i)**.
- F83** Words in s. 76(3) repealed (1.4.1995) by 1994 c. 29, ss. 91, 93, **Sch. 8 Pt. II para. 33(3)(a)**, **Sch. 9 Pt. II**; S.I. 1995/685, **arts. 4(l)(n), 7(2)(i), 8(u)**.
- F84** Words in s. 76(3) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. II para. 33(3)(b)**; S.I. 1995/685, **art. 4(l), 7(2)(i)**.
- F85** Words in s. 76(4) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. II para. 33(4)**; S.I. 1995/685, **art. 4(l), 7(2)(i)**.
- F86** Words in s. 76(4)(5) substituted (1.4.1992) by S.I. 1992/709, art. 2(3), **Sch. 1**.
- F87** S. 76(6) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. II para. 33(6)**; S.I. 1995/685, **arts. 4(l), 7(2)(i)**.

#### Modifications etc. (not altering text)

- C35** S. 76 amended (temp.) (1.4.1995) by S.I. 1995/685, **art. 6(2)(c)**.
- C36** Functions of the Secretary of State under s. 76(4)(5) transferred (1.4.1992) to the Lord Chancellor by S.I. 1992/709, art. 2(1)(c), **Sch. 1**.

#### Commencement Information

- I66** S. 76 wholly in force at 1.4.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 1**.

## 77 Powers and duties of court security officers.

- (1) A court security officer acting in the execution of his duty shall have the following powers, namely—
- (a) to search any person who is in or is seeking to enter the court-house, and any article in the possession of such a person;
  - (b) to exclude or remove from the court-house any person who refuses to permit such a search as is mentioned in paragraph (a) above, or refuses to surrender any article in his possession which the officer reasonably believes may jeopardise the maintenance of order in the court-house;
  - (c) to exclude or remove any person from the court-house, or restrain any person in the court-house, where (in either case) it is reasonably necessary to do so in order—
    - (i) to maintain order in the court-house;
    - (ii) to enable court business to be carried on without interference or delay;or
    - (iii) to secure his or any other person’s safety.
- (2) The powers conferred by subsection (1)(a) above to search a person shall not be construed as authorising a court security officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves.

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- (3) The powers conferred by subsection (1)(b) and (c) above shall include power to use reasonable force, where necessary.
- (4) In the execution of his duty, a court security officer shall act in accordance with any general or specific instructions which have been given to him (whether orally or in writing) by a person in authority.
- (5) In subsection (4) above “person in authority”, in relation to any court-house, means—
  - (a) a justice of the peace, [<sup>F88</sup>justices’ chief executive] or justices’ clerk who is exercising any functions in the court-house; and
  - (b) any officer or staff [<sup>F88</sup>of the magistrates’ courts committee authorised by such a justices’ chief executive or clerk] for the purpose.
- (6) For the purposes of this section and section 78 below, a court security officer shall not be regarded as acting in the execution of his duty at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise).

#### Textual Amendments

**F88** Words in s. 77(5)(a)(b) substituted (1.4.1995) by 1994 c. 29, s. 91, **Sch. 8 Pt. II para. 34(a)(b)**; S.I. 1995/685, **arts. 4(1), 7(2)(j)**

#### Commencement Information

**I67** S. 77 wholly in force at 1.4.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 1**.

## 78 Protection of court security officers.

- (1) Any person who assaults a court security officer acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.
- (2) Any person who resists or wilfully obstructs a court security officer acting in the execution of his duty shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### Commencement Information

**I68** S. 77 wholly in force at 1.4.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 1**.

## [<sup>F89</sup>79 Duties of responsible authorities.

- (1) In section 55(2) (duties of local authorities outside Greater London) of the Justices of the <sup>M47</sup>Peace Act 1979 (“the 1979 Act”), for paragraph (b) there shall be substituted the following paragraphs—
  - “(b) the sums payable under Part II of this Act on account of a person’s salary or expenses as justices’ clerk for the non-metropolitan county or metropolitan district or any part thereof, the remuneration of any staff employed by the magistrates’ courts committee to assist him and the remuneration of any court security officers employed (whether by

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that committee or the council) under section 76(2)(a) of the Criminal Justice Act 1991, together with—

- (i) secondary Class I contributions payable in respect of any such person, staff or officers under Part I of the Social Security Act 1975, and
  - (ii) state scheme premiums so payable under Part III of the Social Security Pensions Act 1975;
- (bb) the sums payable under any contract entered into (whether by the magistrates' courts committee or the council) under section 76(2)(b) of the Criminal Justice Act 1991;”.

(2) In section 58(2) of that Act (corresponding arrangements in the inner London area), for paragraph (b) there shall be substituted the following paragraphs—

- “(b) the sums payable by way of salary or expenses to justices' clerks and other officers employed by the committee of magistrates and the remuneration of any court security officers employed (whether by that committee or the Receiver) under section 76(2)(a) of the Criminal Justice Act 1991, together with—
- (i) secondary Class I contributions payable in respect of any such officers under Part I of the Social Security Act 1975, and
  - (ii) state scheme premiums so payable under Part III of the Social Security Pensions Act 1975;
- (bb) the sums payable under any contract entered into (whether by the committee of magistrates or the Receiver) under section 76(2)(b) of the Criminal Justice Act 1991;”.]

#### Textual Amendments

**F89** S. 79 repealed (1.4.1995 so far as it applies to s. 55(2) of the 1979 Act and otherwise *prosp.*) by 1994 c. 29, s. 93, **Sch. 9 Pt.II**; S.I. 1995/685, **arts. 4(n), 8(v)**

#### Commencement Information

**I69** S. 79 wholly in force at 1.4.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), **Sch. 1**.

#### Marginal Citations

**M47** 1979 c. 55.

### *Prisoner escorts*

## **80 Arrangements for the provision of prisoner escorts.**

- (1) The Secretary of State may make arrangements for any of the following functions, namely—
- [<sup>F90</sup>(a) the delivery of prisoners from one set of relevant premises to another;]
  - (b) the custody of prisoners held on [<sup>F91</sup>the premises of any court] (whether or not they would otherwise be in the custody of the court) and their production before the court;
  - [<sup>F92</sup>(c) the custody of prisoners temporarily held in a prison in the course of delivery from one prison to another; and]

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(e) the custody of prisoners while they are outside a prison for temporary purposes,

to be performed in such cases as may be determined by or under the arrangements by prisoner custody officers who are authorised to perform such functions.

[<sup>F93</sup>(1A) In paragraph (a) of subsection (1) above “relevant premises” means a court, prison, police station or hospital; and either (but not both) of the sets of premises mentioned in that paragraph may be situated in a part of the British Islands outside England and Wales.]

(2) Arrangements made by the Secretary of State under this section (“prisoner escort arrangements”) may include entering into contracts with other persons for the provision by them of prisoner custody officers.

(3) Any person who, under [<sup>F94</sup>a warrant or a hospital order or remand], is responsible for the performance of any such function as is mentioned in subsection (1) above shall be deemed to have complied with [<sup>F94</sup>the warrant, order or remand] if he does all that he reasonably can to secure that the function is performed by a prisoner custody officer acting in pursuance of prisoner escort arrangements.

[<sup>F95</sup>(4) In this section—

“hospital” has the same meaning as in the <sup>M48</sup>Mental Health Act 1983;

“hospital order” means an order for a person’s admission to hospital made under section 37, 38 or 44 of that Act, section 5 of the <sup>M49</sup>Criminal Procedure (Insanity) Act 1964 or section 6, 14 or 14A of the <sup>M50</sup>Criminal Appeal Act 1968;

“hospital remand” means a remand of a person to hospital under section 35 or 36 of the Mental Health Act 1983;

“warrant” means a warrant of commitment, a warrant of arrest or a warrant under section 46, 47, 48, 50 or 74 of that Act.]

#### Textual Amendments

**F90** S. 80(1)(a) substituted (3.11.1994) by 1994 c. 33, s. 93(1)(a).

**F91** Words in s. 80(1)(b) substituted (3.11.1994) by 1994 c. 33, s. 93(1)(b).

**F92** S. 80(1)(c) substituted (3.11.1994) for s. 80(1)(c)(d) by 1994 c. 33, s. 93(1)(c).

**F93** S. 80(1A) inserted (3.11.1994) by 1994 c. 33, s. 93(2).

**F94** Words in s. 80(3) substituted (3.11.1994) by 1994 c. 33, s. 93(3).

**F95** S. 80(4) inserted (3.11.1994) by 1994 c. 33, s. 93(4).

#### Modifications etc. (not altering text)

**C37** S. 80: transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(g)

#### Commencement Information

**I70** S. 80 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

#### Marginal Citations

**M48** 1983 c. 20.

**M49** 1964 c. 84.

**M50** 1968 c. 19.

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## 81 Monitoring etc. of prisoner escort arrangements.

- (1) Prisoner escort arrangements shall include the appointment of—
  - (a) a prisoner escort monitor, that is to say, a Crown servant whose duty it shall be to keep the arrangements under review and to report on them to the Secretary of State; and
  - (b) a panel of lay observers whose duty it shall be to inspect the conditions in which prisoners are transported or held in pursuance of the arrangements and to make recommendations to the Secretary of State.
- (2) It shall also be the duty of a prisoner escort monitor to investigate and report to the Secretary of State on—
  - (a) any allegations made against prisoner custody officers acting in pursuance of prisoner escort arrangements; and
  - (b) any alleged breaches of discipline on the part of prisoners for whose delivery or custody such officers so acting are responsible.
- (3) Any expenses incurred by members of lay panels may be defrayed by the Secretary of State to such extent as he may with the approval of the Treasury determine.

### Modifications etc. (not altering text)

**C38** S. 81(1)(a)(2): transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(b)

### Commencement Information

**I71** S. 81 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

## 82 Powers and duties of prisoner custody officers acting in pursuance of such arrangements.

- (1) A prisoner custody officer acting in pursuance of prisoner escort arrangements shall have the following powers, namely—
  - (a) to search in accordance with rules made by the Secretary of State any prisoner for whose delivery or custody he is responsible in pursuance of the arrangements; and
  - (b) to search any other person who is in or is seeking to enter any place where any such prisoner is or is to be held, and any article in the possession of such a person.
- (2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves.
- (3) A prisoner custody officer shall have the following duties as respects prisoners for whose delivery or custody he is responsible in pursuance of prisoner escort arrangements, namely—
  - (a) to prevent their escape from lawful custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part;
  - (d) to attend to their wellbeing; and
  - (e) to give effect to any directions as to their treatment which are given by a court,

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and the Secretary of State may make rules with respect to the performance by prisoner custody officers of their duty under paragraph (d) above.

[<sup>F96</sup>(4) Where a prisoner custody officer acting in pursuance of prisoner escort arrangements is on any premises in which the Crown Court or a magistrates' court is sitting, it shall be his duty to give effect to any order of that court made—

- (a) in the case of the Crown Court, under section 34A of the 1973 Act (power of Court to order search of persons before it); or
- (b) in the case of a magistrates' court, under section 80 of the 1980 Act (application of money found on defaulter).]

(5) The powers conferred by subsection (1) above, and the powers arising by virtue of subsections (3) and (4) above, shall include power to use reasonable force where necessary.

(6) The power to make rules under this section shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F96** S. 82(4) substituted (3.11.1994) by 1994 c. 33, s. 94(1).

#### Commencement Information

**I72** S. 82 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

### [83 <sup>F97</sup>**Breaches of discipline by prisoners under escort.**

(1) This section applies where a prisoner for whose delivery or custody a prisoner custody officer has been responsible in pursuance of prisoner escort arrangements is delivered to a prison.

(2) For the purposes of such prison rules as relate to disciplinary offences, the prisoner shall be deemed to have been—

- (a) in the custody of the governor of the prison; or
- (b) in the case of a contracted out prison, in the custody of its director,  
at all times during the period for which the prisoner custody officer was so responsible.

(3) In the case of any breach by the prisoner at any time during that period of such prison rules as so relate, a disciplinary charge may be laid against him by the prisoner custody officer.

(4) Nothing in this section shall enable a prisoner to be punished under prison rules for any act or omission of his for which he has already been punished by a court.

(5) In this section “prison rules”, in relation to a prison situated in a part of the British Islands outside England and Wales, means rules made under any provision of the law of that part which corresponds to section 47 of the 1952 Act.]

#### Textual Amendments

**F97** S. 83 substituted (3.11.1994) by 1994 c. 33, s.95.

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### *Contracted out prisons*

#### **[84] <sup>F98</sup>Contracting out prisons etc.**

- (1) The Secretary of State may enter into a contract with another person for the provision or running (or the provision and running) by him, or (if the contract so provides) for the running by sub-contractors of his, of any prison or part of a prison.
- (2) While a contract under this section for the running of a prison or part of a prison is in force—
  - (a) the prison or part shall be run subject to and in accordance with sections 85 and 86 below, the 1952 Act (as modified by section 87 below) and prison rules; and
  - (b) in the case of a part, that part and the remaining part shall each be treated for the purposes of sections 85 to 88A below as if they were separate prisons.
- (3) Where the Secretary of State grants a lease or tenancy of land for the purposes of any contract under this section, none of the following enactments shall apply to it, namely—
  - (a) Part II of the <sup>M51</sup>Landlord and Tenant Act 1954 (security of tenure);
  - (b) section 146 of the <sup>M52</sup>Law of Property Act 1925 (restrictions on and relief against forfeiture);
  - (c) section 19(1), (2) and (3) of the <sup>M53</sup>Landlord and Tenant Act 1927 and the <sup>M54</sup>Landlord and Tenant Act 1988 (covenants not to assign etc.); and
  - (d) the <sup>M55</sup>Agricultural Holdings Act 1986.

In this subsection “lease or tenancy” includes an underlease or sub-tenancy.

- (4) In this Part—

“contracted out prison” means a prison or part of a prison for the running of which a contract under this section is for the time being in force;

“the contractor”, in relation to a contracted out prison, means the person who has contracted with the Secretary of State for the running of it; and

“sub-contractor”, in relation to a contracted out prison, means a person who has contracted with the contractor for the running of it or any part of it.]

#### **Textual Amendments**

**F98** S. 84 substituted (3.11.1994) by 1994 c. 33, s.96.

#### **Marginal Citations**

**M51** 1954 c. 56.

**M52** 1925 c. 20.

**M53** 1927 c. 36

**M54** 1988 c. 26.

**M55** 1986 c. 5.

#### **85 Officers of contracted out prisons.**

- (1) Instead of a governor, every contracted out prison shall have—

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- (a) a director, who shall be a prisoner custody officer appointed by the contractor and specially approved for the purposes of this section by the Secretary of State; and
  - (b) a controller, who shall be a Crown servant appointed by the Secretary of State; and every officer of such a prison who performs custodial duties shall be a prisoner custody officer who is authorised to perform such duties [<sup>F99</sup>or a prison officer who is temporarily attached to the prison].
- (2) Subject to subsection (3) below, the director shall have such functions as are conferred on him by the 1952 Act (as modified by section 87 below) or as may be conferred on him by prison rules.
- (3) The director shall not—
- (a) inquire into a disciplinary charge laid against a prisoner, conduct the hearing of such a charge or make, remit or mitigate an award in respect of such a charge; or
  - (b) except in cases of urgency, order the removal of a prisoner from association with other prisoners, the temporary confinement of a prisoner in a special cell or the application to a prisoner of any other special control or restraint.
- (4) The controller shall have such functions as may be conferred on him by prison rules and shall be under a duty—
- (a) to keep under review, and report to the Secretary of State on, the running of the prison by or on behalf of the director; and
  - (b) to investigate, and report to the Secretary of State on, any allegations made against prisoner custody officers performing custodial duties at the prison [<sup>F100</sup>or prison officers who are temporarily attached to the prison].
- (5) [<sup>F101</sup>The contractor and any sub-contractor of his shall each]be under a duty to do all that he reasonably can (whether by giving directions to the officers of the prison or otherwise) to facilitate the exercise by the controller of all such functions as are mentioned in or conferred by subsection (4) above.

#### Textual Amendments

**F99** Words in s. 85(1) inserted (3.11.1994) by 1994 c. 33, s. 97(1).

**F100** Words in s. 85(4)(b) inserted (3.11.1994) by 1994 c. 33, s. 97(2).

**F101** Words in s. 85(5) substituted (3.11.1994) by 1994 c. 33, s. 101(1).

#### Commencement Information

**I73** S. 85 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

## 86 Powers and duties of prisoner custody officers employed at contracted out prisons.

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers, namely—
- (a) to search in accordance with prison rules any prisoner who is confined in the prison; and
  - (b) to search any other person who is in or is seeking to enter the prison, and any article in the possession of such a person.



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- (2) The powers conferred by subsection (1)(b) above to search a person shall not be construed as authorising a prisoner custody officer to require a person to remove any of his clothing other than an outer coat, jacket or gloves.
- (3) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following duties as respects prisoners confined in the prison, namely—
  - (a) to prevent their escape from lawful custody;
  - (b) to prevent, or detect and report on, the commission or attempted commission by them of other unlawful acts;
  - (c) to ensure good order and discipline on their part; and
  - (d) to attend to their wellbeing.
- (4) The powers conferred by subsection (1) above, and the powers arising by virtue of subsection (3) above, shall include power to use reasonable force where necessary.

#### Commencement Information

**I74** S. 86 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

VALID FROM 01/11/2007

#### [<sup>F102</sup>86A Power of prisoner custody officers to detain suspected offenders

- (1) A prisoner custody officer performing custodial duties at a contracted out prison shall have the following powers in relation to any person who is in or is seeking to enter the prison (other than a prisoner confined in the prison).
- (2) Where the officer has reason to believe that the person is committing or has committed an offence under any of sections 39 to 40D of the Prison Act 1952, the officer may—
  - (a) require the person to wait with him for the arrival of a constable for such period as may be necessary (not exceeding two hours); and
  - (b) use reasonable force to prevent the person from making off while subject to a requirement under paragraph (a).
- (3) A person who makes off while subject to such a requirement is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In subsection (2), a reference to an offence under a particular provision includes a reference to any offence consisting of an attempt to commit, incitement or conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, an offence under that provision.]

#### Textual Amendments

**F102** S. 86(A) inserted (1.11.2007) by Offender Management Act 2007 (c. 21), ss. 17(1), 41(1); S.I. 2007/3001, art. 2(1)(b)

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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#### Modifications etc. (not altering text)

- C39** S. 86A(2) modified (temp.) (1.11.2007) by [The Offender Management Act 2007 \(Commencement No.1 and Transitional Provisions\) Order 2007 \(S.I. 2007/3001\)](#), [art. 2\(2\)](#)
- C40** S. 86A(4) modified (1.10.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 63(1)(2), 94, [Sch. 6 para. 19\(b\)](#); S.I. 2008/2504, [art. 2\(a\)](#)

VALID FROM 01/11/2007

#### <sup>F103</sup>86B Powers of authorised persons to perform custodial duties

- (1) In this section—
- “restricted activity” means an activity which is (apart from this section) required by section 85(1) to be carried out by an officer of a contracted-out prison who is—
- (a) a prisoner custody officer authorised to perform custodial duties; or
  - (b) a prison officer temporarily attached to the prison; and
- “worker”, in relation to a contracted out prison, means a person who works at the prison, other than an officer mentioned above.
- (2) The Secretary of State may by order specify descriptions of restricted activity that may be the subject of authorisations under subsection (3) given to workers at a contracted-out prison.
- (3) A worker at a contracted-out prison may carry out any activity of a description specified under subsection (2), but only if and to the extent that he is for the time being authorised to do so by the director of the prison.
- (4) The director may give such authorisation—
- (a) in general or specific terms, subject to any limitations or conditions he considers appropriate; and
  - (b) to one or more particular workers or to any worker who is (or comes to be) within a specified description of workers at the prison.
- (5) Nothing in an order or authorisation under this section is to be taken as authorising the use of force.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F103** S. 86(B) inserted (1.11.2007) by [Offender Management Act 2007 \(c. 21\)](#), ss. 18(2), 41(1); S.I. 2007/3001, [art. 2\(1\)\(c\)](#)

#### 87 Consequential modifications of 1952 Act.

- (1) In relation to a contracted out prison, the provisions of the 1952 Act specified in subsections (2) to (8) below shall have effect subject to the modifications so specified.

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- (2) In section 7(1) (prison officers), the reference to a governor shall be construed as a reference to a director and a controller.
- [<sup>F104</sup>(3) Section 8 (powers of prison officers) [<sup>F105</sup>and section 8A (powers of search by authorised employees)] shall not apply in relation to a prisoner custody officer performing custodial duties at the prison.
- (4) In sections 10(5), 12(3), 13(1), [<sup>F106</sup>16A] and 19(1) and (3) (various functions of the governor of a prison), references to the governor shall be construed as references to the director.
- [<sup>F107</sup>(4A) Section 11 (ejection of prison officers and their families refusing to quit) shall not apply.]
- [<sup>F107</sup>(5) In section 12(1) and (2) (place of confinement of prisoners), any reference to a prisoner or prisoners shall be construed as a reference to a remand prisoner or prisoners.]
- (6) In section 13(2) (legal custody of prisoner), the reference to an officer of the prison shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison [<sup>F108</sup>or a prison officer who is temporarily attached to the prison].
- (7) In section 14(2) (cells), the reference to a prison officer shall be construed as a reference to a prisoner custody officer performing custodial duties at the prison [<sup>F108</sup>or a prison officer who is temporarily attached to the prison].
- (8) Section 35 (vesting of prison property in the Secretary of State) shall have effect subject to the provisions of the contract entered into under section 84(1) above.

#### Textual Amendments

**F104** S. 87(3) substituted (3.11.1994) by 1994 c. 33, s. 97(3).

**F105** Words in s. 87(3) inserted (3.2.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para.68**; S.I. 1995/127, art. 2(1), **Sch. 1** AppendixB.

**F106** Words in s. 87(4) inserted (9.1.1995) by 1994 c. 33, s. 168(2), **Sch. 10 para. 69**; S.I. 1994/3192, art. 2, **Sch.**

**F107** S. 87(4A) inserted (3.11.1994) by 1994 c. 33, s. 97(4).

**F108** Words in s. 87(6)(7) inserted (3.11.1994) by 1994 c. 33, s. 97(5).

#### Modifications etc. (not altering text)

**C41** S. 87 has effect (9.7.1992) by S.I. 1992/1656, **art. 3** as if s. 87(5) were omitted (which S.I. is revoked (24.2.1993) by S.I. 1993/368, **art. 2**.)

S. 87 has effect (24.02.1993) by S.I. 1993/368, **art. 4** as if subsection (5) were omitted.

#### Commencement Information

**I75** S. 87 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, **art. 2(4)** and Sch. 3

## 88 Intervention by the Secretary of State.

- (1) This section applies where, in the case of a contracted out prison, it appears to the Secretary of State—
- (a) that the director has lost, or is likely to lose, effective control of the prison or any part of it; and

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- (b) that the making of an appointment under subsection (2) below is necessary in the interests of preserving the safety of any person, or of preventing serious damage to any property.
- (2) The Secretary of State may appoint a Crown servant to act as governor of the prison for the period—
- (a) beginning with the time specified in the appointment; and
  - (b) ending with the time specified in the notice of termination under subsection (4) below.
- (3) During that period—
- (a) all the functions which would otherwise be exercisable by the director or the controller shall be exercisable by the governor;
  - (b) [<sup>F109</sup>the contractor and any sub-contractor of his shall each] do all that he reasonably can to facilitate the exercise by the governor of those functions; and
  - (c) the officers of the prison shall comply with any directions given by the governor in the exercise of those functions.
- (4) Where the Secretary of State is satisfied—
- (a) that the governor has secured effective control of the prison or, as the case may be, the relevant part of it; and
  - (b) that the governor's appointment is no longer necessary as mentioned in subsection (1)(b) above,
- he shall, by a notice to the governor, terminate the appointment at a time specified in the notice.
- (5) As soon as practicable after making or terminating an appointment under this section, the Secretary of State shall give a notice of the appointment, or a copy of the notice of termination, to the contractor, [<sup>F110</sup>any sub-contractor of his,]the director and the controller.

#### Textual Amendments

**F109** Words in s. 88(3)(b) substituted (3.11.1994) by 1994 c. 33, s. 101(2).

**F110** Words in s. 88(5) inserted (3.11.1994) by 1994 c. 33, s. 101(3).

#### Commencement Information

**I76** S. 88 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

*[<sup>F111</sup>Contracted out functions]*

#### Textual Amendments

**F111** S. 88A and cross heading inserted (3.11.1994) by 1994 c. 33, s.99.

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## [<sup>F112</sup>88A Contracted out functions at directly managed prisons.

- (1) The Secretary of State may enter into a contract with another person for any functions at a directly managed prison to be performed by prisoner custody officers who are provided by that person and are authorised to perform custodial duties.
- (2) Section 86 above shall apply in relation to a prisoner custody officer performing contracted out functions at a directly managed prison as it applies in relation to such an officer performing custodial duties at a contracted out prison.
- (3) In relation to a directly managed prison—
  - (a) the reference in section 13(2) of the 1952 Act (legal custody of prisoners) to an officer of the prison; and
  - (b) the reference in section 14(2) of that Act (cells) to a prison officer,shall each be construed as including a reference to a prisoner custody officer performing custodial duties at the prison in pursuance of a contract under this section.
- (4) Any reference in subsections (1) to (3) above to the performance of functions or custodial duties at a directly managed prison includes a reference to the performance of functions or such duties for the purposes of, or for purposes connected with, such a prison.
- (5) In this Part—

“contracted out functions” means any functions which, by virtue of a contract under this section, fall to be performed by prisoner custody officers;

“directly managed prison” means a prison which is not a contracted out prison.]

### Textual Amendments

**F112** S. 88A and cross heading inserted (3.11.1994) by 1994 c. 33, s.99.

### *Supplemental*

## 89 Certification of prisoner custody officers

- (1) In this Part “prisoner custody officer” means a person in respect of whom a certificate is for the time being in force certifying—
  - (a) that he has been approved by the Secretary of State for the purpose of performing escort functions or custodial duties or both; and
  - (b) that he is accordingly authorised to perform them.
- (2) The provisions of Schedule 10 to this Act shall have effect with respect to the certification of prisoner custody officers.
- (3) In this section and Schedule 10 to this Act—

“custodial duties” means custodial duties at a [<sup>F113</sup>contracted out or directly managed prison];

“escort functions” means the functions specified in section 80(1) above.

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#### Textual Amendments

**F113** Words in s. 89(3) substituted (3.11.1994) by 1994 c. 33, s. 101(4).

#### Modifications etc. (not altering text)

**C42** S. 89: transfer of functions (20.4.2000) by S.I. 2000/1160, art. 4(1)(2)(h)

#### Commencement Information

**I77** S. 89 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

## 90 Protection of prisoner custody officers.

- (1) Any person who assaults a prisoner custody officer
  - [<sup>F114</sup>(a) acting in pursuance of prisoner escort arrangements;
  - (b) performing custodial duties at a contracted out prison; or
  - (c) performing contracted out functions at a directly managed prison,]
 shall be liable on summary conviction to fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.
- (2) Section 17(2) of the <sup>M56</sup>Firearms Act 1968 (additional penalty for possession of firearms when committing certain offences) shall apply to offences under subsection (1) above.
- (3) Any person who resists or wilfully obstructs a prisoner custody officer
  - [<sup>F114</sup>(a) acting in pursuance of prisoner escort arrangements;
  - (b) performing custodial duties at a contracted out prison; or
  - (c) performing contracted out functions at a directly managed prison,]
 shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) For the purposes of this section, a prisoner custody officer shall not be regarded as acting in pursuance of prisoner escort arrangements at any time when he is not readily identifiable as such an officer (whether by means of a uniform or badge which he is wearing or otherwise).

#### Textual Amendments

**F114** Words in s. 90(1)(3) substituted (3.11.1994) by 1994 c. 33, s. 101(5).

#### Commencement Information

**I78** S. 90 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

#### Marginal Citations

**M56** 1968 c. 27.

## 91 Wrongful disclosure of information.

- (1) A person who
  - [<sup>F115</sup>(a) is or has been employed (whether as a prisoner custody officer or otherwise) in pursuance of prisoner escort arrangements, or at a contracted out prison; or

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(b) is or has been employed to perform contracted out functions at a directly managed prison,]

shall be guilty of an offence if he discloses, otherwise than in the course of his duty or as authorised by the Secretary of State, any information which he acquired in the course of his employment and which relates to a particular prisoner.

- (2) A person guilty of an offence under subsection (1) above shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

#### Textual Amendments

**F115** Words in s. 91(1) substituted (3.11.1994) by 1994 c. 33, s. 101(6).

#### Commencement Information

**I79** S. 91 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

## 92 Interpretation of Part IV.

- (1) In this Part [<sup>F116</sup>unless the context otherwise requires]—
- “contracted out prison” and “the contractor” have the meanings given by [<sup>F117</sup>section 84(4)] above;
  - [<sup>F118</sup>“contracted out functions” and “directly managed prison” have the meanings given by section 88A(5) above;]
  - “court-house” means a petty sessional court-house within the meaning of the 1980 Act or an occasional court-house appointed under section 147 of that Act;
  - “court security officer” has the meaning given by section 76(1) above;
  - “prison” includes a young offender institution or remand centre;
  - [<sup>F118</sup>“prison officer” means an officer of a directly managed prison;
  - “prison rules” means rules made under section 47 of the 1952 Act;]
  - [<sup>F119</sup>“prisoner” means any person for the time being detained in legal custody as a result of a requirement imposed by a court or otherwise that he be so detained;]
  - “prisoner custody officer” has the meaning given by section 89(1) above;
  - “prisoner escort arrangements” has the meaning given by section 80(2) above.
  - [<sup>F118</sup>“sub-contractor” has the meaning given by section 84(4) above.]

- [<sup>F120</sup>(1A) Any reference in this Part to custodial duties at a contracted out prison includes a reference to custodial duties in relation to a prisoner who is outside such a prison for temporary purposes.]
- (2) Unless the contrary intention appears, expressions used in sections 76 to 79 above which are also used in the 1979 Act have the same meanings as in that Act.
- (3) Sections 80, 81(1) and (2)(a), 82 and 89 to 91 above, subsection (1) above and Schedule 10 to this Act shall have effect as if—

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- (a) any reference in section 80(1), 81(1), 82 or 91 above to prisoners included a reference to persons [<sup>F121</sup>remanded or committed to local authority accommodation under section 23 of the 1969 Act] by virtue of a security requirement imposed under section 23(4) of the 1969 Act (remands and committals to local authority accommodation); and
- (b) any reference in [<sup>F121</sup>section 80(1)(c) or (e) or (1A)] above to a prison included a reference to such accommodation.

[<sup>F122</sup>(4) In sections 80, 82 and 83 above, “prison”—

- (a) so far as relating to the delivery of prisoners to or from a prison situated in Scotland, includes a remand centre or young offenders institution within the meaning of section 19 of the <sup>M57</sup>Prisons (Scotland) Act 1989; and
- (b) so far as relating to the delivery of prisoners to or from a prison situated in Northern Ireland, includes a remand centre or young offenders centre.]

#### Textual Amendments

- F116** Words in s. 92(1) inserted (3.11.1994) by 1994 c. 33, s. 101(7)(a).  
**F117** Words in s. 92(1) substituted (3.11.1994) by 1994 c. 33, s. 101(7)(b).  
**F118** Definitions in s. 92(1) inserted (3.11.1994) by 1994 c. 33, s. 101(7)(c)-(e).  
**F119** Definition in s. 92(1) substituted (3.11.1994) by 1994 c. 33, s. 93(5).  
**F120** S. 92(1A) inserted (3.11.1994) by 1994 c. 33, s. 98.  
**F121** Words in s. 92(3) substituted (3.11.1994) by 1994 c. 33, s. 93(6).  
**F122** S. 92(4) inserted (3.11.1994) by 1994 c. 33, s. 93(7).

#### Commencement Information

- I80** S. 92 partly in force; s. 92(3) not in force; s. 92(1) in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3; s. 92(2) in force at 1.4.1992 see S.I. 1992/333, art. 2(1), Sch. 1. S. 92(3) shall come into force on the day appointed by the Secretary of State by order under s. 62(1) see S.I. 1992/333, art. 2(5), Sch. 3.

#### Marginal Citations

- M57** 1989 c. 45.

## PART V

### FINANCIAL AND OTHER PROVISIONS

#### *Cash limits*

#### 93 Cash limits for magistrates' courts.

<sup>F123</sup>(1) . . . . .

- (2) In section 58 of that Act (corresponding arrangements in inner London area), after subsection (2) there shall be inserted the following subsection—

“(2A) Nothing in subsection (1) or (2) above shall require the Receiver to incur any expenditure or make any payment which would—



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- (a) cause the net cost to him in any year of the matters mentioned in subsection (1) of section 59 of this Act to exceed the amount which, in relation to the Receiver and that year, is for the time being determined by the Secretary of State under subsection (3)(b) of that section; or
- (b) cause his capital expenditure in any year in pursuance of functions under this Part of this Act to exceed the amount which, in relation to the Receiver and that year, is for the time being determined by the Secretary of State under subsection (4)(b) of that section;

and in determining any such net cost as is mentioned in paragraph (a) above there shall be disregarded any such capital expenditure as is mentioned in paragraph (b) above.”

- (3) For section 59 of that Act there shall be substituted the following section—

**“59 Grants by Secretary of State to responsible authorities.**

- (1) The Secretary of State may out of money provided by Parliament pay to the responsible authorities grants towards the net cost to them in any year—
  - (a) of their functions under this Part or Part II of this Act;
  - (b) of their functions under any regulations made, or having effect as if made, under section 7 of the Superannuation Act 1972 with respect to court staff or, in the case of the Receiver, his corresponding functions; and
  - (c) of making payments under section 12 or 53 of this Act;and in determining any such net cost as is mentioned above there shall be disregarded any such capital expenditure as is mentioned in subsection (2) below.
- (2) The Secretary of State may also out of money provided by Parliament pay to the responsible authorities grants towards their capital expenditure in any year in pursuance of their functions under this Part of this Act.
- (3) The amount of any grant under subsection (1) above towards the net cost to a responsible authority in any year of the matters mentioned in that subsection shall not exceed 80 per cent. of whichever of the following is the less, namely—
  - (a) that net cost; and
  - (b) the amount which, in relation to the authority and that year, is for the time being determined by the Secretary of State.
- (4) The amount of any grant under subsection (2) above towards the capital expenditure in any year of a responsible authority in pursuance of its functions under this Part of this Act shall not exceed 80 per cent. of whichever of the following is the less, namely—
  - (a) that capital expenditure; and
  - (b) the amount which, in relation to the authority and that year, is for the time being determined by the Secretary of State.
- (5) The Secretary of State, with the concurrence of the Treasury, may by statutory instrument make regulations as to the manner in which—

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- (a) income and expenditure of responsible authorities are to be taken into account in determining the net cost to them in any year of the matters mentioned in subsection (1) above; or
- (b) expenditure of such authorities is to be taken into account in determining their capital expenditure in any year in pursuance of their functions under this Part of this Act;

and for the purposes of this section any question as to that net cost or that capital expenditure shall (subject to the regulations) be determined by the Secretary of State.

- (6) The Secretary of State may direct that, in determining—
  - (a) the net cost to a responsible authority in any year of the matters mentioned in subsection (1) above; or
  - (b) the capital expenditure of such an authority in any year in pursuance of its functions under this Part of this Act,
 there shall be taken into account or disregarded, to such extent as may be specified in the direction, such items as may be so specified.

(7) Grants under this section shall be paid at such times, in such manner and subject to such conditions as the Secretary of State may with the approval of the Treasury determine.

(8) In this section—  
 “court staff” means persons appointed or deemed to have been appointed as justices’ clerks, or employed by a magistrates’ courts committee to assist a justices’ clerk, under Part III of the Justices of the Peace Act 1949 or Part II of this Act;

“responsible authority” means any of the following, namely, the council of a non-metropolitan county, metropolitan district or outer London borough, the Common Council of the City of London and the Receiver.”

(4) In section 70 of that Act (interpretation), before the definition of “commission area” there shall be inserted the following definition—

““capital expenditure” means expenditure for capital purposes (construed in accordance with section 40 of the Local Government and Housing Act 1989);”.

**Textual Amendments**

**F123** S. 93(1) repealed (1.4.1995) by 1994 c. 29, s. 93, Sch. 9 Pt.II; S.I. 1995/685, arts. 4(n), 8(w).

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**Commencement Information**

**I81** S. 93 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

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**Textual Amendments**

**F124** S. 94 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

*Miscellaneous*

**95 Information for financial and other purposes.**

- (1) The Secretary of State shall in each year publish such information as he considers expedient for the purpose of—
- (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or
  - (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground.
- (2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned.

**Commencement Information**

**I82** S. 95 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

**F125**96 .....

**Textual Amendments**

**F125** S. 96 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

**F126**97 .....

**Textual Amendments**

**F126** S. 97 repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

**PART VI**

SUPPLEMENTAL

**98 Expenses etc. under Act.**

There shall be paid out of money provided by Parliament—

- (a) any sums required by the Secretary of State for making payments under contracts entered into under section 13, 80 or 84 above <sup>F127</sup> . . . ;

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- (b) any sums so required for defraying the expenses of the Parole Board, or any expenses incurred by members of lay panels appointed under section 81 above;
- (c) any administrative expenses incurred by the Secretary of State under this Act; and
- (d) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

#### Textual Amendments

**F127** Words in s. 98(a) repealed (5.2.1994) by 1993 c. 47, ss. 32, 33(2), Sch.4

#### Commencement Information

**I83** S. 98 wholly in force at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3

## 99 General interpretation.

(1) In this Act—

“the 1933 Act” means the <sup>M58</sup>Children and Young Persons Act 1933;

“the 1952 Act” means the <sup>M59</sup>Prison Act 1952;

“the 1967 Act” means the <sup>M60</sup>Criminal Justice Act 1967;

“the 1969 Act” means the <sup>M61</sup>Children and Young Persons Act 1969;

“the 1973 Act” means the <sup>M62</sup>Powers of Criminal Courts Act 1973;

“the 1979 Act” means the <sup>M63</sup>Justices of the Peace Act 1979;

“the 1980 Act” means the <sup>M64</sup>Magistrates’ Courts Act 1980;

“the 1982 Act” means the <sup>M65</sup>Criminal Justice Act 1982;

“the 1983 Act” means the <sup>M66</sup>Mental Health Act 1983;

“the 1988 Act” means the <sup>M67</sup>Criminal Justice Act 1988;

“child”, unless the contrary intention appears, means a person under the age of fourteen years;

“prison rules” means rules made under section 47 of the 1952 Act;

“young person” means a person who has attained the age of fourteen years and is under the age of eighteen years.

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

#### Commencement Information

**I84** S. 99 wholly in force; s. 99(1) (save for the definitions of "child" and "young person") in force at 14.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(1) and Sch. 1; s. 99 wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

#### Marginal Citations

**M58** 1933 c. 12.

**M59** 1952 c. 52.

**M60** 1967 c. 80.

**Status:** Point in time view as at 31/03/1996. This version of this Act contains provisions that are not valid for this point in time.

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- M61** 1969 c. 54.
- M62** 1973 c. 62.
- M63** 1979 c. 55.
- M64** 1980 c. 43.
- M65** 1982 c. 48.
- M66** 1983 c. 20.
- M67** 1988 c. 33.

## 100 Minor and consequential amendments.

The enactments mentioned in Schedule 11 to this Act shall have effect subject to the amendments there specified (being minor amendments and amendments consequential on the preceding provisions of this Act).

### Commencement Information

**I85** S. 100 wholly in force at 1.6.1999; S. 100 in force for certain purposes at 14.10.1991 and for further purposes at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(1)(4) and Schs. 1 and 3; s. 100 in force for certain purposes at 1.4.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(1), Sch. 1; s. 100 in force for certain purposes at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.; s. 100 in force for certain purposes (1.6.1999) by S.I. 1999/1280, art. 3, Sch.

S. 100 shall come into force for certain purposes on the day appointed by the Secretary of State by order under s. 62(1) see S.I. 1992/333, art. 2(5), Sch. 3 (which art. 2(5) is revoked (1.6.1999) by S.I. 1999/1280, art. 2)

## 101 Transitional provisions, savings and repeals.

- (1) The transitional provisions and savings contained in Schedule 12 to this Act shall have effect; but nothing in this subsection shall be taken as prejudicing the operation of sections 16 and 17 of the <sup>M68</sup>Interpretation Act 1978 (which relate to the effect of repeals).
- (2) The enactments mentioned in Schedule 13 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

### Commencement Information

**I86** S. 101 partly in force; s. 101(1) in force for certain purposes 14.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(1) and Sch. 1; s. 101(1) in force for certain purposes at 25.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(2) and Sch. 2; s. 101(2) in force for certain purposes at 31.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(4) and Sch. 3; s. 101 in force for certain purposes at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.; s. 101 in force for certain purposes (1.6.1999) by S.I. 1999/1280, art. 3, Sch.

S. 101 to come into force for certain purposes on the day appointed by the Secretary of State by order under s. 62(1) see S.I. 1992/333, art. 2(5), Sch. 3 (which art. 2(5) is repealed (1.6.1999) by S.I. 1999/1280, art. 2)

### Marginal Citations

**M68** 1978 c. 30.

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## 102 Short title, commencement and extent.

- (1) This Act may be cited as the Criminal Justice Act 1991.
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed for different provisions or for different purposes.
- (3) Without prejudice to the provisions of Schedule 12 to this Act, an order under subsection (2) above may make such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with any provision brought into force by the order.
- (4) Subject to subsections (5) to (8) below, this Act extends to England and Wales only.
- (5) The following provisions of this Act, namely—
  - (a) this section;
  - (b) sections 16, 17(1) and (2), 24 and 26(3) and (4); and
  - (c) Schedule 3, paragraph 6 of Schedule 6, paragraph 5 of Schedule 8, paragraph 15 of Schedule 11 to this Act and, so far as relating to the <sup>M69</sup>Social Work (Scotland) Act 1968, Schedule 13,
 

also extend to Scotland; and section 23(2) above and, in so far as relating to the <sup>M70</sup>Criminal Procedure (Scotland) Act 1975, Schedule 13 to this Act extend to Scotland only.
- (6) This section, section 16 above, Schedule 3 to this Act, paragraph 16 of Schedule 11 to this Act and, so far as relating to the <sup>M71</sup>Social Work (Scotland) Act 1968, Schedule 13 to this Act also extend to Northern Ireland.
- (7) An Order in Council under section 81(11) of the 1982 Act may direct that both or either of—
  - (a) section 37 of that Act as amended by section 17(1) above; and
  - (b) section 32 of the 1980 Act as amended by section 17(2) above,

shall extend, subject to such modifications as may be specified in the Order, to the Isle of Man or any of the Channel Islands.
- [<sup>F128</sup>(7A) Sections 80, 82 and 83 above, so far as relating to the delivery of prisoners to or from premises situated in a part of the British Islands outside England and Wales, extend to that part of those Islands.]
- (8) Nothing in subsection (4) above affects the extent of this Act in so far as it amends or repeals any provision of the <sup>M72</sup>Army Act 1955, the <sup>M73</sup>Air Force Act 1955, the <sup>M74</sup>Naval Discipline Act 1957 or the <sup>M75</sup>Armed Forces Act 1991.

### Subordinate Legislation Made

- P1** S. 102(2)(3) power exercised by S.I. 1991/2208  
S. 102(2)(3) power exercised by S.I. 1991/2706
- P2** S. 102(2)(3) power exercised (21.2.1992): different dates appointed for specified provisions by S.I. 1999/333, art. 2(1)(2) (as amended by S.I. 1999/2118)  
S. 102(2)(3) power partly exercised (11.12.1994): 9.1.1995 appointed day by 1994/3191
- P3** S. 102(2) power partly exercised (4.5.1999): 1.6.1999 appointed for specific provisions by S.I. 1999/1280, art. 3, Sch.

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#### Textual Amendments

**F128** S. 102(7A) inserted (3.11.1994) by 1994 c. 33, s. 101(8).

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#### Commencement Information

**I87** S. 102 so far as not in force wholly in force at 14.10.1991 see s. 102(2)(3) and S.I. 1991/2208, art. 2(1) and Sch. 1

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#### Marginal Citations

**M69** 1968 c. 49.

**M70** 1975 c. 21.

**M71** 1968 c. 49.

**M72** 1955 c. 18.

**M73** 1955 c. 19.

**M74** 1957 c. 53.

**M75** 1991 c. 62.

**Status:**

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**Changes to legislation:**

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