

*Status: Point in time view as at 01/04/2016.*

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## SCHEDULES

### SCHEDULE 1

Section 9

#### CIVIL LEGAL SERVICES

#### PART 1

#### SERVICES

##### *Care, supervision and protection of children*

- 1 (1) Civil legal services provided in relation to—
- (a) orders under section 25 of the Children Act 1989 (“the 1989 Act”) (secure accommodation);
  - (b) orders under Part 4 of the 1989 Act (care and supervision);
  - (c) orders under Part 5 of the 1989 Act (protection of children);
  - (d) approval by a court under paragraph 19 of Schedule 2 to the 1989 Act (arrangements to assist children to live abroad);
  - (e) parenting orders under section 8 of the Crime and Disorder Act 1998 (“the 1998 Act”);
  - (f) child safety orders under section 11 of the 1998 Act;
  - (g) orders for contact under section 26 of the Adoption and Children Act 2002 (“the 2002 Act”);
  - (h) applications for leave of the court to remove a child from a person's custody under section 36 of the 2002 Act;
  - (i) placement orders, recovery orders or adoption orders under Chapter 3 of Part 1 of the 2002 Act (see sections 21, 41 and 46 of that Act);
  - (j) orders under section 84 of the 2002 Act (parental responsibility prior to adoption abroad).
- (2) Civil legal services provided in relation to an order under an enactment made—
- (a) as an alternative to an order mentioned in sub-paragraph (1), or
  - (b) in proceedings heard together with proceedings relating to such an order.

##### *Exclusions*

- (3) Sub-paragraphs (1) and (2) are subject to the exclusions in Parts 2 and 3 of this Schedule.

##### *Definitions*

- (4) In this paragraph “children” means persons under the age of 18.

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### *Special educational needs*

- 2 (1) Civil legal services provided in relation to—
- (a) matters arising under Part 4 of the Education Act 1996 [<sup>F1</sup>or Part 3 of the Children and Families Act 2014] (special educational needs);
  - (b) assessments relating to learning difficulties under [<sup>F2</sup>section ] 140 of the Learning and Skills Act 2000.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### **Textual Amendments**

- F1** Words in Sch. 1 Pt.1 para. 2(1)(a) inserted (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), Sch. 3 para.96(a); [S.I. 2014/889](#), art. 7(a)
- F2** Word in Sch.1 Pt.1 para 2(1)(b) substituted by (1.9.2014) by [Children and Families Act 2014 \(c. 6\)](#), Sch. 3 para.96(b); [S.I. 2014/889](#), art. 7(a)

### *Abuse of child or vulnerable adult*

- 3 (1) Civil legal services provided in relation to abuse of an individual that took place at a time when the individual was a child or vulnerable adult, but only where—
- (a) the services are provided to the individual, or
  - (b) the individual has died and the services are provided—
    - (i) to the individual's personal representative, or
    - (ii) for the purposes of a claim under the Fatal Accidents Act 1976 for the benefit of the individual's dependants.

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 8 and 12 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Specific exclusions*

- (3) The services described in sub-paragraph (1) do not include services provided in relation to clinical negligence.
- (4) The services described in sub-paragraph (1) do not include services provided in relation to a matter arising under a family enactment.

#### *Definitions*

- (5) In this paragraph—
- “abuse” means physical or mental abuse, including—
- (a) sexual abuse, and
  - (b) abuse in the form of violence, neglect, maltreatment and exploitation;
- “child” means a person under the age of 18;

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“clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);

“family enactment” has the meaning given in paragraph 12;

“personal representative”, in relation to an individual who has died, means—

(a) a person responsible for administering the individual's estate under the law of England and Wales, Scotland or Northern Ireland, or

(b) a person who, under the law of another country or territory, has functions equivalent to those of administering the individual's estate;

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from abuse is significantly impaired through physical or mental disability or illness, through old age or otherwise.

#### *Working with children and vulnerable adults*

- 4 (1) Civil legal services provided in relation to—
- (a) the inclusion of a person in a barred list or the removal of a person from a barred list;
  - (b) a disqualification order under section 28, 29 or 29A of the Criminal Justice and Court Services Act 2000 (disqualification from working with children);
  - (c) a direction under section 142 of the Education Act 2002 (prohibition from teaching etc).

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Definitions*

- (3) In this paragraph “barred list” means a list maintained under—
- (a) section 2 of the Safeguarding Vulnerable Groups Act 2006 (persons barred from regulated activities relating to children or vulnerable adults);
  - (b) section 81 of the Care Standards Act 2000;
  - (c) section 1 of the Protection of Children Act 1999.

#### *Mental health and mental capacity*

- 5 (1) Civil legal services provided in relation to matters arising under—
- (a) the Mental Health Act 1983;
  - (b) paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984;
  - (c) the Mental Capacity Act 2005.

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Specific exclusion*

- (3) The services described in sub-paragraph (1) do not include services provided in relation to—

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- (a) the creation of lasting powers of attorney under the Mental Capacity Act 2005, or
  - (b) the making of advance decisions under that Act.
- (4) Sub-paragraph (3) does not exclude services provided in relation to determinations and declarations by a court under the Mental Capacity Act 2005 as to the validity, meaning, effect or applicability of—
- (a) a lasting power of attorney that has been created, or
  - (b) an advance decision that has been made.

#### *Community care*

- 6 (1) Civil legal services provided in relation to community care services.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Definitions*

- (3) In this paragraph—

“community care services” means services which a relevant person may provide or arrange to be provided under—

- (a) Part 3 of the National Assistance Act 1948 (“the 1948 Act”) (local authority support for children and families);
- (b) section 47 of the 1948 Act (removal to suitable premises of persons in need of care and attention);
- (c) section 48 of the 1948 Act (temporary protection for property of persons admitted to hospital);
- (d) section 45 of the Health Services and Public Health Act 1968 (arrangements for promoting welfare of old people);
- (e) section 117 of the Mental Health Act 1983 (after-care);
- (f) section 17 of the Children Act 1989 (“the 1989 Act”) (provision of services for children in need);
- (g) section 20 of the 1989 Act (provision of accommodation for children);
- (h) sections 22A, 22B, 22C and 23 of the 1989 Act (accommodation and maintenance for children in care and looked after children);
- (i) sections 23B and 23C of the 1989 Act (local authority functions in respect of relevant children);
- (j) sections 24, 24A and 24B of the 1989 Act (provision of services for persons qualifying for advice and assistance);
- (k) section 2 of the Carers and Disabled Children Act 2000 (services for carers);
- (l) <sup>F3</sup> ...
- (m) section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006 (functions of local social service authorities);
- (n) [<sup>F4</sup>Part 1 of the Care Act 2014 (local authority’s functions of meeting adult’s needs for care and support);]

“relevant person” means—

- (a) a district council;

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- (b) a county council;
- (c) a county borough council;
- (d) a London borough council;
- (e) the Common Council of the City of London;
- (f) a Primary Care Trust established under section 18 of the National Health Service Act 2006;
- (g) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
- (h) any other person prescribed for the purposes of this paragraph.

#### Textual Amendments

- F3** Words in Sch. 1 Pt. 1 para. 6(3) omitted (1.4.2015) by virtue of The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015, [S.I.2015/914](#), art. 1(2), Sch. para 96(a) (with arts. 1(3), 3)
- F4** Words in Sch. 1 Pt. 1 para. 6(3) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015, [S.I.2015/914](#), art. 1(2), Sch. para 96(b) (with arts. 1(3), 3)

#### *Facilities for disabled persons*

- 7 (1) Civil legal services provided in relation to grants under Part 1 of the Housing Grants, Construction and Regeneration Act 1996 for the provision of facilities for disabled persons.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Definitions*

- (3) In this paragraph “disabled person” has the meaning given in section 100 of the Housing Grants, Construction and Regeneration Act 1996.

#### *Appeals relating to welfare benefits*

- 8 (1) Civil legal services provided in relation to an appeal on a point of law to the Upper Tribunal, the Court of Appeal or the Supreme Court relating to a benefit, allowance, payment, credit or pension under—
- (a) a social security enactment,
  - (b) the Vaccine Damage Payments Act 1979, or
  - (c) Part 4 of the Child Maintenance and Other Payments Act 2008.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1 and 15 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Definitions*

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- (3) In this paragraph “social security enactment” means—
- (a) the Social Security Contributions and Benefits Act 1992,
  - (b) the Jobseekers Act 1995,
  - (c) the State Pension Credit Act 2002,
  - (d) the Tax Credits Act 2002,
  - (e) the Welfare Reform Act 2007,
  - (f) the Welfare Reform Act 2012, or
  - (g) any other enactment relating to social security.

*f<sup>5</sup> Appeals relating to council tax reduction schemes*

**Textual Amendments**

**F5** Sch. 1 Pt. 1 para. 8A and cross-heading inserted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, 3

- 8A (1) Civil legal services provided in relation to an appeal on a point of law to the High Court, the Court of Appeal or the Supreme Court relating to a council tax reduction scheme.

*General exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Specific exclusion*

- (3) The services described in sub-paragraph (1) do not include advocacy in proceedings in the High Court.

*Definitions*

- (4) In this paragraph “ council tax reduction scheme ” has the same meaning as in Part 1 of the Local Government Finance Act 1992 (council tax: England and Wales) (see section 13A(9) of that Act). ]

**Textual Amendments**

**F5** Sch. 1 Pt. 1 para. 8A and cross-heading inserted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, 3

*Inherent jurisdiction of High Court in relation to children and vulnerable adults*

- 9 (1) Civil legal services provided in relation to the inherent jurisdiction of the High Court in relation to children and vulnerable adults.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Definitions*

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- (3) In this paragraph—  
“adults” means persons aged 18 or over;  
“children” means persons under the age of 18.

*Unlawful removal of children*

- 10 (1) Civil legal services provided to an individual in relation to the following orders and requirements where the individual is seeking to prevent the unlawful removal of a related child from the United Kingdom or to secure the return of a related child who has been unlawfully removed from the United Kingdom—
- (a) a prohibited steps order or specific issue order (as defined in section 8(1) of the Children Act 1989);
  - (b) an order under section 33 of the Family Law Act 1986 for disclosure of the child's whereabouts;
  - (c) an order under section 34 of that Act for the child's return;
  - (d) a requirement under section 37 of that Act to surrender a passport issued to, or containing particulars of, the child.
- (2) Civil legal services provided to an individual in relation to the following orders and applications where the individual is seeking to secure the return of a related child who has been unlawfully removed to a place in the United Kingdom—
- (a) a prohibited steps order or specific issue order (as defined in section 8(1) of the Children Act 1989);
  - (b) an application under section 27 of the Family Law Act 1986 for registration of an order relating to the child;
  - (c) an order under section 33 of that Act for disclosure of the child's whereabouts;
  - (d) an order under section 34 of that Act for the child's return.

*Exclusions*

- (3) Sub-paragraphs (1) and (2) are subject to the exclusions in Parts 2 and 3 of this Schedule.

*Definitions*

- (4) For the purposes of this paragraph, a child is related to an individual if the individual is the child's parent or has parental responsibility for the child.
- (5) In this paragraph “child” means a person under the age of 18.

*Family homes and domestic violence*

- 11 (1) Civil legal services provided in relation to home rights, occupation orders and non-molestation orders under Part 4 of the Family Law Act 1996.
- (2) Civil legal services provided in relation to the following in circumstances arising out of a family relationship—
- (a) an injunction following assault, battery or false imprisonment;
  - (b) the inherent jurisdiction of the High Court to protect an adult.

*Exclusions*

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- (3) Sub-paragraphs (1) and (2) are subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 3 and 11 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

*Definitions*

- (4) For the purposes of this paragraph—
- (a) there is a family relationship between two people if they are associated with each other, and
  - (b) “associated” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act).
- (5) For the purposes of this paragraph, the Lord Chancellor may by regulations make provision about when circumstances arise out of a family relationship.

*Victims of domestic violence and family matters*

- 12 (1) Civil legal services provided to an adult (“A”) in relation to a matter arising out of a family relationship between A and another individual (“B”) where—
- (a) there has been, or is a risk of, domestic violence between A and B, and
  - (b) A was, or is at risk of being, the victim of that domestic violence.

*General exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Part 2 of this Schedule, with the exception of paragraph 11 of that Part.
- (3) But the exclusions described in sub-paragraph (2) are subject to the exception in sub-paragraph (4).
- (4) The services described in sub-paragraph (1) include services provided in relation to conveyancing, but only where—
- (a) the services in relation to conveyancing are provided in the course of giving effect to a court order made in proceedings, and
  - (b) services described in that sub-paragraph (other than services in relation to conveyancing) are being or have been provided in relation to those proceedings under arrangements made for the purposes of this Part of this Act.
- (5) Sub-paragraph (1) is subject to the exclusion in Part 3 of this Schedule.

*Specific exclusion*

- (6) The services described in sub-paragraph (1) do not include services provided in relation to a claim in tort in respect of the domestic violence.

*Definitions*

- (7) For the purposes of this paragraph—
- (a) there is a family relationship between two people if they are associated with each other, and



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- (b) “associated” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act).
- (8) For the purposes of this paragraph—
- (a) matters arising out of a family relationship include matters arising under a family enactment, and
- (b) (subject to paragraph (a)) the Lord Chancellor may by regulations make provision about when matters arise out of a family relationship.
- (9) In this paragraph—
- “adult” means a person aged 18 or over;
- [<sup>F6</sup> “ domestic violence ” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other; ]
- “family enactment” means—
- (a) section 17 of the Married Women's Property Act 1882 (questions between husband and wife as to property);
- (b) the Maintenance Orders (Facilities for Enforcement) Act 1920;
- (c) the Maintenance Orders Act 1950;
- (d) the Maintenance Orders Act 1958;
- (e) the Maintenance Orders (Reciprocal Enforcement) Act 1972;
- (f) Schedule 1 to the Domicile and Matrimonial Proceedings Act 1973 (staying of matrimonial proceedings) and corresponding provision in relation to civil partnerships made by rules of court under section 223 of the Civil Partnership Act 2004;
- (g) the Matrimonial Causes Act 1973;
- (h) the Inheritance (Provision for Family Dependents) Act 1975;
- (i) the Domestic Proceedings and Magistrates' Courts Act 1978;
- (j) Part 3 of the Matrimonial and Family Proceedings Act 1984 (financial relief after overseas divorce etc);
- (k) Parts 1 and 3 of the Family Law Act 1986 (child custody and declarations of status);
- (l) Parts 1 and 2 of the Children Act 1989 (orders with respect to children in family proceedings);
- (m) section 53 of, and Schedule 7 to, the Family Law Act 1996 (transfer of tenancies on divorce etc or separation of cohabitants);
- (n) Chapters 2 and 3 of Part 2 of the Civil Partnership Act 2004 (dissolution, nullity and other proceedings and property and financial arrangements);
- (o) section 54 of the Human Fertilisation and Embryology Act 2008 (applications for parental orders).
- (xvi) [<sup>F7</sup>section 51A of the Adoption and Children Act 2002 (post-adoption contact orders).]

#### Textual Amendments

- F6** Words in Sch. 1 Pt. 1 para. 12(9) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, **4(1)**

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- F7** Sch. 1 Pt. 1 para. 12(9)(xvi) inserted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 9(12)(a); [S.I. 2014/889](#), art. 4(a)

*Protection of children and family matters*

- 13 (1) Civil legal services provided to an adult (“A”) in relation to the following orders and procedures where the child who is or would be the subject of the order is at risk of abuse from an individual other than A—
- (a) orders under section 4(2A) of the Children Act 1989 (“the 1989 Act”) (removal of father’s parental responsibility);
  - (b) orders under section 6(7) of the 1989 Act (termination of appointment of guardian);
  - (c) orders mentioned in section 8(1) of the 1989 Act ([<sup>F8</sup>child arrangements orders ] and other orders);
  - (d) special guardianship orders under Part 2 of the 1989 Act;
  - (e) orders under section 33 of the Family Law Act 1986 (“the 1986 Act”) (disclosure of child’s whereabouts);
  - (f) orders under section 34 of the 1986 Act (return of child).
  - [<sup>F9</sup>(g) orders under section 51A of the Adoption and Children Act 2002 (post-adoption contact).]

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Definitions*

- (3) In this paragraph—
- “abuse” means physical or mental abuse, including—
- (a) sexual abuse, and
  - (b) abuse in the form of violence, neglect, maltreatment and exploitation;
- “adult” means a person aged 18 or over;
- “child” means a person under the age of 18.

**Textual Amendments**

- F8** Words in Sch. 1 Pt. 1 para. 13(1)(c) substituted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), Sch. 2 para. 70; [S.I. 2014/889](#), art. 4(f)
- F9** Sch. 1 Pt.1 para. 13(1)(g) inserted (22.4.2014) by [Children and Families Act 2014 \(c. 6\)](#), s. 9(12)(b); [S.I. 2014/889](#), art. 4(a)

*Mediation in family disputes*

- 14 (1) Mediation provided in relation to family disputes.
- (2) Civil legal services provided in connection with the mediation of family disputes.

*Exclusions*

- (3) Sub-paragraphs (1) and (2) are subject to the exclusions in Part 2 of this Schedule, with the exception of paragraph 11 of that Part.

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- (4) But the exclusions described in sub-paragraph (3) are subject to the exception in sub-paragraph (5).
- (5) The services described in sub-paragraph (2) include services provided in relation to conveyancing, but only where—
  - (a) the services in relation to conveyancing are provided in the course of giving effect to arrangements for the resolution of a family dispute, and
  - (b) services described in that sub-paragraph or sub-paragraph (1) (other than services in relation to conveyancing) are being or have been provided in relation to the dispute under arrangements made for the purposes of this Part of this Act.
- (6) Sub-paragraphs (1) and (2) are subject to the exclusion in Part 3 of this Schedule.

#### *Definitions*

- (7) For the purposes of this paragraph—
  - (a) a dispute is a family dispute if it is a dispute between individuals about a matter arising out of a family relationship between the individuals,
  - (b) there is a family relationship between two individuals if they are associated with each other, and
  - (c) “associated” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act).
- (8) For the purposes of this paragraph—
  - (a) matters arising out of a family relationship include matters arising under a family enactment, and
  - (b) (subject to paragraph (a)) the Lord Chancellor may by regulations make provision about when matters arise out of a family relationship.
- (9) In this paragraph—
  - “child” means a person under the age of 18;
  - “family enactment” has the meaning given in paragraph 12.

#### *Children who are parties to family proceedings*

- 15 (1) Civil legal services provided to a child in relation to family proceedings—
  - (a) where the child is, or proposes to be, the applicant or respondent;
  - (b) where the child is made a party to the proceedings by a court under rule 16.2 of the Family Procedure Rules;
  - (c) where the child is a party to the proceedings and is conducting, or proposes to conduct, the proceedings without a children's guardian or litigation friend in accordance with rule 16.6 of the Family Procedure Rules.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Definitions*

- (3) For the purposes of this paragraph—

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- (a) proceedings are family proceedings if they relate to a matter arising out of a family relationship,
  - (b) there is a family relationship between two individuals if they are associated with each other, and
  - (c) “associated” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act).
- (4) For the purposes of this paragraph—
- (a) matters arising out of a family relationship include matters arising under a family enactment, and
  - (b) (subject to paragraph (a)) the Lord Chancellor may by regulations make provision about when matters arise out of a family relationship.
- (5) In this paragraph—
- “child” means a person under the age of 18;
  - “family enactment” has the meaning given in paragraph 12.

*<sup>F10</sup>Female genital mutilation protection orders*

**Textual Amendments**

**F10** Sch. 1 Pt. 1 para. 15A and cross-heading inserted (17.7.2015) by [Serious Crime Act 2015 \(c. 9\), s. 88\(1\), Sch. 4 para. 87\(2\)](#); [S.I. 2015/1428, art. 2\(c\)\(iv\)](#)

- 15A (1) Civil legal services provided in relation to female genital mutilation protection orders under paragraph 1 of Schedule 2 to the Female Genital Mutilation Act 2003.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.]

*Forced marriage*

- 16 (1) Civil legal services provided in relation to forced marriage protection orders under Part 4A of the Family Law Act 1996.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*EU and international agreements concerning children*

- 17 (1) Civil legal services provided in relation to—
- (a) an application made to the Lord Chancellor under the 1980 European Convention on Child Custody for the recognition or enforcement in England and Wales of a decision relating to the custody of a child;
  - (b) an application made to the Lord Chancellor under the 1980 Hague Convention in respect of a child who is, or is believed to be, in England and Wales;
  - (c) the recognition or enforcement of a judgment in England and Wales in accordance with Article 21, 28, 41, 42 or 48 of the 2003 Brussels Regulation.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

### *Definitions*

- (3) In this paragraph—

“the 1980 European Convention on Child Custody” means the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20 May 1980;

“the 1980 Hague Convention” means the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980;

“the 2003 Brussels Regulation” means Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

- (4) For the purposes of this paragraph, an application is made to the Lord Chancellor if it is addressed to the Lord Chancellor or transmitted to the Lord Chancellor in accordance with section 3 or 14 of the Child Abduction and Custody Act 1985.

### *EU and international agreements concerning maintenance*

- 18 (1) Civil legal services provided in relation to an application under the following for the recognition or enforcement in England and Wales of a maintenance order—
- (a) the 1968 Brussels Convention;
  - (b) the 1973 Hague Convention;
  - (c) the 1989 Lugano Convention;
  - (d) the 2000 Brussels Regulation;
  - (e) the 2007 Lugano Convention.
- (2) Civil legal services provided in relation to an application under Article 56 of the EU Maintenance Regulation (applications relating to maintenance decisions).
- (3) Civil legal services provided to an individual in relation to proceedings in England and Wales relating to the recognition, enforceability or enforcement of a maintenance decision in circumstances in which the individual falls within Article 47(2) or (3) of the EU Maintenance Regulation (parties who benefited from free legal aid etc in Member State of origin).
- [<sup>F11</sup>(3A) Civil legal services provided in relation to an application under Article 10 of the 2007 Hague Convention (applications relating to maintenance decisions).
- (3B) Civil legal services provided to an individual in relation to proceedings in England and Wales relating to the recognition or enforcement of a maintenance decision in circumstances in which—
- (a) Article 17(b) of the 2007 Hague Convention (free legal assistance for persons who benefited from such assistance in State of origin) applies to the proceedings by virtue of Article 37(2) of that Convention (direct request to competent authority of Contracting State), and

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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) the individual falls within Article 17(b) as so applied.]

#### *Exclusions*

- (4) Sub-paragraphs (1) to [<sup>F12</sup>(3B)] are subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 11 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Definitions*

- (5) In this paragraph—

“the 1968 Brussels Convention” means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocol annexed to that Convention) signed at Brussels on 27 September 1968;

“the 1973 Hague Convention” means the Convention on the recognition and enforcement of decisions relating to maintenance obligations concluded at The Hague on 2 October 1973;

“the 1989 Lugano Convention” means the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (including the Protocols annexed to that Convention) opened for signature at Lugano on 16 September 1988 and signed by the United Kingdom on 18 September 1989;

“the 2000 Brussels Regulation” means Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;

[<sup>F13</sup> “ the 2007 Hague Convention ” means the Convention on the international recovery of child support and other forms of family maintenance concluded at The Hague on 23 November 2007; ]

“the 2007 Lugano Convention” means the Convention on jurisdiction and enforcement of judgments in civil and commercial matters, between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation and the Kingdom of Denmark signed on behalf of the European Community on 30 October 2007;

“the EU Maintenance Regulation” means Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations;

“maintenance order”, in relation to a convention or regulation listed in this paragraph, means a maintenance judgment within the meaning of that convention or regulation.

#### **Textual Amendments**

- F11** Sch. 1 Pt. 1 para. 18(3A)(3B) inserted (1.4.2013) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) Order 2013, arts. 1, {5(2)}
- F12** Word in Sch. 1 Pt. 1 para. 18(4) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, **5(3)**
- F13** Words in Sch. 1 Pt. 1 para. 18(5) inserted (1.4.3003) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, **5(4)**

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

### *Judicial review*

- 19 (1) Civil legal services provided in relation to judicial review of an enactment, decision, act or omission.

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6, 8, 12, [F14 15, 16 and 18] of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Specific exclusion: benefit to individual*

- (3) The services described in sub-paragraph (1) do not include services provided to an individual in relation to judicial review that does not have the potential to produce a benefit for the individual, a member of the individual's family or the environment.
- (4) Sub-paragraph (3) does not exclude services provided in relation to a judicial review where the judicial review ceases to have the potential to produce such a benefit after civil legal services have been provided in relation to the judicial review under arrangements made for the purposes of this Part of this Act.

#### *Specific exclusions: immigration cases*

- (5) The services described in sub-paragraph (1) do not include services provided in relation to judicial review in respect of an issue relating to immigration where—
- (a) the same issue, or substantially the same issue, was the subject of a previous judicial review or an appeal to a court or tribunal,
  - (b) on the determination of the previous judicial review or appeal (or, if there was more than one, the latest one), the court, tribunal or other person hearing the case found against the applicant or appellant on that issue, and
  - (c) the services in relation to the new judicial review are provided before the end of the period of 1 year beginning with the day of that determination.
- (6) The services described in sub-paragraph (1) do not include services provided in relation to judicial review of removal directions in respect of an individual where the directions were given not more than 1 year after the latest of the following—
- (a) the making of the decision (or, if there was more than one, the latest decision) to remove the individual from the United Kingdom by way of removal directions;
  - (b) the refusal of leave to appeal against that decision;
  - (c) the determination or withdrawal of an appeal against that decision.
- (7) Sub-paragraphs (5) and (6) do not exclude services provided to an individual in relation to—
- (a) judicial review of a negative decision in relation to an asylum application (within the meaning of the EU Procedures Directive) where there is no right of appeal to the First-tier Tribunal against the decision;
  - (b) judicial review of certification under section 94 or 96 of the Nationality, Immigration and Asylum Act 2002 (certificate preventing or restricting appeal of immigration decision).

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

- (8) Sub-paragraphs (5) and (6) do not exclude services provided in relation to judicial review of removal directions in respect of an individual where prescribed conditions relating to either or both of the following are met—
- (a) the period between the individual being given notice of the removal directions and the proposed time for his or her removal;
  - (b) the reasons for proposing that period.

*Definitions*

- (9) For the purposes of this paragraph an individual is a member of another individual's family if—
- (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
  - (b) they are cohabitants (as defined in Part 4 of the Family Law Act 1996), or
  - (c) one has parental responsibility for the other.

- (10) In this paragraph—

“EU Procedures Directive” means Council Directive [2005/85/EC](#) of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;

“an issue relating to immigration” includes an issue relating to rights described in paragraph 30 of this Part of this Schedule;

“judicial review” means—

- (a) the procedure on an application for judicial review (see section 31 of the Senior Courts Act 1981), but not including the procedure after the application is treated under rules of court as if it were not such an application, and
- (b) any procedure in which a court, tribunal or other person mentioned in Part 3 of this Schedule is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review;

“removal directions” means directions under—

- (a) paragraphs 8 to 10A of Schedule 2 to the Immigration Act 1971 (removal of persons refused leave to enter and illegal entrants);
- (b) paragraphs 12 to 14 of Schedule 2 to that Act (removal of seamen and aircrew);
- (c) paragraph 1 of Schedule 3 to that Act (removal of persons liable to deportation);
- (d) section 10 of the Immigration and Asylum Act 1999 (removal of certain persons unlawfully in the United Kingdom);
- (e) <sup>F15</sup> ...

**Textual Amendments**

**F14** Words in Sch. 1 Pt. 1 para. 19(2)(a) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, 6

**F15** Words in Sch.1 Pt. 1 para. 19(10) omitted (22.10.2014) by virtue of the [Immigration Act 2014 \(c. 22\)](#), Sch. 9 para. 6; [S.I. 2014/2771](#), art. 2(e)



*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

### *Habeas corpus*

- 20 (1) Civil legal services provided in relation to a writ of habeas corpus ad subjiciendum.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Abuse of position or powers by public authority*

- 21 (1) Civil legal services provided in relation to abuse by a public authority of its position or powers.

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6, 8 and 12 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Specific exclusion*

- (3) The services described in sub-paragraph (1) do not include services provided in relation to clinical negligence.

#### *Definitions*

- (4) For the purposes of this paragraph, an act or omission by a public authority does not constitute an abuse of its position or powers unless the act or omission—
- (a) is deliberate or dishonest, and
  - (b) results in harm to a person or property that was reasonably foreseeable.
- (5) In this paragraph—
- “clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);
  - “public authority” has the same meaning as in section 6 of the Human Rights Act 1998.

#### *Breach of Convention rights by public authority*

- 22 (1) Civil legal services provided in relation to—
- (a) a claim in tort, or
  - (b) a claim for damages (other than a claim in tort),
- in respect of an act or omission by a public authority that involves a significant breach of Convention rights by the authority.

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6, 8 and 12 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

*Specific exclusion*

- (3) The services described in sub-paragraph (1) do not include services provided in relation to clinical negligence.

*Definitions*

- (4) In this paragraph—

“clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);

“Convention rights” has the same meaning as in the Human Rights Act 1998;

“public authority” has the same meaning as in section 6 of that Act.

*Clinical negligence and severely disabled infants*

- 23 (1) Civil legal services provided in relation to a claim for damages in respect of clinical negligence which caused a neurological injury to an individual (“V”) as a result of which V is severely disabled, but only where the first and second conditions are met.
- (2) The first condition is that the clinical negligence occurred—
- (a) while V was in his or her mother's womb, or
  - (b) during or after V's birth but before the end of the following period—
    - (i) if V was born before the beginning of the 37th week of pregnancy, the period of 8 weeks beginning with the first day of what would have been that week;
    - (ii) if V was born during or after the 37th week of pregnancy, the period of 8 weeks beginning with the day of V's birth.
- (3) The second condition is that—
- (a) the services are provided to V, or
  - (b) V has died and the services are provided to V's personal representative.

*General exclusions*

- (4) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3 and 8 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

*Definitions*

- (5) In this paragraph—

“birth” means the moment when an individual first has a life separate from his or her mother and references to an individual being born are to be interpreted accordingly;

“clinical negligence” means breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services);

“disabled” means physically or mentally disabled;

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*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

“personal representative”, in relation to an individual who has died, means—

- (a) a person responsible for administering the individual's estate under the law of England and Wales, Scotland or Northern Ireland, or
- (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the individual's estate.

*Special Immigration Appeals Commission*

- 24 (1) Civil legal services provided in relation to proceedings before the Special Immigration Appeals Commission.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Immigration: detention*

- 25 (1) Civil legal services provided in relation to—
- (a) detention under the authority of an immigration officer;
  - (b) detention under Schedule 3 to the Immigration Act 1971;
  - (c) detention under section 62 of the Nationality, Immigration and Asylum Act 2002;
  - (d) detention under section 36 of the UK Borders Act 2007.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Immigration: temporary admission*

- 26 (1) Civil legal services provided in relation to temporary admission to the United Kingdom under—
- (a) paragraph 21 of Schedule 2 to the Immigration Act 1971;
  - (b) section 62 of the Nationality, Immigration and Asylum Act 2002.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Immigration: residence etc restrictions*

- 27 (1) Civil legal services provided in relation to restrictions imposed under—
- (a) paragraph 2(5) or 4 of Schedule 3 to the Immigration Act 1971 (residence etc restrictions pending deportation);
  - (b) section 71 of the Nationality, Immigration and Asylum Act 2002 (residence etc restrictions on asylum-seekers).

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

*Immigration: victims of domestic violence and indefinite leave to remain*

- 28 (1) Civil legal services provided to an individual (“V”) in relation to an application by V for indefinite leave to remain in the United Kingdom on the grounds that—
- (a) V was given leave to enter or remain in the United Kingdom for a limited period as the partner of another individual present and settled in the United Kingdom, and
  - (b) V's relationship with the other individual broke down permanently because V was the victim of domestic violence.

*General exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Specific exclusion*

- (3) The services described in sub-paragraph (1) do not include attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on an application.

*Definitions*

- (4) For the purposes of this paragraph, one individual is a partner of another if—
- (a) they are married to each other,
  - (b) they are civil partners of each other, or
  - (c) they are cohabitants.

- (5) In this paragraph—

“cohabitant” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62 of that Act);

[<sup>F16</sup> “ domestic violence ” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (within the meaning of section 62 of the Family Law Act 1996); ]

“indefinite leave to remain in the United Kingdom” means leave to remain in the United Kingdom under the Immigration Act 1971 which is not limited as to duration;

“present and settled in the United Kingdom” has the same meaning as in the rules made under section 3(2) of the Immigration Act 1971.

**Textual Amendments**

**F16** Words in Sch. 1 Pt. 1 para. 28(5) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, 4(2)

*Immigration: victims of domestic violence and residence cards*

- 29 (1) Civil legal services provided to an individual (“V”) in relation to a residence card application where V—
- (a) has ceased to be a family member of a qualified person on the termination of the marriage or civil partnership of the qualified person,

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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) is a family member who has retained the right of residence by virtue of satisfying the conditions in regulation 10(5) of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003) (“the 2006 Regulations”), and
- (c) has satisfied the condition in regulation 10(5)(d)(iv) of the 2006 Regulations on the ground that V or a family member of V was the victim of domestic violence while the marriage or civil partnership of the qualified person was subsisting.

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### *Specific exclusion*

- (3) The services described in sub-paragraph (1) do not include attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on an application.

#### *Definitions*

- (4) In this paragraph—

[<sup>F17</sup> “ domestic violence ” means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between individuals who are associated with each other (within the meaning of section 62 of the Family Law Act 1996); ]

“family member” has the same meaning as in the 2006 Regulations (see regulations 7 and 9);

“family member who has retained the right of residence” has the same meaning as in the 2006 Regulations (see regulation 10);

“qualified person” has the same meaning as in the 2006 Regulations (see regulation 6);

“residence card application” means—

- (a) an application for a residence card under regulation 17 of the 2006 Regulations, or
- (b) an application for a permanent residence card under regulation 18(2) of the 2006 Regulations.

#### **Textual Amendments**

**F17** Words in Sch. 1 Pt. 1 para. 29(4) substituted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, 4(3)

#### *Immigration: rights to enter and remain*

- 30 (1) Civil legal services provided in relation to rights to enter, and to remain in, the United Kingdom arising from—
  - (a) the Refugee Convention;
  - (b) Article 2 or 3 of the Human Rights Convention;
  - (c) the Temporary Protection Directive;

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

(d) the Qualification Directive.

*General exclusions*

(2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Specific exclusion*

(3) The services described in sub-paragraph (1) do not include attendance at an interview conducted on behalf of the Secretary of State with a view to reaching a decision on a claim in respect of the rights mentioned in that sub-paragraph, except where regulations provide otherwise.

*Definitions*

(4) In this paragraph—

“the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950 as it has effect for the time being in relation to the United Kingdom;

“the Qualification Directive” means Council Directive [2004/83/EC](#) of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;

“the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

“the Temporary Protection Directive” means Council Directive [2001/55/EC](#) of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

*Immigration: accommodation for asylum-seekers etc*

- 31 (1) Civil legal services provided in relation to the Secretary of State's powers to provide, or arrange for the provision of, accommodation under—
- (a) section 4 or 95 of the Immigration and Asylum Act 1999 (accommodation for persons temporarily admitted and asylum-seekers);
  - (b) section 17 of the Nationality, Immigration and Asylum Act 2002 (support for destitute asylum-seekers).

*Exclusions*

(2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Victims of trafficking in human beings*

- 32 (1) Civil legal services provided to an individual in relation to an application by the individual for leave to enter, or to remain in, the United Kingdom where—
- (a) there has been a conclusive determination that the individual is a victim of trafficking in human beings, or

*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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) there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.
- (2) Civil legal services provided in relation to a claim under employment law arising in connection with the exploitation of an individual who is a victim of trafficking in human beings, but only where—
  - (a) the services are provided to the individual, or
  - (b) the individual has died and the services are provided to the individual's personal representative.
- (3) Civil legal services provided in relation to a claim for damages arising in connection with the trafficking or exploitation of an individual who is a victim of trafficking in human beings, but only where—
  - (a) the services are provided to the individual, or
  - (b) the individual has died and the services are provided to the individual's personal representative.

#### *Exclusions*

- (4) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.
- (5) Sub-paragraphs (2) and (3) are subject to—
  - (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6 and 8 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Definitions*

- (6) For the purposes of sub-paragraph (1)(b) there are reasonable grounds to believe that an individual is a victim of trafficking in human beings if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds.
- (7) For the purposes of sub-paragraph (1) there is a conclusive determination that an individual is or is not a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the individual is or is not such a victim.
- (8) In this paragraph—
  - “competent authority” means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;
  - “employment” means employment under a contract of employment or a contract personally to do work and references to “employers” and “employees” are to be interpreted accordingly;
  - “employment law” means an enactment or rule of law relating to employment, including in particular an enactment or rule of law conferring powers or imposing duties on employers, conferring rights on employees or otherwise regulating the relations between employers and employees;
  - “exploitation” means a form of exploitation described in [F18]section 3 of the Modern Slavery Act 2015 (meaning of exploitation for purposes of human trafficking offence in section 2 of that Act);]

*Status: Point in time view as at 01/04/2016.*

**Changes to legislation:** *Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

“personal representative”, in relation to an individual who has died, means—

- (a) a person responsible for administering the individual's estate under the law of England and Wales, Scotland or Northern Ireland, or
- (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the individual's estate;

“the Trafficking Convention” means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);

“trafficking in human beings” has the same meaning as in the Trafficking Convention.

#### Textual Amendments

- F18** Words in Sch. 1 Pt. 1 para. 32(8) substituted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\), s. 61\(1\), Sch. 5 para. 10](#); S.I. 2015/1476, reg. 2(j)

*[<sup>F19</sup>Victims of slavery, servitude or forced or compulsory labour*

#### Textual Amendments

- F19** Sch. 1 para. 32A and cross-heading inserted (31.7.2015) by [Modern Slavery Act 2015 \(c. 30\), ss. 47\(2\), 61\(1\)](#); S.I. 2015/1476, reg. 2(f)

- 32A (1) Civil legal services provided to an individual in relation to an application by the individual for leave to enter, or to remain in, the United Kingdom where—
- (a) there has been a conclusive determination that the individual is a victim of slavery, servitude or forced or compulsory labour, or
  - (b) there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.
- (2) Civil legal services provided in relation to a claim under employment law arising in connection with the conduct by virtue of which an individual who is a victim of slavery, servitude or forced or compulsory labour is such a victim, but only where—
- (a) the services are provided to the individual, or
  - (b) the individual has died and the services are provided to the individual's personal representative.
- (3) Civil legal services provided in relation to a claim for damages arising in connection with the conduct by virtue of which an individual who is a victim of slavery, servitude or forced or compulsory labour is such a victim, but only where—
- (a) the services are provided to the individual, or
  - (b) the individual has died and the services are provided to the individual's personal representative.

#### *Exclusions*

- (4) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.



*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

- (5) Sub-paragraphs (2) and (3) are subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 4, 5, 6 and 8 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Definitions*

- (6) For the purposes of sub-paragraph (1)(b) there are reasonable grounds to believe that an individual is a victim of slavery, servitude or forced or compulsory labour if a competent authority has determined that there are such grounds.
- (7) For the purposes of sub-paragraph (1) there is a conclusive determination that an individual is or is not a victim of slavery, servitude or forced or compulsory labour when a competent authority concludes that the individual is or is not such a victim.
- (8) For the purposes of this paragraph “ slavery ”, “ servitude ” and “ forced or compulsory labour ” have the same meaning as they have for the purposes of article 4 of the Human Rights Convention.
- (9) The “ Human Rights Convention ” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4 November 1950, as it has effect for the time being in relation to the United Kingdom.
- (10) The definitions of “competent authority”, “employment”, “employment law” and “personal representative” in paragraph 32(8) also apply for the purposes of this paragraph.]

#### *Loss of home*

- 33 (1) Civil legal services provided to an individual in relation to—
- (a) court orders for sale or possession of the individual's home, or
  - (b) the eviction from the individual's home of the individual or others.
- (2) Civil legal services provided to an individual in relation to a bankruptcy order against the individual under Part 9 of the Insolvency Act 1986 where—
- (a) the individual's estate includes the individual's home, and
  - (b) the petition for the bankruptcy order is or was presented by a person other than the individual,
- including services provided in relation to a statutory demand under that Part of that Act.

#### *General exclusions*

- (3) Sub-paragraphs (1) and (2) are subject to the exclusions in Part 2 of this Schedule, with the exception of paragraph 14 of that Part.
- (4) But the exclusions described in sub-paragraph (3) are subject to the exceptions in sub-paragraphs (5) and (6).
- (5) The services described in sub-paragraph (1) include services provided in relation to proceedings on an application under the Trusts of Land and Appointment of Trustees Act 1996 to which section 335A of the Insolvency Act 1986 applies (application by trustee of bankrupt's estate).

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- (6) The services described in sub-paragraph (1) include services described in any of paragraphs 3 to 6 or 8 of Part 2 of this Schedule to the extent that they are—
- (a) services provided to an individual in relation to a counterclaim in proceedings for a court order for sale or possession of the individual's home, or
  - (b) services provided to an individual in relation to the unlawful eviction from the individual's home of the individual or others.
- (7) Sub-paragraphs (1) and (2) are subject to the exclusion in Part 3 of this Schedule.

*Specific exclusion*

- (8) The services described in sub-paragraph (1) do not include services provided in relation to—
- (a) proceedings under the Matrimonial Causes Act 1973;
  - (b) proceedings under Chapters 2 and 3 of Part 2 of the Civil Partnership Act 2004 (dissolution, nullity and other proceedings and property and financial arrangements).

*Definitions*

- (9) In this paragraph “home”, in relation to an individual, means the house, caravan, houseboat or other vehicle or structure that is the individual's only or main residence, subject to sub-paragraph (10).
- (10) References in this paragraph to an individual's home do not include a vehicle or structure occupied by the individual if—
- (a) there are no grounds on which it can be argued that the individual is occupying the vehicle or structure otherwise than as a trespasser, and
  - (b) there are no grounds on which it can be argued that the individual's occupation of the vehicle or structure began otherwise than as a trespasser.
- (11) In sub-paragraphs (9) and (10), the references to a caravan, houseboat or other vehicle include the land on which it is located or to which it is moored.
- (12) For the purposes of sub-paragraph (10) individuals occupying, or beginning occupation, of a vehicle or structure as a trespasser include individuals who do so by virtue of—
- (a) title derived from a trespasser, or
  - (b) a licence or consent given by a trespasser or a person deriving title from a trespasser.
- (13) For the purposes of sub-paragraph (10) an individual who is occupying a vehicle or structure as a trespasser does not cease to be a trespasser by virtue of being allowed time to leave the vehicle or structure.

*Homelessness*

- 34 (1) Civil legal services provided to an individual who is homeless, or threatened with homelessness, in relation to the provision of accommodation and assistance for the individual under—
- (a) Part 6 of the Housing Act 1996 (allocation of housing accommodation);
  - (b) Part 7 of that Act (homelessness).

*Status: Point in time view as at 01/04/2016.*

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### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

### *Definitions*

- (3) In this paragraph “homeless” and “threatened with homelessness” have the same meaning as in section 175 of the Housing Act 1996.

### *Risk to health or safety in rented home*

- 35 (1) Civil legal services provided to an individual in relation to the removal or reduction of a serious risk of harm to the health or safety of the individual or a relevant member of the individual's family where—
- (a) the risk arises from a deficiency in the individual's home,
  - (b) the individual's home is rented or leased from another person, and
  - (c) the services are provided with a view to securing that the other person makes arrangements to remove or reduce the risk.

### *Exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 6 and 8 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

### *Definitions*

- (3) For the purposes of this paragraph—
- (a) a child is a relevant member of an individual's family if the individual is the child's parent or has parental responsibility for the child;
  - (b) an adult (“A”) is a relevant member of an individual's family if—
    - (i) they are relatives (whether of the full blood or half blood or by marriage or civil partnership) or cohabitants, and
    - (ii) the individual's home is also A's home.
- (4) In this paragraph—
- “adult” means a person aged 18 or over;
  - “building” includes part of a building;
  - “child” means a person under the age of 18;
  - “cohabitant” has the same meaning as in Part 4 of the Family Law Act 1996 (see section 62(1) of that Act);
  - “deficiency” means any deficiency, whether arising as a result of the construction of a building, an absence of maintenance or repair, or otherwise;
  - “harm” includes temporary harm;
  - “health” includes mental health;
  - “home”, in relation to an individual, means the house, caravan, houseboat or other vehicle or structure that is the individual's only or main residence, together with any garden or ground usually occupied with it.

*Status: Point in time view as at 01/04/2016.*

**Changes to legislation:** *Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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)*

### *Anti-social behaviour*

- 36 (1) Civil legal services provided to an individual in relation to [<sup>F20</sup>an application for, or proceedings in respect of, an injunction against the individual under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014.]

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### **Textual Amendments**

**F20** Words in Sch. 1 Pt. 1 para. 36(1) substituted (23.3.2015) by Anti-social Behaviour, Crime and Policing Act 2014 (c. 12), Sch. 11 para. 49(1)(2); S.I. 2015/373, art. 4(f)(xi) (with ss. 21, 33, 42, 58, 75, 93)

### *Protection from harassment*

- 37 (1) Civil legal services provided in relation to—
- (a) an injunction under section 3 or 3A of the Protection from Harassment Act 1997;
  - (b) the variation or discharge of a restraining order under section 5 or 5A of that Act.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

### *Gang-related violence [<sup>F21</sup>and drug-dealing activity]*

#### **Textual Amendments**

**F21** Words in Sch. 1 Pt. 1 para.38 cross-heading inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), Sch. 4 para. 87(3); S.I. 2015/820, reg. 3(q)(x)

- 38 (1) Civil legal services provided in relation to injunctions under Part 4 of the Policing and Crime Act 2009 (injunctions to prevent gang-related violence [<sup>F22</sup>and drug-dealing activity]).

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

#### **Textual Amendments**

**F22** Words in Sch. 1 Pt. 1 para. 38(1) inserted (1.6.2015) by Serious Crime Act 2015 (c. 9), s. 88(1), Sch. 4 para. 87(4); S.I. 2015/820, reg. 3(q)(x)

### *Sexual offences*

- 39 (1) Civil legal services provided in relation to a sexual offence, but only where—
- (a) the services are provided to the victim of the offence, or

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- (b) the victim of the offence has died and the services are provided to the victim's personal representative.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to—
  - (a) the exclusions in Part 2 of this Schedule, with the exception of paragraphs 1, 2, 3, 8 and 12 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Definitions*

- (3) In this paragraph—
  - “personal representative”, in relation to an individual who has died, means—
    - (a) a person responsible for administering the individual's estate under the law of England and Wales, Scotland or Northern Ireland, or
    - (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the individual's estate;
  - “sexual offence” means—
    - (a) an offence under a provision of the Sexual Offences Act 2003 (“the 2003 Act”),<sup>F23</sup> ...
    - (b) an offence under section 1 of the Protection of Children Act 1978 (“the 1978 Act”) (indecent photographs of children)<sup>F24</sup>, and
    - (c) an offence under section 2 of the Modern Slavery Act 2015 (human trafficking) committed with a view to exploitation that consists of or includes behaviour within section 3(3) of that Act (sexual exploitation).]
- (4) The references in sub-paragraph (1) to a sexual offence include—
  - (a) incitement to commit a sexual offence,
  - (b) an offence committed by a person under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to which a sexual offence is the offence which the person intended or believed would be committed,
  - (c) conspiracy to commit a sexual offence, and
  - (d) an attempt to commit a sexual offence.
- (5) In this paragraph references to a sexual offence include conduct which would be an offence under a provision of the 2003 Act or section 1 of the 1978 Act but for the fact that it took place before that provision or section came into force.
- (6) Conduct falls within the definition of a sexual offence for the purposes of this paragraph whether or not there have been criminal proceedings in relation to the conduct and whatever the outcome of any such proceedings.

#### **Textual Amendments**

**F23** Word in Sch. 1 para. 39(3) omitted (17.3.2016) by virtue of [The Modern Slavery Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/244\)](#), regs. 1(1), **20(a)**

**F24** Words in Sch. 1 para. 39(3) inserted (17.3.2016) by [The Modern Slavery Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/244\)](#), regs. 1(1), **20(b)**

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### *Proceeds of crime*

- 40 (1) Civil legal services provided in relation to—
- (a) restraint orders under section 41 of the Proceeds of Crime Act 2002 (“the 2002 Act”) including orders under section 41(7) of that Act (orders for ensuring that restraint order is effective);
  - (b) orders under section 47M of the 2002 Act (detention of property);
  - (c) directions under section 54(3) of the 2002 Act (distribution of funds in the hands of a receiver);
  - (d) directions under section 62 of the 2002 Act (action to be taken by receiver);
  - (e) orders under section 67A of the 2002 Act (realising property), including directions under section 67D of that Act (distribution of proceeds of realisation);
  - (f) orders under section 72 or 73 of the 2002 Act (compensation);
  - (g) applications under section 351 of the 2002 Act (discharge or variation of a production order or order to grant entry);
  - (h) applications under section 362 of the 2002 Act (discharge or variation of disclosure order);
  - (i) applications under section 369 of the 2002 Act (discharge or variation of customer information order);
  - (j) applications under section 375 of the 2002 Act (discharge or variation of account monitoring orders).

#### *General exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 14 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

#### *Specific exclusions*

- (3) Where a confiscation order has been made under Part 2 of the 2002 Act against a defendant, the services described in sub-paragraph (1) do not include services provided to the defendant in relation to—
- (a) directions under section 54(3) of that Act (distribution of funds in the hands of a receiver), or
  - (b) directions under section 67D of that Act (distribution of proceeds of realisation),
- that relate to property recovered pursuant to the order.
- (4) Where a confiscation order has been made under Part 2 of the 2002 Act against a defendant and varied under section 29 of that Act, the services described in sub-paragraph (1) do not include services provided in relation to an application by the defendant under section 73 of that Act (compensation).

### *Inquests*

- 41 (1) Civil legal services provided to an individual in relation to an inquest under the Coroners Act 1988 into the death of a member of the individual's family.

#### *Exclusions*

*Status: Point in time view as at 01/04/2016.*

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- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 1 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

*Definitions*

- (3) For the purposes of this paragraph an individual is a member of another individual's family if—
- (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
  - (b) they are cohabitants (as defined in Part 4 of the Family Law Act 1996), or
  - (c) one has parental responsibility for the other.

*Environmental pollution*

- 42 (1) Civil legal services provided in relation to injunctions in respect of nuisance arising from prescribed types of pollution of the environment.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.

*Equality*

- 43 (1) Civil legal services provided in relation to contravention of the Equality Act 2010 or a previous discrimination enactment.

*Exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Part 2 of this Schedule, with the exception of paragraph 15 of that Part, and
  - (b) the exclusion in Part 3 of this Schedule.

*Definitions*

- (3) In this paragraph “previous discrimination enactment” means—
- (a) the Equal Pay Act 1970;
  - (b) the Sex Discrimination Act 1975;
  - (c) the Race Relations Act 1976;
  - (d) the Disability Discrimination Act 1995;
  - (e) the Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660);
  - (f) the Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661);
  - (g) the Equality Act 2006;
  - (h) the Employment Equality (Age) Regulations 2006 (S.I. 2006/1031);
  - (i) the Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263).

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- (4) The reference in sub-paragraph (1) to contravention of the Equality Act 2010 or a previous discrimination enactment includes—
- (a) breach of a term modified by, or included by virtue of, a provision that is an equality clause or equality rule for the purposes of the Equal Pay Act 1970 or the Equality Act 2010, and
  - (b) breach of a provision that is a non-discrimination rule for the purposes of the Equality Act 2010.

*Cross-border disputes*

- 44 (1) Civil legal services provided in relation to proceedings in circumstances in which the services are required to be provided under Council Directive [2003/8/EC](#) of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

*No exclusions*

- (2) Sub-paragraph (1) is not subject to the exclusions in Parts 2 and 3 of this Schedule.

*Terrorism prevention and investigation measures etc*

- 45 (1) Civil legal services provided to an individual in relation to a TPIM notice relating to the individual.
- (2) Civil legal services provided to an individual in relation to control order proceedings relating to the individual.

*Exclusions*

- (3) Sub-paragraphs (1) and (2) are subject to the exclusions in Parts 2 and 3 of this Schedule.
- (4) In this paragraph—
- “control order proceedings” means proceedings described in paragraph 3(1)(a) to (e) of Schedule 8 to the Terrorism Prevention and Investigation Measures Act 2011 (“the 2011 Act”);
- “TPIM notice” means a notice under section 2(1) of the 2011 Act.

*[<sup>F25</sup>Extension of time for retention of travel documents*

**Textual Amendments**

**F25** Sch. 1 Pt.1 para 45A and cross-heading inserted (13.2.2015) by [Counter-Terrorism and Security Act 2015 \(c. 6\)](#), **ss. 1(2)(a), 52(1)**

- 45A (1) Civil legal services provided in relation to proceedings under paragraph 8 of Schedule 1 to the Counter-Terrorism and Security Act 2015.

*Exclusions*

- (2) Sub-paragraph (1) is subject to the exclusions in Parts 2 and 3 of this Schedule.]



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### *Connected matters*

- 46 (1) Prescribed civil legal services provided, in prescribed circumstances, in connection with the provision of services described in a preceding paragraph of this Part of this Schedule.

#### *Exclusions*

- (2) Sub-paragraph (1) is subject to—
- (a) the exclusions in Parts 2 and 3 of this Schedule, except to the extent that regulations under this paragraph provide otherwise, and
  - (b) any other prescribed exclusions.

## PART 2

### EXCLUDED SERVICES

The services described in Part 1 of this Schedule do not include the services listed in this Part of this Schedule, except to the extent that Part 1 of this Schedule provides otherwise.

- 1 Civil legal services provided in relation to personal injury or death.
- 2 Civil legal services provided in relation to a claim in tort in respect of negligence.
- 3 Civil legal services provided in relation to a claim in tort in respect of assault, battery or false imprisonment.
- 4 Civil legal services provided in relation to a claim in tort in respect of trespass to goods.
- 5 Civil legal services provided in relation to a claim in tort in respect of trespass to land.
- 6 Civil legal services provided in relation to damage to property.
- 7 Civil legal services provided in relation to defamation or malicious falsehood.
- 8 Civil legal services provided in relation to a claim in tort in respect of breach of statutory duty.
- 9 Civil legal services provided in relation to conveyancing.
- 10 Civil legal services provided in relation to the making of wills.
- 11 Civil legal services provided in relation to matters of trust law.

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

- C1** Sch. 1 Pt. 2 para. 11 restricted (1.4.2013) by The Civil Legal Aid (Connected Matters) Regulations (S.I. 2013/451), regs. 1, {4}

- 12 (1) Civil legal services provided in relation to a claim for damages in respect of a breach of Convention rights by a public authority to the extent that the claim is made in reliance on section 7 of the Human Rights Act 1998.

- (2) In this paragraph—

“Convention rights” has the same meaning as in the Human Rights Act 1998;

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“public authority” has the same meaning as in section 6 of that Act.

13 Civil legal services provided in relation to matters of company or partnership law.

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

**C2** Sch. 1 Pt. 2 para. 13 restricted (1.4.2013) by The Civil Legal Aid (Connected Matters) Regulations (S.I. 2013/451), regs. 1, {4}

14 Civil legal services provided to an individual in relation to matters arising out of or in connection with—

- (a) a proposal by that individual to establish a business,
- (b) the carrying on of a business by that individual (whether or not the business is being carried on at the time the services are provided), or
- (c) the termination or transfer of a business that was being carried on by that individual.

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

**C3** Sch. 1 Pt. 2 para. 14 restricted (1.4.2013) by The Civil Legal Aid (Connected Matters) Regulations (S.I. 2013/451), regs. 1, {4}

15 (1) Civil legal services provided in relation to a benefit, allowance, payment, credit or pension under—

- (a) a social security enactment,
- (b) the Vaccine Damage Payments Act 1979, or
- (c) Part 4 of the Child Maintenance and Other Payments Act 2008.

(2) In this paragraph “social security enactment” means—

- (a) the Social Security Contributions and Benefits Act 1992,
- (b) the Jobseekers Act 1995,
- (c) the State Pension Credit Act 2002,
- (d) the Tax Credits Act 2002,
- (e) the Welfare Reform Act 2007,
- (f) the Welfare Reform Act 2012, or
- (g) any other enactment relating to social security.

16 Civil legal services provided in relation to compensation under the Criminal Injuries Compensation Scheme.

17 Civil legal services provided in relation to changing an individual's name.

[<sup>F26</sup>18] (1) Civil legal services provided in relation to judicial review of an enactment, decision, act or omission.

(2) In this paragraph “judicial review” means—

- (a) the procedure on an application for judicial review (see section 31 of the Senior Courts Act 1981), but not including the procedure after the application is treated under rules of court as if it were not such an application, and

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- (b) any procedure in which a court, tribunal or other person mentioned in Part 3 of this Schedule is required by an enactment to make a decision applying the principles that are applied by the court on an application for judicial review.]

#### Textual Amendments

**F26** Sch. 1 Pt. 2 para. 18 inserted (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Amendment of Schedule 1\) Order 2013 \(S.I. 2013/748\)](#), arts. 1, 7

### PART 3

#### ADVOCACY: EXCLUSION AND EXCEPTIONS

The services described in Part 1 of this Schedule do not include advocacy, except as follows—

- (a) those services include the types of advocacy listed in this Part of this Schedule, except to the extent that Part 1 of this Schedule provides otherwise;
- (b) those services include other types of advocacy to the extent that Part 1 of this Schedule so provides.

#### *Exceptions: courts*

- 1 Advocacy in proceedings in the Supreme Court.
- 2 Advocacy in proceedings in the Court of Appeal.
- 3 Advocacy in proceedings in the High Court.
- 4 Advocacy in proceedings in the Court of Protection to the extent that they concern—
- (a) a person's right to life,
- (b) a person's liberty or physical safety,
- (c) a person's medical treatment (within the meaning of the Mental Health Act 1983),
- (d) a person's capacity to marry, to enter into a civil partnership or to enter into sexual relations, or
- (e) a person's right to family life.
- 5 Advocacy in proceedings in [<sup>F27</sup>the county court].

#### Textual Amendments

**F27** Words in Sch. 1 Pt. 3 para. 5 substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), Sch. 9, para.52; [S.I. 2014/954](#), art. 2(c)

- [<sup>F28</sup>5A. Advocacy in proceedings in the family court.]

#### Textual Amendments

**F28** Sch. 1 Pt. 3 para. 5A inserted (22.4.2014) by [The Crime and Courts Act 2013 \(Family Court: Consequential Provision\) Order 2014 \(S.I. 2014/605\)](#), arts. 1, 26(a)

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- 6 Advocacy in the following proceedings in the Crown Court—
- (a) proceedings for the variation or discharge of an order under section 5 or 5A of the Protection from Harassment Act 1997, <sup>F29</sup> ...
  - [<sup>F30</sup>(aa) proceedings on an appeal under section 10(1)(b) of the Crime and Disorder Act 1998(1) against the making of a parenting order where an injunction is granted under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014,]
  - (b) proceedings under the Proceeds of Crime Act 2002 in relation to matters listed in paragraph 40 of Part 1 of this Schedule.
  - [<sup>F31</sup>(c) proceedings on an appeal under section 46B of the Policing and Crime Act 2009, <sup>F32</sup> ...
  - (d) proceedings on an appeal under section 15 of the Anti-social Behaviour, Crime and Policing Act 2014][<sup>F33</sup> and
  - (e) proceedings for the variation or discharge of an order under paragraph 1 of Schedule 2 to the Female Genital Mutilation Act 2003.]

#### Textual Amendments

- F29** Word in Sch. 1 Pt. 3 para. 6(a) omitted (16.12.2014) by virtue of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014, [S.I. 2014/3305](#), arts. 1, 2(2)(a)
- F30** Sch.1 Pt. 3 para 6(aa) inserted (16.12.2014) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014, [S.I. 2014/3305](#), arts. 1, 2(2)(b)
- F31** Sch. 1 Pt. 3 paras. 6(c)(d) inserted (16.12.2014) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014, [S.I. 2014/3305](#), arts 1. 2(2)(c)
- F32** Word in Sch. 1 Pt. 3 para. 6(c) repealed (17.7.2015) by the [Serious Crime Act 2015 \(c. 9\)](#), Sch. 4 para. 88(2)(a); [S.I. 2015/1428](#), art 2(c)(v)
- F33** Sch. 1 Pt. 3 para. 6(e) and word inserted (17.7.2015) by the [Serious Crime Act 2015 \(c. 9\)](#), Sch. 4 para. 88(2)(b); [S.I. 2015/1428](#), art 2(c)(v)

- 7 Advocacy in a magistrates' court that falls within the description of civil legal services in any of [<sup>F34</sup>the following provisions of Part 1 of this Schedule—
- (a) paragraph 1(1)(e)
  - (b) paragraph 1(2) so far as relating to paragraph (1)(1)(e), and
  - (c) paragraphs 11(2), 12, 13(1)(e), 15[<sup>F35</sup>, 17 (1)(a) and (b), 36 and 38].]

#### Textual Amendments

- F34** Words in Sch. 1 Pt. 3 para 7. substituted (22.4.2014) by [The Crime and Courts Act 2013 \(Family Court: Consequential Provision\) Order 2014 \(S.I. 2014/605\)](#), arts. 1, **26(b)**
- F35** Words in Sch. 1 Pt. 3 para. 7(c) substituted (16.12.2014) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014, [S.I. 2014/3305](#), arts. 1, 2(3)

- 8 Advocacy in the following proceedings in a magistrates' court—
- (a) proceedings under section 47 of the National Assistance Act 1948,
  - (b) proceedings in relation to—

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- (i) bail under Schedule 2 to the Immigration Act 1971, or
- (ii) arrest under Schedule 2 or 3 to that Act,
- (c) proceedings for the variation or discharge of an order under section 5 or 5A of the Protection from Harassment Act 1997, <sup>F36</sup>...
- (d) proceedings under the Proceeds of Crime Act 2002 in relation to matters listed in paragraph 40 of Part 1 of this Schedule [<sup>F37</sup>; and
- (e) proceedings for the variation or discharge of an order under paragraph 1 of Schedule 2 to the Female Genital Mutilation Act 2003.]

#### Textual Amendments

- F36** Word in Sch.1 Pt. 3 para. 8(c) omitted (17.7.2015) by virtue of [Serious Crime Act 2015 \(c. 9\)](#), Sch. 4 para. 88(3)(b); [S.I. 2015/1428](#), art 2(c)(v)
- F37** Sch. 1 Pt. 3 para. 8(e) and word inserted (17.7.2015) by the [Serious Crime Act 2015 \(c. 9\)](#), Sch. 4 para. 88(3)(b); [S.I. 2015/1428](#), art 2(c)(v)

#### *Exceptions: tribunals*

- 9 Advocacy in proceedings in the First-tier Tribunal under—
- (a) the Mental Health Act 1983, or
  - (b) paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984.
- 10 Advocacy in proceedings in the Mental Health Review Tribunal for Wales.
- 11 Advocacy in proceedings in the First-tier Tribunal under—
- (a) Schedule 2 to the Immigration Act 1971, or
  - (b) Part 5 of the Nationality, Immigration and Asylum Act 2002.
- 12 Advocacy in proceedings in the First-tier Tribunal under—
- (a) section 40A of the British Nationality Act 1981, or
  - (b) regulation 26 of the Immigration (European Economic Area) Regulations 2006 (S.I. 2006/1003),
- but only to the extent that the proceedings concern contravention of the Equality Act 2010.
- 13 Advocacy in the First-tier Tribunal that falls within the description of civil legal services in paragraph 28, 29 or [<sup>F38</sup>, 32(1) or 32A(1)] of Part 1 of this Schedule.

#### Textual Amendments

- F38** Words in Sch. 1 Pt. 3 para. 13 substituted (31.7.2015) by the [Modern Slavery Act 2015 \(c. 30\)](#), s 47(3); [S.I. 2015/1476](#), art. 2(f)

- 14 Advocacy in proceedings in the First-tier Tribunal under—
- (a) section 4 or 4A of the Protection of Children Act 1999 (appeals and applications relating to list of barred from regulated activities with children or vulnerable adults),
  - (b) section 86 or 87 of the Care Standards Act 2000 (appeals and applications relating to list of persons unsuitable to work with vulnerable adults),
  - (c) section 32 of the Criminal Justice and Court Services Act 2000 (applications relating to disqualification orders), or

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- (d) section 144 of the Education Act 2002 (appeals and reviews relating to direction prohibiting person from teaching etc).
- 15 Advocacy in proceedings in the Upper Tribunal arising out of proceedings within any of paragraphs 9 to 14 of this Part of this Schedule.
- 16 Advocacy in proceedings in the Upper Tribunal under section 4 of the Safeguarding Vulnerable Groups Act 2006.
- 17 Advocacy in proceedings in the Upper Tribunal under section 11 of the Tribunals, Courts and Enforcement Act 2007 (appeals on a point of law) from decisions made by the First-tier Tribunal or the Special Educational Needs Tribunal for Wales in proceedings under—
- (a) Part 4 of the Education Act 1996 (special educational needs), <sup>F39</sup> ...
- (b) the Equality Act 2010<sup>F40</sup>, or]
- (c) [<sup>F41</sup>Part 3 of the Children and Families Act 2014(6) (children and young people in England with special educational needs or disabilities).]

#### Textual Amendments

- F39** Word in Sch. 1 Pt. 3 para. 17(a) omitted (16.12.2014) by virtue of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014, S.I. 2014/3305, arts. 1, 2(4)(a)
- F40** Word in Sch. 1 Pt. 3 para.. 17(b) inserted (16.12.2014) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014 (S.I. 2014/3305), arts. 1, 2(4)(b)
- F41** Sch. 1 Pt. 3 para. 17(c) inserted (16.12.2014) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Schedule 1) (Advocacy Exceptions) Order 2014 (S.I. 2014/3305), arts. 1, 2(4)(c)

- 18 Advocacy in proceedings which are brought before the Upper Tribunal (wholly or primarily) to exercise its judicial review jurisdiction under section 15 of the Tribunals, Courts and Enforcement Act 2007.
- 19 Advocacy where judicial review applications are transferred to the Upper Tribunal from the High Court under section 31A of the Senior Courts Act 1981.
- 20 Advocacy in proceedings in the Employment Appeal Tribunal, but only to the extent that the proceedings concern contravention of the Equality Act 2010.

#### *Other exceptions*

- 21 Advocacy in proceedings in the Special Immigration Appeals Commission.
- 22 Advocacy in proceedings in the Proscribed Organisations Appeal Commission.
- [<sup>F42</sup>22A Advocacy in proceedings before a District Judge (Magistrates' Courts) under paragraph 8 of Schedule 1 to the Counter-Terrorism and Security Act 2015.]

#### Textual Amendments

- F42** Sch. 1 Pt. 3 para. 22A inserted (13.2.2015) by Counter-Terrorism and Security Act 2015 (c. 6), ss. 1(2)(b), 52(1)

*Status: Point in time view as at 01/04/2016.*

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- 23 Advocacy in legal proceedings before any person to whom a case is referred (in whole or in part) in any proceedings within any other paragraph of this Part of this Schedule.
- 24 Advocacy in bail proceedings before any court which are related to proceedings within any other paragraph of this Part of this Schedule.
- 25 Advocacy in proceedings before any person for the enforcement of a decision in proceedings within any other paragraph of this Part of this Schedule.

## PART 4

### INTERPRETATION

- 1 For the purposes of this Part of this Act, civil legal services are described in Part 1 of this Schedule if they are described in one of the paragraphs of that Part (other than in an exclusion), even if they are (expressly or impliedly) excluded from another paragraph of that Part.
- 2 References in this Schedule to an Act or instrument, or a provision of an Act or instrument—
- (a) are references to the Act, instrument or provision as amended from time to time, and
  - (b) include the Act, instrument or provision as applied by another Act or instrument (with or without modifications).
- 3 References in this Schedule to services provided in relation to an act, omission or other matter of a particular description (however expressed) include services provided in relation to an act, omission or other matter alleged to be of that description.
- 4 References in this Schedule to services provided in relation to proceedings, orders and other matters include services provided when such proceedings, orders and matters are contemplated.
- 5 (1) Where a paragraph of Part 1 or 2 of this Schedule describes services that consist of or include services provided in relation to proceedings, the description is to be treated as including, in particular—
- (a) services provided in relation to related bail proceedings,
  - (b) services provided in relation to preliminary or incidental proceedings,
  - (c) services provided in relation to a related appeal or reference to a court, tribunal or other person, and
  - (d) services provided in relation to the enforcement of decisions in the proceedings.
- (2) Where a paragraph of Part 3 of this Schedule describes advocacy provided in relation to particular proceedings in or before a court, tribunal or other person, the description is to be treated as including services provided in relation to preliminary or incidental proceedings in or before the same court, tribunal or other person.
- (3) Regulations may make provision specifying whether proceedings are or are not to be regarded as preliminary or incidental for the purposes of this paragraph.
- 6 For the purposes of this Schedule, regulations may make provision about—
- (a) when services are provided in relation to a matter;

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- (b) when matters arise under a particular enactment;
  - (c) when proceedings are proceedings under a particular enactment;
  - (d) when proceedings are related to other proceedings.
- 7 In this Schedule “enactment” includes—
- (a) an enactment contained in subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales.

## SCHEDULE 2

Section 24

### CRIMINAL LEGAL AID: MOTOR VEHICLE ORDERS

#### *Amounts payable in connection with criminal legal aid*

- 1 (1) This Schedule makes provision about the recovery of—
- (a) an amount payable in connection with the provision of criminal legal aid which is unpaid after the time when it is required to be paid under section 23,
  - (b) interest in respect of such an amount which is required to be paid under that section, and
  - (c) an amount required to be paid under section 24 in respect of costs incurred in connection with the enforcement of an obligation to pay an amount or interest described in paragraph (a) or (b).
- (2) Such amounts and interest are referred to in this Schedule as “relevant overdue amounts”.
- (3) In this Schedule “criminal legal aid” means—
- (a) advice and assistance required to be made available under section 13 or 15, and
  - (b) representation required to be made available made under section 16.

#### *Recovery by means of motor vehicle orders*

- 2 (1) Regulations under section 24 may authorise a court to make motor vehicle orders in respect of an individual for the purpose of enabling a relevant overdue amount required to be paid by the individual to be recovered by the person to whom the amount is due.
- (2) Regulations that make such provision are referred to in this Schedule as “MVO regulations”.
- (3) In this Schedule “court” means the High Court, [<sup>F43</sup> the county court ] or a magistrates' court.

#### **Textual Amendments**

**F43** Words in Sch. 2 para. 2(3) substituted (22.4.2014) by the Crime and Courts Act 2013 (c. 22), Sch. 9, Pt. 3 para 52; S.I. 2014/954, art. 2(c)



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### *Motor vehicle orders*

- 3 (1) In this Schedule “motor vehicle order” means—
- (a) a clamping order;
  - (b) a vehicle sale order.
- (2) A clamping order is an order—
- (a) that a motor vehicle be fitted with an immobilisation device (“clamped”), and
  - (b) which complies with any requirements that are imposed by MVO regulations with respect to the making of clamping orders.
- (3) A vehicle sale order is an order that—
- (a) a motor vehicle which is the subject of a clamping order is to be sold or otherwise disposed of in accordance with provision made by MVO regulations, and
  - (b) any proceeds are to be applied, in accordance with MVO regulations, in discharging the individual's liability in respect of the relevant overdue amount.
- (4) MVO regulations may make provision in connection with—
- (a) the procedure for making motor vehicle orders,
  - (b) the matters which must be included in such orders,
  - (c) the fitting of immobilisation devices,
  - (d) the fixing of notices to motor vehicles to which immobilisation devices have been fitted and the content of such notices,
  - (e) the removal and storage of motor vehicles,
  - (f) the release of motor vehicles from immobilisation devices or from storage, including the conditions to be met before a motor vehicle is released,
  - (g) the sale or other disposal of motor vehicles not released,
  - (h) the imposition of charges in connection with the fitting of immobilisation devices,
  - (i) the imposition of charges in connection with the removal, storage, release (whether from immobilisation devices or from storage), sale or disposal of motor vehicles, and
  - (j) the recovery of charges described in paragraphs (h) and (i), including provision for them to be recovered from the proceeds of sale of motor vehicles.
- (5) In this Schedule—
- “immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (immobilisation of vehicles illegally parked);
- “motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads, except that section 189 of the Road Traffic Act 1988 (exceptions for certain vehicles) applies for the purposes of this Schedule as it applies for the purposes of the Road Traffic Acts.

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### *Applications*

- 4 MVO regulations must provide that a motor vehicle order may be made in relation to a relevant overdue amount only on the application of the person to whom the amount is due.

### *Matters of which court to be satisfied*

- 5 (1) MVO regulations must provide that, before a court makes a clamping order in respect of an individual, it must be satisfied—
- (a) that the failure to pay the relevant overdue amount is attributable to the individual's wilful refusal or culpable neglect, and
  - (b) that the value of the motor vehicle or vehicles to be clamped, if sold, would be likely to be an amount which exceeds half of the estimated recoverable amount.
- (2) In this paragraph “the estimated recoverable amount” means the aggregate of—
- (a) the relevant overdue amount, and
  - (b) the amount of the likely charges due under MVO regulations in relation to the motor vehicle or vehicles.

### *Ownership of motor vehicles*

- 6 (1) MVO regulations must provide that a clamping order must not be made except in relation to a motor vehicle which is owned by the individual liable to pay the relevant overdue amount.
- (2) For this purpose a motor vehicle is owned by an individual if the individual has an interest in the motor vehicle.

### *Motor vehicles used by disabled persons*

- 7 (1) MVO regulations must provide that an immobilisation device may not be fitted to a motor vehicle—
- (a) which displays a current disabled person's badge or a current recognised badge, or
  - (b) in relation to which there are reasonable grounds for believing that it is used for the carriage of a disabled person.
- (2) In this paragraph—
- “disabled person's badge” means a badge issued, or having effect as if issued, under regulations under section 21 of the Chronically Sick and Disabled Persons Act 1970 (badges for display on motor vehicles used by disabled persons);
- “recognised badge” has the meaning given by section 21A of the Chronically Sick and Disabled Persons Act 1970 (recognition of badges issued outside Great Britain).

### *Restrictions on making vehicle sale orders*

- 8 MVO regulations must provide that, where a motor vehicle has been clamped under a clamping order, no vehicle sale order may be made in respect of the motor vehicle before the end of a prescribed period.

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## SCHEDULE 3

Section 31

### LEGAL AID FOR LEGAL PERSONS

#### *Legal persons*

- 1 In this Schedule “legal person” means a person other than an individual.

#### *Exceptional case determinations*

- 2 (1) For the purposes of this Schedule, in relation to a legal person and civil legal services, advice, assistance or representation for the purposes of criminal proceedings, an exceptional case determination is a determination that sub-paragraph (2) or (3) is satisfied.
- (2) This sub-paragraph is satisfied if it is necessary to make the services available to the legal person under this Part because failure to do so would be a breach of—
- (a) the person's Convention rights (within the meaning of the Human Rights Act 1998), or
  - (b) any rights of the person to the provision of legal services that are enforceable EU rights.
- (3) This sub-paragraph is satisfied if it is appropriate to make the services available to the legal person under this Part, in the particular circumstances of the case, having regard to any risk that failure to do so would be such a breach.

#### *Civil legal aid*

- 3 (1) Civil legal services are to be available to a legal person under this Part only if the Director—
- (a) has made an exceptional case determination in relation to the person and the services, and
  - (b) has determined that the person qualifies for the services in accordance with this Part,
- (and has not withdrawn either determination).
- (2) Sections 11 and 12(1) apply in relation to a determination under sub-paragraph (1) (b) as they apply in relation to a determination under section 10(2)(b).
- (3) Subsections (2) to (6) of section 12 apply in relation to a determination under this paragraph as they apply in relation to a determination under section 10.
- (4) In sections 11 and 12 as applied by this paragraph, references to an individual include a legal person.

#### *Advice and assistance for criminal proceedings*

- 4 (1) Regulations may provide that prescribed advice and assistance is to be available under this Part to a legal person described in sub-paragraph (2) if—
- (a) prescribed conditions are met,
  - (b) the Director has made an exceptional case determination in relation to the person and the advice and assistance (and has not withdrawn that determination), and

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- (c) the Director has determined that the legal person qualifies for such advice and assistance in accordance with the regulations (and has not withdrawn that determination).
- (2) Those legal persons are—
  - (a) legal persons who are involved in investigations which may lead to criminal proceedings, and
  - (b) legal persons who are before a court, tribunal or other person in criminal proceedings.
- (3) Subsections (3) to (9) of section 15 apply in relation to regulations under this paragraph (and decisions made under such regulations) as they apply in relation to regulations under that section (and decisions made under such regulations).
- (4) In those subsections as applied by this paragraph, references to an individual include a legal person.
- (5) In this paragraph “assistance” includes, in particular, assistance in the form of advocacy.

*Representation for criminal proceedings*

- 5 (1) Representation for the purposes of criminal proceedings is to be available under this Part to a legal person if—
  - (a) the person is a specified legal person in relation to the proceedings, or
  - (b) the proceedings involve the person resisting an appeal to the Crown Court otherwise than in an official capacity,
 and the conditions in sub-paragraph (2) are met.
- (2) Those conditions are that the Director—
  - (a) has made an exceptional case determination in relation to the legal person and representation for the purposes of the proceedings, and
  - (b) has determined (provisionally or otherwise) that the legal person qualifies for such representation in accordance with this Part,
 (and has not withdrawn either determination).
- (3) Where a legal person qualifies under this Part for representation for the purposes of criminal proceedings, representation is also to be available to the legal person for the purposes of any preliminary or incidental proceedings.
- (4) Regulations under section 16(4) and (5) apply for the purposes of sub-paragraph (3) as they apply for the purposes of section 16(3), except to the extent that the regulations provide otherwise.
- (5) Section 17(1)(b) applies in relation to an exceptional case determination under sub-paragraph (2)(a) as it applies in relation to a determination under section 16.
- (6) Paragraphs (a) and (b) of section 17(1) apply in relation to a determination under sub-paragraph (2)(b) as they apply in relation to a determination under section 16.
- (7) Subsections (2) to (7) of section 18 apply in relation to a determination under sub-paragraph (2) (and a decision in relation to the interests of justice for the purposes of such a determination) as they apply in relation to a determination under section 16 (and a decision for the purposes of such a determination).

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- (8) The Director may not make a provisional determination under sub-paragraph (2)(b) unless authorised to do so by regulations under sub-paragraph (9).
- (9) Regulations may provide that the Director may make a provisional determination that a legal person qualifies under this Part for representation for the purposes of criminal proceedings where—
- (a) the legal person is involved in an investigation which may result in criminal proceedings,
  - (b) the determination is made for the purposes of criminal proceedings that may result from the investigation, and
  - (c) any prescribed conditions are met.
- (10) Subsections (2) and (3) of section 20 apply in relation to regulations under sub-paragraph (9) (and determinations and decisions made under such regulations) as they apply in relation to regulations under that section (and determinations and decisions made under such regulations).
- (11) In sections 17, 18 and 20 as applied by this paragraph—
- (a) references to an individual include a legal person,
  - (b) references to the relevant authority have effect as if they were references to the Director, and
  - (c) the reference in section 20(2)(d) to a determination made by the Director or a court in reliance on section 18 or 19 has effect as if it were a reference to a determination by the Director under sub-paragraph (2)(b) made otherwise than in reliance on regulations under sub-paragraph (9).
- (12) Regulations may prescribe circumstances in which making representation available to a legal person for the purposes of criminal proceedings is to be taken to be in the interests of justice for the purposes of a determination under this paragraph.
- (13) In this paragraph “specified legal person”, in relation to criminal proceedings, means a description of legal person specified in regulations in relation to those proceedings.

#### *Financial resources*

- 6 Section 21 applies for the purposes of a determination under paragraph 3(1)(b) or 5(2)(b), or under regulations under paragraph 4 or 5(9), as if the references to an individual included a legal person.

#### *Contributions and costs*

- 7 In sections 23, 24, 25 and 26 and Schedule 2, references to an individual include a legal person to whom services are made available under this Part in accordance with this Schedule or regulations under this Schedule.
- 8 In Schedule 2, references to criminal legal aid include advice, assistance and representation required to be made available under paragraph 4 or 5 of this Schedule.

*Status: Point in time view as at 01/04/2016.*

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*Providers of services etc*

- 9 (1) Section 27 applies in relation to the provision of services to a legal person in accordance with this Schedule or regulations under this Schedule as it applies in relation to the provision of services to an individual under this Part.
- (2) In that section as applied by this paragraph—
- (a) references to an individual include a legal person,
  - (b) the reference to a determination under section 16 includes a determination under paragraph 5(2)(b) of this Schedule, and
  - (c) the reference to regulations under section 15 includes regulations under paragraph 4 of this Schedule.
- (3) In sections 28, 29 and 30, references to an individual include a legal person to whom services are made available under this Part in accordance with this Schedule or regulations under this Schedule.

*Supplementary matters*

- 10 In sections 34, 35 and 41(2), references to an individual include a legal person to whom services are made available under this Part in accordance with this Schedule or regulations under this Schedule or who is seeking the provision of such services.

SCHEDULE 4

Section 38

TRANSFER OF EMPLOYEES AND PROPERTY ETC OF LEGAL SERVICES COMMISSION

**PART 1**

TRANSFER OF EMPLOYEES ETC

*Transfer*

- 1 (1) An individual who is an employee of the Legal Services Commission (“the LSC”) immediately before the transfer day becomes employed in the civil service of the State on that day.
- (2) The terms and conditions of the individual's contract of employment immediately before the transfer day have effect, on and after that day, as if they were terms and conditions of the individual's employment in the civil service of the State, subject to paragraph 4(1) and (2).
- (3) All of the rights, powers, duties and liabilities of the LSC in connection with the individual's employment are transferred to the Crown on the transfer day, subject to paragraph 4(1) and (2).
- (4) Anything done (or having effect as if done) before the transfer day—
- (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraphs (1) to (3),

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is to have effect, so far as necessary for continuing its effect on and after that day, as if done by or in relation to the Crown.

- (5) Anything which is in the process of being done immediately before the transfer day—
- (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraphs (1) to (3),
- may be continued by or in relation to the Crown.
- (6) A reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of sub-paragraphs (1) to (3) is to have effect, so far as is necessary for giving effect to those sub-paragraphs, as a reference to the Crown.

#### *Continuity of employment*

- 2 A transfer under paragraph 1 does not break the continuity of the individual's employment and accordingly—
- (a) the individual is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (redundancy) as having been dismissed by reason of that transfer, and
  - (b) the individual's period of employment with the LSC counts as a period of employment in the civil service of the State for the purposes of that Act.

#### *Right to object to transfer*

- 3 (1) This paragraph has effect where, before the transfer day, an individual who is an employee of the LSC informs the LSC or the Lord Chancellor that the individual objects to becoming employed in the civil service of the State by virtue of paragraph 1(1).
- (2) Where this paragraph has effect—
- (a) the individual does not become employed in the civil service of the State by virtue of paragraph 1(1),
  - (b) the rights, powers, duties and liabilities under the individual's contract of employment do not transfer by virtue of paragraph 1(3),
  - (c) the individual's contract of employment terminates immediately before the transfer day, and
  - (d) the individual is not to be treated, for any purpose, as having been dismissed by the LSC by reason of the termination of the contract under this paragraph.

#### *Pension schemes and compensation schemes*

- 4 (1) On and after the transfer day, the terms and conditions of employment of an individual who is employed in the civil service of the State by virtue of paragraph 1(1) do not include any term or condition that was part of the individual's contract of employment immediately before the transfer day and that relates to—
- (a) an occupational pension scheme,
  - (b) a compensation scheme, or
  - (c) rights, powers, duties or liabilities under or in connection with such a scheme.

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- (2) Accordingly, paragraph 1(3) does not apply in relation to rights, powers, duties or liabilities under or in connection with an occupational pension scheme or a compensation scheme.
- (3) The Lord Chancellor may make one or more schemes providing for the transfer to the Lord Chancellor or the Secretary of State of the LSC's rights, powers, duties and liabilities under or in connection with—
  - (a) an occupational pension scheme, or
  - (b) a compensation scheme,whether the rights, powers, duties and liabilities arise under the occupational pension scheme or compensation scheme, under an enactment, under a contract of employment or otherwise.
- (4) A transfer scheme may provide that anything done (or having effect as if done) before the day on which the transfer scheme takes effect—
  - (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of the transfer scheme,is to have effect, so far as is necessary for continuing its effect on and after that day, as if done by or in relation to the transferee.
- (5) A transfer scheme may provide that anything which is in the process of being done immediately before the day on which the transfer scheme takes effect—
  - (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of the transfer scheme,may be continued by or in relation to the transferee.
- (6) A transfer scheme may provide that a reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of the scheme is to have effect, so far as is necessary for giving effect to that scheme, as a reference to the transferee.
- (7) A transfer scheme may, so far as is necessary for giving effect to that scheme, provide that an enactment that applies in relation to compensation schemes or occupational pension schemes applies to a compensation scheme or occupational pension scheme that is the subject of the transfer scheme, the members of such a scheme or the transferee with modifications specified in the transfer scheme.
- (8) A transfer scheme may—
  - (a) amend or otherwise modify a compensation scheme that is the subject of the transfer scheme, and
  - (b) create, modify or remove rights, powers, duties or liabilities under or in connection with such a scheme.
- (9) The powers under sub-paragraph (8) include power to amend or otherwise modify any instrument relating to the constitution, management or operation of a compensation scheme.
- (10) Transfer schemes amending or otherwise modifying a compensation scheme have effect in spite of any provision (of any nature) which would otherwise prevent or restrict the amendment or modification.



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(11) A transfer scheme may include consequential, incidental, supplementary, transitional, transitory and saving provision.

[<sup>F44</sup>(11A) Where an individual—

- (a) was a member of a relevant LSC scheme immediately before the transfer day,
- (b) had been a member of that scheme immediately before 1 April 2012, and
- (c) becomes, on or after the transfer day, a member of a civil service scheme by virtue of employment in the civil service of the State,

the individual is to be regarded, for the purposes of section 18(5) of the Public Service Pensions Act 2013 (transitional protection under existing schemes), as having been a member of the civil service scheme immediately before 1 April 2012.

(11B) In sub-paragraph (11A)—

- (a) “relevant LSC scheme” means a scheme made or treated as made under paragraph 10(1) of Schedule 1 to the Access to Justice Act 1999;
- (b) “civil service scheme” means a scheme under section 1 of the Superannuation Act 1972.]

(12) In this paragraph—

“compensation scheme” means so much of any scheme as makes provision for payment by way of compensation on or in respect of termination of employment;

“occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993;

“transfer scheme” means a scheme made under sub-paragraph (3).

#### Textual Amendments

**F44** Sch. 4 para. 4(11A)(11B) inserted (1.4.2014) by Public Service Pensions Act 2013 (c. 25), s. 41(2), Sch. 8 para. 31 (with Sch. 11 para. 8); S.I. 2014/839, art. 4(2)(o)

#### *Power to merge LSC occupational pension schemes*

5 (1) The Lord Chancellor may make a scheme providing for the merger of LSC occupational pension schemes.

(2) A scheme under this paragraph may in particular—

- (a) provide for the assets and liabilities of one LSC occupational pension scheme to become assets and liabilities of another,
- (b) create, modify or remove rights, powers, duties or liabilities under or in connection with an LSC occupational pension scheme,
- (c) provide for the winding up of an LSC occupational pension scheme,
- (d) provide for references to one LSC occupational pension scheme in a document, including an enactment, to have effect as references to another, and
- (e) include consequential, incidental, supplementary, transitional, transitory and saving provision.

(3) A scheme under this paragraph may in particular amend or otherwise modify—

- (a) the trust deed of an LSC occupational pension scheme,

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- (b) rules of an LSC occupational pension scheme, and
  - (c) any other instrument relating to the constitution, management or operation of an LSC occupational pension scheme.
- (4) A scheme under this paragraph must ensure that the merger of the LSC occupational pension schemes does not, to any extent, deprive members of the LSC occupational pension schemes, or other beneficiaries under those schemes, of rights that accrue to them under those schemes before the merger takes effect.
- (5) Subject to sub-paragraph (4), a scheme under this paragraph has effect in spite of any provision (of any nature) which would otherwise prevent the merger of the LSC occupational pension schemes.
- (6) In this paragraph—
- “LSC occupational pension scheme” means an occupational pension scheme under which—
    - (a) the LSC has rights, powers, duties or liabilities, or
    - (b) the Lord Chancellor or the Secretary of State has rights, powers, duties or liabilities by virtue of a scheme under paragraph 4(3);
  - “occupational pension scheme” has the same meaning as in the Pension Schemes Act 1993.

## PART 2

### TRANSFER OF PROPERTY ETC

#### *Transfer of interests in land*

- 6 (1) The LSC's interests in land are by virtue of this sub-paragraph transferred to the Secretary of State for Communities and Local Government on the transfer day.
- (2) Anything done (or having effect as if done) before the transfer day—
- (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),
- is to have effect, so far as is necessary for continuing its effect on and after that day, as if done by or in relation to the Secretary of State for Communities and Local Government.
- (3) Anything which is in the process of being done immediately before the transfer day—
- (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),
- may be continued by or in relation to the Secretary of State for Communities and Local Government.
- (4) A reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of sub-paragraph (1) is to have effect, so far as is necessary for giving effect to that sub-paragraph, as a reference to the Secretary of State for Communities and Local Government.
- (5) In this paragraph—

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“interest in land” means—

- (a) an estate or interest in land, and
- (b) any rights, powers, duties or liabilities of the LSC in connection with such an estate or interest,

but does not include a charge on an estate or interest in land;

“land” includes buildings and other structures.

#### *Transfer of other property, rights and liabilities*

- 7 (1) The property, rights, powers, duties and liabilities of the LSC are by virtue of this sub-paragraph transferred to the Lord Chancellor on the transfer day.
- (2) Sub-paragraph (1) does not apply to—
- (a) property, rights, powers, duties and liabilities transferred by virtue of paragraph 1 or 6, or
  - (b) rights, powers, duties and liabilities described in paragraph 4(3).
- (3) Anything done (or having effect as if done) before the transfer day—
- (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),
- is to have effect, so far as is necessary for continuing its effect on and after that day, as if done by or in relation to the Lord Chancellor.
- (4) Anything which is in the process of being done immediately before the transfer day—
- (a) by or in relation to the LSC, and
  - (b) for the purposes of, or in connection with, anything transferred by virtue of sub-paragraph (1),
- may be continued by or in relation to the Lord Chancellor.
- (5) A reference to the LSC in a document, including an enactment, constituting or relating to anything transferred by virtue of sub-paragraph (1) is to have effect, so far as is necessary for giving effect to that sub-paragraph, as a reference to the Lord Chancellor.

### **PART 3**

#### SUPPLEMENTARY

#### *Disapplying restrictions on transfer*

- 8 Paragraphs 1, 6 and 7 and schemes under paragraph 4 have effect in relation to property, rights, powers, duties and liabilities in spite of any provision (of any nature) which would otherwise prevent or restrict their transfer.

#### *Certificate*

- 9 A certificate issued by the Lord Chancellor stating that anything specified in the certificate has vested in a person specified in the certificate by virtue of any of paragraphs 1, 6 and 7 or a scheme under paragraph 4 is conclusive evidence of that fact for all purposes.

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### *Validity*

- 10 The transfer of property, rights, powers, duties or liabilities by any of paragraphs 1, 6 and 7 or a scheme under paragraph 4 does not affect the validity of anything done by or in relation to the LSC before that paragraph or scheme has effect.

### *Power to make further provision*

- 11 (1) The Lord Chancellor may by regulations make consequential, supplementary, incidental, transitional, transitory or saving provision in connection with—
- (a) transfers effected by this Schedule, or
  - (b) schemes made under this Schedule.
- (2) The regulations may, in particular, include provision modifying an enactment (whenever passed or made), including this Schedule.

### *Interpretation*

- 12 (1) In this Schedule—
- “the LSC” means the Legal Services Commission;
  - “the transfer day” means the day on which section 38(1) comes into force (subject to regulations under sub-paragraph (2));
  - “enactment” means an enactment contained in an Act or an instrument made under an Act (and “Act” includes an Act or Measure of the National Assembly for Wales).
- (2) The Lord Chancellor may by regulations amend or otherwise modify the definition of “the transfer day” in sub-paragraph (1).

## SCHEDULE 5

Section 39

### LEGAL AID: CONSEQUENTIAL AMENDMENTS

#### **PART 1**

#### AMENDMENTS

##### *Public Records Act 1958 (c. 51)*

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records), in Part 1 of the Table at the end of paragraph 3, in the second column omit “Legal Services Commission.”

##### *Parliamentary Commissioner Act 1967 (c. 13)*

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation) omit “Legal Services Commission.”

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*Criminal Appeal Act 1968 (c. 19)*

- 3 In section 50 of the Criminal Appeal Act 1968 (meaning of “sentence”), in subsection (3) for “under section 17 of the Access to Justice Act 1999” substitute “relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012”.

*Children and Young Persons Act 1969 (c. 54)*

- 4 (1) Section 23(5A) of the Children and Young Persons Act 1969 (restrictions on imposing security requirement on child or young person who is not legally represented) is amended as follows.

(2) In paragraph (a)—

- (a) for the words from the beginning to “but the right” substitute “representation was provided to the child or young person under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 for the purposes of the proceedings but”, and  
(b) for “to be granted such a right” substitute “for such representation”.

(3) In paragraph (aa) for “to be granted a right to it” substitute “for such representation”.

- 5 (1) In section 23 of that Act as it has effect pursuant to section 98 of the Crime and Disorder Act 1998 (restrictions on remand of boy who is not legally represented), subsection (4A) is amended as follows.

(2) In paragraph (a)—

- (a) for the words from the beginning to “but the right” substitute “representation was provided to the person under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 for the purposes of the proceedings but”, and  
(b) for “to be granted such a right” substitute “for such representation”.

(3) In paragraph (aa) for “to be granted a right to it” substitute “for such representation”.

*Attachment of Earnings Act 1971 (c. 32)*

- 6 In section 1(3)(c) of the Attachment of Earnings Act 1971 (cases in which magistrates' court may make attachment of earnings order) for the words from “paid by” to the end substitute “paid under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012”.

*Solicitors Act 1974 (c. 47)*

- 7 The Solicitors Act 1974 is amended as follows.

- 8 (1) Section 47 (jurisdiction and powers of Tribunal) is amended as follows.

(2) In subsections (2)(d), (2B) and (2D) for “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service” substitute “criminal legal aid work”.

(3) In subsection (2A)—

- (a) for “providing representation” substitute “criminal legal aid work”, and

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(b) for “funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service” substitute “ provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

(4) After subsection (3B) insert—

“(3C) In this section “criminal legal aid work” means the provision under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 of—

- (a) advice or assistance described in section 13 or 15 of that Act, or
- (b) representation for the purposes of criminal proceedings.”

9 In section 49(3) (appeals from Tribunal) for “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service” substitute “ criminal legal aid work (as defined in that section) ”.

*House of Commons Disqualification Act 1975 (c. 24)*

10 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified) omit “The Legal Services Commission.”

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

11 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified) omit “The Legal Services Commission.”

*Magistrates' Courts Act 1980 (c. 43)*

12 The Magistrates' Courts Act 1980 is amended as follows.

13 In section 8(4) (matters which may be contained in report of committal proceedings without an order) for paragraph (i) substitute—

- “(i) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

14 In section 8A(5) (power to make ruling at pre-trial hearing)—

- (a) in paragraph (a) for the words from “to be granted” to “Criminal Defence Service” substitute “ to be provided with representation for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”, and
- (b) in paragraph (b) for “the Legal Services Commission must decide whether or not to grant him that right” substitute “ the necessary arrangements must be made for him to apply for it and, where appropriate, obtain it ”.

15 In section 8C(7) (matters to which reporting restrictions do not apply) for paragraph (g) substitute—

- “(g) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

16 In section 92(1)(b) (exception to restriction on power to impose imprisonment for default) for the words from “under section 17(2)” to “criminal case” substitute “

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made by a court under regulations under section 23 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (payment by individual in respect of legal aid) ”.

- 17 In section 130(3) (powers of alternate court on transfer of remand hearing) for the words from “all the powers” to end substitute “all of the following powers which that court would have had but for the order—
- (a) powers in relation to further remand (whether in custody or on bail), and
  - (b) powers under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”
- 18 In section 145A(4) (rules about costs orders against legal representatives) for “the Legal Services Commission” substitute “ the Lord Chancellor under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Senior Courts Act 1981 (c. 54)*

- 19 The Senior Courts Act 1981 is amended as follows.
- 20 In section 28(4) (appeals from Crown Court and inferior courts) for “an order under section 17 of the Access to Justice Act 1999” substitute “ a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- 21 In section 29(6) (mandatory, prohibiting and quashing orders) for “orders under section 17 of the Access to Justice Act 1999” substitute “ requirements to make payments under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Prosecution of Offences Act 1985 (c. 23)*

- 22 Part 2 of the Prosecution of Offences Act 1985 (costs in criminal cases) is amended as follows.
- 23 In section 19(2)(b) (matters of which account to be taken when making order as to costs) for “any grant of a right to representation funded by the Legal Services Commission as part of the Criminal Defence Service” substitute “ of whether, for the purposes of the proceedings, representation has been provided under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- 24 In section 20(2) (regulations) for “by the Legal Services Commission or out of central funds” substitute “ by the Lord Chancellor under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or out of central funds in accordance with a costs order ”.
- 25 (1) Section 21 (interpretation) is amended as follows.
- (2) In subsection (1), in the definition of “legally assisted person” for the words from “to whom” to the end of the definition substitute “ for whom advice, assistance or representation is provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
  - (3) In subsection (4A)(a) for the words from “not” to “Service” substitute “ not to include the cost of advice, assistance or representation provided to the person under

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arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

- (4) In subsection (4A)(b) for the words from “the cost” to the end substitute “ the cost of such advice, assistance or representation ”.

*Child Abduction and Custody Act 1985 (c. 60)*

- 26 In section 11 of the Child Abduction and Custody Act 1985 (cost of applications for child custody or access), for paragraph (a) (but not the “or” following it) substitute—

“(a) the provision of any civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) under arrangements made for the purposes of that Part of that Act,”.

*Administration of Justice Act 1985 (c. 61)*

- 27 Part 3 of the Administration of Justice Act 1985 (legal aid) is amended as follows.

- 28 In section 40(1) (legal aid complaints) for the words from “funded by” to “Criminal Defence Service” substitute “ under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

- 29 In section 41(2) (reduction of fees payable where legal aid complaint made)—

- (a) for “Legal Services Commission” substitute “ Lord Chancellor ”, and  
 (b) for “by him as part of the Community Legal Service or Criminal Defence Service” substitute “ by the barrister under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

- 30 (1) Section 42 (exclusion of barristers from legal aid work) is amended as follows.

- (2) In subsections (1) and (3) for “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service” substitute “ criminal legal aid work ”.

- (3) At the end insert—

“(5) In this section “criminal legal aid work” means the provision under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 of—

- (a) advice or assistance described in section 13 or 15 of that Act, or  
 (b) representation for the purposes of criminal proceedings.”

- 31 In section 43(3) (reduction of costs payable where legal aid complaint made)—

- (a) for “Legal Services Commission” substitute “ Lord Chancellor ”, and  
 (b) for “as part of the Community Legal Service or Criminal Defence Service” substitute “ under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

- 32 In paragraph 20(1) of Schedule 2 (powers of Tribunal in respect of legal aid complaints) for “providing representation funded by the Legal Services Commission as part of the Criminal Defence Service” substitute “ criminal legal aid work (as defined in that section) ”.



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*Housing Act 1985 (c. 68)*

- 33 In section 170(5) of the Housing Act 1985 (charges to recover costs of assistance in legal proceedings)—
- (a) for “section 10(7) of the Access to Justice Act 1999” substitute “ section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”, and
  - (b) for “Legal Services Commission” substitute “ Lord Chancellor ”.

*Criminal Justice Act 1987 (c. 38)*

- 34 The Criminal Justice Act 1987 is amended as follows.
- 35 In section 4(1) (notices of transfer to Crown Court) for “paragraph 2 of Schedule 3 to the Access to Justice Act 1999” substitute “ regulations under section 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- 36 In section 11(12) (matters to which reporting restrictions do not apply) for paragraph (h) substitute—
- “(h) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

*Housing Act 1988 (c. 50)*

- 37 In section 82(4) of the Housing Act 1988 (charges to recover costs of assistance in legal proceedings)—
- (a) for “section 10(7) of the Access to Justice Act 1999” substitute “ section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”, and
  - (b) for “Legal Services Commission” substitute “ Lord Chancellor ”.

*Children Act 1989 (c. 41)*

- 38 In section 25(6) of the Children Act 1989 (child without legal representation not to be placed in secure accommodation without having been informed of right to apply for legal aid), for the words from “representation” to “Criminal Defence Service” substitute “ the provision of representation under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Courts and Legal Services Act 1990 (c. 41)*

- 39 (1) Section 31B of the Courts and Legal Services Act 1990 (advocates and litigators employed by Legal Services Commission) is amended as follows.
- (2) In the heading of the section for “Legal Services Commission” substitute “ Lord Chancellor ”.
- (3) In subsection (1) for paragraph (b) substitute—
- “(b) is employed by the Lord Chancellor, or by any body established and maintained by the Lord Chancellor, under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

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*Criminal Justice Act 1991 (c. 53)*

- 40 In section 53(3) of the Criminal Justice Act 1991 (effect of notices transferring certain cases involving children) for “paragraph 2 of Schedule 3 to the Access to Justice Act 1999” substitute “ regulations under section 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Social Security Administration Act 1992 (c. 5)*

- 41 (1) Section 108(7) of the Social Security Administration Act 1992 is amended as follows.
- (2) For “Legal Services Commission”, in the first place, substitute “ Lord Chancellor ”.
- (3) In paragraph (a)—
- (a) at the end of sub-paragraph (iii) for “and” substitute “ or ”, and
- (b) after that sub-paragraph insert—
- “(iv) was provided with civil legal services (within the meaning of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012) under arrangements made for the purposes of that Part of that Act; and”.
- (4) In paragraph (b) after sub-paragraph (iii) insert “or
- (iv) under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in respect of civil legal services (within the meaning of Part 1 of that Act) provided under arrangements made for the purposes of that Part of that Act,”.

*Criminal Procedure and Investigations Act 1996 (c. 25)*

- 42 In section 37(9) of the Criminal Procedure and Investigations Act 1996 (matters to which reporting restrictions do not apply) for paragraph (g) substitute—
- “(g) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

*Family Law Act 1996 (c. 27)*

F45 43 .....

**Textual Amendments**

F45 Sch. 5 paras. 43-45 repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. 18(3)(e)(i), 139(4)

F45 44 .....

**Textual Amendments**

F45 Sch. 5 paras. 43-45 repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. 18(3)(e)(i), 139(4)

F45 45 .....

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### Textual Amendments

**F45** Sch. 5 paras. 43-45 repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. **18(3)(e)(i)**, 139(4)

#### *Crime and Disorder Act 1998 (c. 37)*

- 46 The Crime and Disorder Act 1998 is amended as follows.
- 47 (1) Section 50 (early administrative hearings) is amended as follows.
- (2) In subsection (2)—
- (a) after “this section” insert “—
- (a)”,
- and
- (b) for the words from “to be granted” to the end substitute “to be provided with representation for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, and
- (b) if he indicates that he does, the necessary arrangements must be made for him to apply for it and, where appropriate, obtain it.”
- (3) Omit subsection (2A).
- 48 In section 51B(6)(b) (effect of notice given under section 51B in serious or complex fraud cases) for “paragraph 2 of Schedule 3 to the Access to Justice Act 1999” substitute “ regulations under section 19 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- 49 In section 52A(7) (matters to which reporting restrictions do not apply) for paragraph (h) substitute—
- “(h) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”
- 50 In paragraph 3(8) of Schedule 3 (matters to which reporting restrictions do not apply) for paragraph (g) substitute—
- “(g) whether, for the purposes of the proceedings, representation was provided to the accused or any of the accused under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

#### *Access to Justice Act 1999 (c. 22)*

- 51 In the Access to Justice Act 1999 omit—
- (a) sections 1 to 26 and Schedules 1 to 3A (legal aid), and
- (b) Part 2 of Schedule 14 (transitional provision: Legal Services Commission).

#### *Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 52 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- 53 (1) Section 83(3) (exception to restriction on imposition of custodial sentence on persons not legally represented) is amended as follows.
- (2) In paragraph (a)—

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- (a) for the words from the beginning to “but the right” substitute “ representation was made available to him for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but ”, and
- (b) for “to be granted such a right” substitute “ for such representation ”.

(3) In paragraph (aa) for “to be granted a right to it” substitute “ for such representation ”.

- 54 In section 155(8) (alteration of Crown Court sentence) for “under section 17(2) of the Access to Justice Act 1999” substitute “ relating to a requirement to make a payment under regulations under section 23 or 24 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Freedom of Information Act 2000 (c. 36)*

- 55 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) omit “The Legal Services Commission.”

*International Criminal Court Act 2001 (c. 17)*

- 56 In section 6(2)(c) of the International Criminal Court Act 2001 (supplementary provisions as to proceedings before competent court) for “Access to Justice Act 1999 (c.22) (advice, assistance and representation)” substitute “ Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Anti-terrorism, Crime and Security Act 2001 (c. 24)*

- 57 In Schedule 4 to the Anti-terrorism, Crime and Security Act 2001 (extension of disclosure powers)—
- (a) omit paragraph 47, and
  - (b) after paragraph 53D insert—
- “53E Sections 34(2) and 35 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

*Proceeds of Crime Act 2002 (c. 29)*

- 58 The Proceeds of Crime Act 2002 is amended as follows.
- 59 In section 245C(6)(b) (exclusion from property freezing order or prohibition on dealing with property to which order applies) for “funded by the Legal Services Commission or” substitute “ made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by ”.
- 60 In section 252(4A)(b) (exclusion from restriction on dealing with property) for “funded by the Legal Services Commission or” substitute “ made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 or funded by ”.

*Communications Act 2003 (c. 21)*

- 61 In section 119(7)(a) of the Communications Act 2003 (charges to recover costs of assistance in proceedings)—

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- (a) for “section 10(7) of the Access to Justice Act 1999 (c.22)” substitute “section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012”, and
- (b) for “Legal Services Commission” substitute “Lord Chancellor”.

*Extradition Act 2003 (c. 41)*

62 The Extradition Act 2003 is amended as follows.

63 In section 45(7) (consent to extradition) for paragraph (a) substitute—

“(a) in England and Wales, representation for the purposes of criminal proceedings provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;”.

64 In section 127(8) (consent to extradition: general) for paragraph (a) substitute—

“(a) in England and Wales, representation for the purposes of criminal proceedings provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012;”.

*Criminal Justice Act 2003 (c. 44)*

65 In section 71(8) of the Criminal Justice Act 2003 (matters to which reporting restrictions do not apply) for paragraph (g) substitute—

“(g) whether, for the purposes of the proceedings, representation was provided to the defendant or any of the defendants under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

*Domestic Violence, Crime and Victims Act 2004 (c. 28)*

66 In Schedule 9 to the Domestic Violence, Crime and Victims Act 2004 (authorities within remit of Commissioner for Victims and Witnesses) omit paragraph 21 (Legal Services Commission).

*Equality Act 2006 (c. 3)*

67 In section 29(3) of the Equality Act 2006 (costs of Equality and Human Rights Commission in providing legal assistance) for “section 11(4)(f) of the Access to Justice Act 1999 (c. 22) (recovery of costs in funded cases)” substitute “section 25 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (statutory charge in connection with civil legal aid)”.

*Legal Services Act 2007 (c. 29)*

68 In section 194(6) of the Legal Services Act 2007 (payments in respect of pro bono representation) for paragraph (b) substitute—

“(b) provided under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

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*Criminal Justice and Immigration Act 2008 (c. 4)*

- 69 In paragraph 19(2) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (preconditions to imposing local authority residence requirement or fostering requirement) for paragraph (a) (but not the “or” following it) substitute—
- “(a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender’s conduct.”

*Equality Act 2010 (c. 15)*

- 70 In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities) omit “The Legal Services Commission.”

*Terrorist Asset-Freezing etc Act 2010 (c. 38)*

- 71 In section 23(1)(d) (general power to disclose information) omit “the Legal Services Commission.”

**PART 2**

REPEALS CONSEQUENTIAL ON PART 1 OF THIS SCHEDULE

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Legal Aid Act 1988 (c. 34)	In Schedule 5, paragraph 13.
Access to Justice Act 1999 (c. 22)	In Schedule 4— (a) paragraph 1; (b) paragraph 8; (c) paragraphs 10 to 12; (d) paragraphs 15 to 19; (e) paragraphs 29 and 30(2) and (3)(a); (f) paragraph 33; (g) paragraph 35; (h) paragraphs 38 to 40; (i) paragraph 45; (j) paragraph 47; (k) paragraph 49; (l) <sup>F46</sup> ... (m) paragraph 55.
Terrorism Act 2000 (c. 11)	In Schedule 15, paragraph 19.
Child Support, Pensions and Social Security Act 2000 (c. 19)	In Schedule 8, paragraph 15.
Criminal Defence Service (Advice and Assistance) Act 2001 (c. 4)	The whole Act.
Anti-terrorism, Crime and Security Act 2001 (c. 24)	Section 2(1) to (3).
Proceeds of Crime Act 2002 (c. 29)	In Schedule 11, paragraph 36.

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Adoption and Children Act 2002 (c. 38)	In Schedule 3, paragraph 102.
Nationality, Immigration and Asylum Act 2002 (c. 41)	Section 116.
Extradition Act 2003 (c. 41)	Section 182.
Criminal Justice Act 2003 (c. 44)	In Schedule 26, paragraph 51.
Civil Partnership Act 2004 (c. 33)	In Schedule 27, paragraph 156.
Constitutional Reform Act 2005 (c. 4)	In Schedule 9, paragraph 68(3).
Mental Capacity Act 2005 (c. 9)	In Schedule 6, paragraph 44.
Criminal Defence Service Act 2006 (c. 9)	Sections 1 to 3. Section 4(1).
Serious Crime Act 2007 (c. 27)	In Schedule 8, paragraph 159.
Legal Services Act 2007 (c. 29)	In Schedule 16, paragraphs 51(4) and 108(c). In Schedule 21, paragraph 128.
Criminal Justice and Immigration Act 2008 (c. 4)	Sections 56 to 58.
Human Fertilisation and Embryology Act 2008 (c. 22)	Schedule 6, paragraph 38.
Coroners and Justice Act 2009 (c. 25)	Section 51. Sections 149 to 153. Schedule 18.
Policing and Crime Act 2009 (c. 26)	In Schedule 7, paragraphs 65 and 98.

#### Textual Amendments

**F46** Words in [Sch. 5 Pt. 2](#) repealed (13.5.2014) by [Children and Families Act 2014 \(c. 6\)](#), [ss. 18\(3\)\(e\)\(ii\)](#), [139\(4\)](#)

## SCHEDULE 6

Section 40

### NORTHERN IRELAND: INFORMATION ABOUT FINANCIAL RESOURCES

#### *Obtaining information*

- 1 (1) The relevant authority may make an information request to—
  - (a) the Secretary of State,
  - (b) a relevant Northern Ireland Department, or
  - (c) the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”).

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- (2) An information request may be made under this paragraph only for the purposes of facilitating a determination about an individual's financial resources for the purposes of—
  - (a) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (S.I. 1981/228 (N.I. 8)), or
  - (b) the Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435) (N.I. 10)).
- (3) An information request made to the Secretary of State or a relevant Northern Ireland Department under this paragraph may request the disclosure of some or all of the following information—
  - (a) a relevant individual's full name and any previous names;
  - (b) a relevant individual's address and any previous addresses;
  - (c) a relevant individual's date of birth;
  - (d) a relevant individual's national insurance number;
  - (e) a relevant individual's benefit status at a time specified in the request;
  - (f) information of a prescribed description.
- (4) An information request made to the Commissioners under this paragraph may request the disclosure of some or all of the following information—
  - (a) whether or not a relevant individual is employed or was employed at a time specified in the request;
  - (b) the name and address of the employer;
  - (c) whether or not a relevant individual is carrying on a business, trade or profession or was doing so at a time specified in the request;
  - (d) the name under which it is or was carried on;
  - (e) the address of any premises used for the purposes of carrying it on;
  - (f) a relevant individual's national insurance number;
  - (g) a relevant individual's benefit status at a time specified in the request;
  - (h) information of a prescribed description.
- (5) The information that may be prescribed under sub-paragraphs (3)(f) and (4)(h) includes, in particular, information relating to—
  - (a) prescribed income of a relevant individual for a prescribed period, and
  - (b) prescribed capital of a relevant individual.
- (6) Information may not be prescribed under sub-paragraph (4)(h) without the Commissioners' consent.
- (7) The Secretary of State, the relevant Northern Ireland Departments and the Commissioners may disclose to the relevant authority information specified in an information request made under this paragraph.
- (8) In this paragraph—

“benefit status”, in relation to an individual, means whether or not the individual is in receipt of a prescribed benefit or benefits and, if so—

  - (a) which benefit or benefits the individual is receiving,
  - (b) whether the individual is entitled to the benefit or benefits alone or jointly,



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- (c) in prescribed cases, the amount the individual is receiving by way of the benefit (or each of the benefits) (“the benefit amount”), and
  - (d) in prescribed cases, where the benefit consists of a number of elements, what those elements are and the amount included in respect of each element in calculating the benefit amount;
- “financial resources”, in relation to an individual, includes an individual's means, disposable income and disposable capital;
- “the relevant authority” means—
- (a) a prescribed person, or
  - (b) in relation to circumstances for which no person is prescribed, [<sup>F47</sup>the Director of Legal Aid Casework designated under section 2 of the Legal Aid and Coroners' Courts Act (Northern Ireland) 2014];
- “a relevant individual”, in relation to an information request under this paragraph for the purposes of a determination about an individual's financial resources, means—
- (a) that individual, and
  - (b) any other individual whose financial resources are or may be relevant for the purposes of the determination;
- “relevant Northern Ireland Department” means the Department for Social Development in Northern Ireland or the Department of Finance and Personnel in Northern Ireland.

#### Textual Amendments

**F47** Words in Sch. 6 para. 1(8) substituted (N.I.) (1.4.2015) by [Legal Aid and Coroners' Courts Act \(Northern Ireland\) 2014 \(c. 11\), s. 12\(1\), Sch. 2 para. 11](#) (with ss. 2(3), 9, Sch. 1 paras. 3(3)); S.R. 2015/193, art. 2(e)

#### *Restrictions on disclosing information*

- 2
- (1) A person to whom information is disclosed under paragraph 1 of this Schedule or this sub-paragraph may disclose the information to any person to whom its disclosure is necessary or expedient in connection with facilitating a determination described in paragraph 1(2).
  - (2) A person to whom such information is disclosed must not—
    - (a) disclose the information other than in accordance with sub-paragraph (1), or
    - (b) use the information other than for the purpose of facilitating a determination described in paragraph 1(2).
  - (3) Sub-paragraph (2) does not prevent—
    - (a) the disclosure of information in accordance with an enactment or an order of a court,
    - (b) the disclosure of information for the purposes of the investigation or prosecution of an offence (or suspected offence) under the law of England and Wales or Northern Ireland or any other jurisdiction, except as otherwise prescribed,
    - (c) the disclosure of information for the purposes of instituting, or otherwise for the purposes of, proceedings before a court, or

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- (d) the disclosure of information which has previously been lawfully disclosed to the public.
- (4) A person who discloses or uses information in contravention of this paragraph is guilty of an offence and liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both);
  - (b) on summary conviction—
    - (i) in England and Wales, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both), and
    - (ii) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both).
- (5) It is a defence for a person charged with an offence under this paragraph to prove that the person reasonably believed that the disclosure or use was lawful.
- (6) In this paragraph “enactment” includes—
  - (a) an enactment contained subordinate legislation (within the meaning of the Interpretation Act 1978), and
  - (b) an enactment contained in, or in an instrument made under, an Act or Measure of the National Assembly for Wales or Northern Ireland legislation.
- (7) In relation to an offence under this paragraph committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in sub-paragraph (4) (b)(i) to 12 months has effect as if it were a reference to 6 months.

*Power to make consequential and supplementary provision etc*

- 3 (1) The Department of Justice in Northern Ireland may by regulations make consequential, supplementary, incidental or transitional provision in relation to this Schedule extending to Northern Ireland.
- (2) The regulations may, in particular—
  - (a) amend, repeal, revoke or otherwise modify Northern Ireland legislation passed before this Schedule comes into force or an instrument made under such legislation, and
  - (b) include transitory or saving provision.

*Regulations*

- 4 (1) In this Schedule “prescribed” means prescribed by regulations made by the Department of Justice in Northern Ireland.
- (2) The powers under this Schedule to make regulations are exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) Regulations under this Schedule are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954, subject to sub-paragraph (4).
- (4) The following regulations may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly—
  - (a) the first regulations under paragraph 1, and

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- (b) regulations under paragraph 3 that amend or repeal Northern Ireland legislation (whether alone or with other provision).
- (5) Section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of sub-paragraph (4) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment (as defined in that Act).
- (6) Subsections (1) to (3) of section 41 of this Act apply in relation to regulations made under paragraph 1 or 2 of this Schedule as they apply in relation to regulations made by the Lord Chancellor under this Part.

## SCHEDULE 7

Section 62

### COSTS IN CRIMINAL CASES

#### PART 1

#### PROSECUTION OF OFFENCES ACT 1985

##### *Introduction*

- 1 The Prosecution of Offences Act 1985 is amended as follows.

##### *Defence costs*

- 2 (1) Section 16 (defence costs) is amended as follows.
- (2) After subsection (6) insert—
- “(6A) Where the court considers that there are circumstances that make it inappropriate for the accused to recover the full amount mentioned in subsection (6), a defendant's costs order must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.
- (6B) Subsections (6) and (6A) have effect subject to—
- (a) section 16A, and
  - (b) regulations under section 20(1A)(d).
- (6C) When making a defendant's costs order, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
- (a) the accused agrees the amount, or
  - (b) subsection (6A) applies.
- (6D) Where the court does not fix the amount to be paid out of central funds in the order—
- (a) it must describe in the order any reduction required under subsection (6A), and

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- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.”
- (3) Omit subsections (7) and (9).

### *Legal costs*

3 After section 16 insert—

#### “16A Legal costs

- (1) A defendant's costs order may not require the payment out of central funds of an amount that includes an amount in respect of the accused's legal costs, subject to the following provisions of this section.
- (2) Subsection (1) does not apply where condition A, B or C is met.
- (3) Condition A is that the accused is an individual and the order is made under—
  - (a) section 16(1),
  - (b) section 16(3), or
  - (c) section 16(4)(a)(ii) or (iii) or (d).
- (4) Condition B is that the accused is an individual and the legal costs were incurred in proceedings in a court below which were—
  - (a) proceedings in a magistrates' court, or
  - (b) proceedings on an appeal to the Crown Court under section 108 of the Magistrates' Courts Act 1980 (right of appeal against conviction or sentence).
- (5) Condition C is that the legal costs were incurred in proceedings in the Supreme Court.
- (6) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
  - (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (7) Regulations under subsection (6) may not remove or limit the exception provided by condition C.
- (8) Where a court makes a defendant's costs order requiring the payment out of central funds of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (9) Where, in a defendant's costs order, a court fixes an amount to be paid out of central funds that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.
- (10) In this section—

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“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.”

#### *Prosecution costs*

- 4 (1) Section 17 (prosecution costs) is amended as follows.
- (2) In subsection (1) for “subsection (2)” substitute “ subsections (2) and (2A) ”.
- (3) After subsection (2) insert—
- “(2A) Where the court considers that there are circumstances that make it inappropriate for the prosecution to recover the full amount mentioned in subsection (1), an order under this section must be for the payment out of central funds of such lesser amount as the court considers just and reasonable.
- (2B) When making an order under this section, the court must fix the amount to be paid out of central funds in the order if it considers it appropriate to do so and—
- (a) the prosecutor agrees the amount, or
- (b) subsection (2A) applies.
- (2C) Where the court does not fix the amount to be paid out of central funds in the order—
- (a) it must describe in the order any reduction required under subsection (2A), and
- (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.”
- (4) Omit subsections (3) and (4).

#### *Costs of witnesses and appellants not in custody*

- 5 (1) Section 19 (provision for orders as to costs in other circumstances) is amended as follows.
- (2) After subsection (3) insert—

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“(3ZA) In relation to a sum that may be required by a court other than the Supreme Court to be paid out of central funds under regulations under subsection (3)

- (a) the requirement under that subsection for the sum to be such sum as the court considers reasonably necessary to cover or compensate for expenses, fees, costs, trouble or losses is subject to regulations made under section 20(1A)(d), and
- (b) regulations under subsection (3) may make provision accordingly.”

(3) After subsection (3C) insert—

“(3D) Regulations under subsection (3) may make provision generally or only in relation to particular descriptions of persons, expenses, fees, costs, trouble or losses.”

(4) After subsection (4) insert—

“(4A) Subsection (4) has effect subject to regulations under section 20(1A)(d).

(4B) An order under subsection (4) may not require the payment out of central funds of a sum that includes a sum in respect of legal costs (as defined in section 16A), except where regulations made by the Lord Chancellor provide otherwise.

(4C) Regulations under subsection (4B) may, in particular, include—

- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
- (b) provision requiring the court, when it orders the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the order, and
- (c) provision that the court may not order the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.”

### *Regulations*

6 (1) Section 20 (regulations) is amended as follows.

(2) In subsection (1) omit the words from “and the regulations” to the end.

(3) After that subsection insert—

“(1A) The Lord Chancellor may by regulations—

- (a) make provision as to the amounts that may be ordered to be paid out of central funds in pursuance of a costs order, whether by specifying rates or scales or by making other provision as to the calculation of the amounts,
- (b) make provision as to the circumstances in which and conditions under which such amounts may be paid or ordered to be paid,
- (c) make provision requiring amounts required to be paid out of central funds by a costs order to be calculated having regard to regulations under paragraphs (a) and (b),
- (d) make provision requiring amounts required to be paid to a person out of central funds by a relevant costs order to be calculated in

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accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient or necessary to compensate the person), and

- (e) make provision as to the review of determinations of amounts required to be paid out of central funds by costs orders.

(1B) In subsection (1A)(d) “relevant costs order” means a costs order other than—

- (a) an order made by any court under section 17, and
- (b) so much of a costs order made by the Supreme Court as relates to expenses, fees, costs, trouble or losses incurred in proceedings in that court.

(1C) Regulations under subsection (1A) may, in particular—

- (a) make different provision in relation to amounts to be paid in respect of different expenses, fees, costs, trouble and losses,
- (b) make different provision in relation to different costs orders and different areas, and
- (c) make different provision in relation to the fixing of an amount in a costs order and the fixing of an amount by means of a determination.”

(4) In subsection (3)—

- (a) for “subsection (1)” substitute “ subsection (1A) ”,
- (b) for “rates or scales of allowances” substitute “ provision as to the calculation of amounts ”, and
- (c) after “order” insert “ (whether in the form of rates or scales or other provision) ”.

#### *Interpretation*

7 (1) Section 21 (interpretation) is amended as follows.

(2) In subsection (4) after “16” insert “ , 16A ”.

(3) In subsection (4A)(a) after “16” insert “ , 16A ”.

#### *Supplementary*

8 (1) Section 29 (regulations) is amended as follows.

(2) For subsection (1) substitute—

“(1) A power to make regulations under this Act is exercisable by statutory instrument.

(1A) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (1B).

(1B) A statutory instrument containing (whether alone or with other provision) regulations under section 16A(6) or 19(4B) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

(3) In subsection (2) for “Any such regulations” substitute “ Regulations under this Act ”.

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## PART 2

### ATTORNEY GENERAL'S REFERENCES

#### *Reference of point of law following acquittal on indictment*

- 9 (1) Section 36 of the Criminal Justice Act 1972 (reference of point of law following acquittal on indictment) is amended as follows.
- (2) In subsection (5) omit “to his costs, that is to say”.
- (3) Omit subsection (5A).
- (4) After that subsection insert—
- “(5A) Subsection (5) has effect subject to—
- (a) subsection (5B), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (5B) A person is not entitled under subsection (5) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.
- (5C) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of central funds under subsection (5) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.”
- 10 In consequence of the amendments made by paragraph 9, omit paragraph 8 of Schedule 1 to the Prosecution of Offences Act 1985.

#### *Reference of sentence of Crown Court appearing to be unduly lenient*

- 11 (1) Schedule 3 to the Criminal Justice Act 1988 (reference of sentence of Crown Court appearing to be unduly lenient) is amended as follows.
- (2) In paragraph 11 (recovery of costs of representation)—
- (a) number the existing provision sub-paragraph (1),
- (b) in that sub-paragraph, omit “to his costs, that is to say”, and
- (c) after that sub-paragraph insert—
- “(2) Sub-paragraph (1) has effect subject to—
- (a) sub-paragraph (3), and
- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this paragraph).
- (3) A person is not entitled under sub-paragraph (1) to the payment of sums in respect of legal costs (as defined in section 16A of the Prosecution of Offences Act 1985) incurred in proceedings in the Court of Appeal.
- (4) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid



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out of central funds) apply in relation to funds payable out of central funds under sub-paragraph (1) as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.”

- (3) In paragraph 12 (application to Northern Ireland)—
- (a) for “11”, in each place, substitute “ 11(1) ”, and
  - (b) after sub-paragraph (d) insert—
    - “(e) paragraph 11 has effect as if sub-paragraphs (2) to (4) were omitted.”

### PART 3

#### EXTRADITION ACT 2003

##### *Introduction*

12 The Extradition Act 2003 is amended as follows.

##### *Extradition to Category 1 Territories*

13 (1) Section 61 (costs where discharge ordered) is amended as follows.

(2) After subsection (5) insert—

“(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 62A and 62B.

(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).”

14 In section 62 (supplementary provision about costs where discharge ordered) omit subsections (1) and (2).

15 After section 62 insert—

##### **“62A Appropriate amount: England and Wales**

(1) For the purposes of an order under section 61(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.

(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 61(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.

(3) Subsections (1) and (2) have effect subject to—

- (a) section 62B, and

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- (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 61(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
  - (a) the person in whose favour the order is made agrees the amount, or
  - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
  - (a) the judge or court must describe in the order any reduction required under subsection (2), and
  - (b) the amount must be fixed by means of a determination made by or on behalf of the judge or court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 61 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

#### **62B Legal costs: England and Wales**

- (1) An order under section 61(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
  - (a) proceedings in a magistrates' court, or
  - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
  - (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 61(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.
- (6) Where, in an order under section 61(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount

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in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.”

#### *Extradition to Category 2 Territories*

16 (1) Section 134 (costs where discharge ordered) is amended as follows.

(2) After subsection (5) insert—

“(5A) In England and Wales, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with sections 135A and 135B.

(5B) In Scotland and Northern Ireland, an order under subsection (5) is to be made, and the appropriate amount is to be determined, in accordance with subsections (6) to (9).”

17 In section 135 (supplementary provision about costs where discharge ordered) omit subsections (1) and (2).

18 After section 135 insert—

#### **“135A Appropriate amount: England and Wales**

(1) For the purposes of an order under section 134(5), the appropriate amount is such amount as the judge or court making the order considers reasonably sufficient to compensate the person in whose favour the order is made for any expenses properly incurred by the person in the proceedings under this Part.

(2) But if the judge or court considers that there are circumstances that make it inappropriate for the person to recover the full amount mentioned in subsection (1), the order under section 134(5) must be for the payment out of money provided by Parliament of such lesser amount as the judge or court considers just and reasonable.

(3) Subsections (1) and (2) have effect subject to—

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- (a) section 135B, and
  - (b) regulations under section 20(1A)(d) of the Prosecution of Offences Act 1985 (as applied by this section).
- (4) When making an order under section 134(5), the judge or court must fix the amount to be paid out of money provided by Parliament in the order if the judge or court considers it appropriate to do so and—
- (a) the person in whose favour the order is made agrees the amount, or
  - (b) subsection (2) applies.
- (5) Where the judge or court does not fix the amount to be paid out of money provided by Parliament in the order—
- (a) the judge or court must describe in the order any reduction required under subsection (2), and
  - (b) the amount must be fixed by means of a determination made by or on behalf of the court in accordance with procedures specified in regulations made by the Lord Chancellor.
- (6) Subsections (1A) to (1C) and (3) of section 20 of the Prosecution of Offences Act 1985 (regulations as to amounts ordered to be paid out of central funds) apply in relation to amounts payable out of money provided by Parliament in pursuance of an order under section 134 as they apply in relation to amounts payable out of central funds in pursuance of costs orders made under section 16 of that Act.
- (7) This section extends to England and Wales only.

### **135B Legal costs: England and Wales**

- (1) An order under section 134(5) may not require the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs incurred by the person in whose favour the order is made, subject to the following provisions of this section.
- (2) Subsection (1) does not apply in relation to legal costs incurred in—
- (a) proceedings in a magistrates' court, or
  - (b) proceedings in the Supreme Court.
- (3) The Lord Chancellor may by regulations make provision about exceptions from the prohibition in subsection (1), including—
- (a) provision amending this section by adding, modifying or removing an exception, and
  - (b) provision for an exception to arise where a determination has been made by a person specified in the regulations.
- (4) Regulations under subsection (3) may not remove or limit the exception provided by subsection (2)(b).
- (5) Where a judge or court makes an order under section 134(5) requiring the payment out of money provided by Parliament of an amount that includes an amount in respect of legal costs, the order must include a statement to that effect.

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(6) Where, in an order under section 134(5), a judge or court fixes an amount to be paid out of money provided by Parliament that includes an amount in respect of legal costs incurred in proceedings in a court other than the Supreme Court, the latter amount must not exceed an amount specified by regulations made by the Lord Chancellor.

(7) In this section—

“legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;

“advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;

“expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;

“litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.

(8) This section extends to England and Wales only.”

#### *Regulations*

19 In section 223(6) (orders and regulations subject to affirmative procedure), at the appropriate places insert— “ section 62B(3) ”; “ section 135B(3) ”.

### **PART 4**

#### **SAVINGS**

20 The amendments made by paragraphs 2 to 5 do not have effect in relation to costs orders made by a court in proceedings which commenced before the relevant day.

21 The amendments made by paragraphs 9 to 11 do not have effect in relation to a person's entitlement to costs in connection with a reference made before the relevant day.

22 The amendments made by paragraphs 12 to 19 do not have effect in relation to orders made by a judge or court in proceedings which commenced before the relevant day.

23 In paragraphs 20 to 22 “the relevant day”, in relation to an amendment, means the day on which the amendment comes into force.

24 For the purposes of paragraphs 20 and 22—

- (a) proceedings commence in a magistrates' court when a warrant, requisition or summons relating to the proceedings is issued;
- (b) proceedings commence on an appeal to the Crown Court when a notice of appeal is served;

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- (c) other proceedings commence in the Crown Court when they are committed, transferred or sent to that court;
- (d) proceedings commence in the High Court when an application for leave to appeal by way of case stated is made or (in the absence of such an application) when notice of appeal is given;
- (e) proceedings commence in the Court of Appeal when an application for leave to appeal is made or (in the absence of such an application) when notice of appeal is given;
- (f) proceedings commence in the Supreme Court when an application for leave to appeal is made.

## SCHEDULE 8

Section 62

### COSTS IN CRIMINAL CASES: SERVICE COURTS

#### PART 1

#### APPEALS FROM COURT MARTIAL

##### *Introduction*

- 1 Part 2 of the Court Martial Appeals Act 1968 (appeals from Court Martial) is amended as follows.

##### *Costs of successful appellant*

- 2 (1) Section 31 (costs of successful appellant) is amended as follows.
- (2) In subsection (1) omit “other than an appeal against sentence”.
- (3) In subsection (2) at the end insert “, subject to subsection (3), section 31A and regulations under section 33B(1)(d).”
- (4) After subsection (2) insert—
- “(3) Where the Appeal Court consider that there are circumstances that make it inappropriate for the appellant to recover the whole of the sums mentioned in subsection (2), a direction under this section must be for the payment of such lesser sums as they consider just and reasonable.
- (4) The Appeal Court must fix the sums to be paid by the Secretary of State in the direction if they consider it appropriate to do so and—
- (a) the appellant agrees the sums, or
  - (b) subsection (3) applies.
- (5) Where the Appeal Court do not fix the sums to be paid by the Secretary of State in the direction—
- (a) they must describe in the direction any reduction required under subsection (3), and

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- (b) the sums must be fixed by means of a determination made by or on behalf of the Appeal Court in accordance with procedures specified in regulations made by the Lord Chancellor.”

#### *Legal costs*

3 After section 31 insert—

#### “31A Legal costs

- (1) The costs which the Appeal Court may direct the Secretary of State to pay under section 31 do not include legal costs, except where regulations made by the Lord Chancellor provide otherwise.
- (2) Regulations under this section may, in particular, include—
  - (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
  - (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
  - (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.
- (3) In this section—
  - “legal costs” means fees, charges, disbursements and other amounts payable in respect of advocacy services or litigation services including, in particular, expert witness costs;
  - “advocacy services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide;
  - “expert witness costs” means amounts payable in respect of the services of an expert witness, including amounts payable in connection with attendance by the witness at court or elsewhere;
  - “litigation services” means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to proceedings, or contemplated proceedings, to provide.”

#### *Witnesses' expenses*

- 4 (1) Section 33 (witnesses' expenses) is amended as follows.
- (2) In subsection (1) at the end insert “, subject to subsection (3) and regulations under section 33B (1)(d) ”.
- (3) At the end insert—
  - “(3) Sums ordered to be paid out of money provided by Parliament under subsection (1) may not include sums in respect of expert witness costs (as defined in section 31A), unless regulations made by the Lord Chancellor provide otherwise.”

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*Expenses of appellant not in custody*

- 5 (1) Section 33A (appellant's expenses) is amended as follows.
- (2) Number the existing provision subsection (1).
- (3) After that subsection insert—
- “(2) The expenses which the Appeal Court may direct the Secretary of State to pay under this section do not include legal costs (as defined in section 31A), except where regulations made by the Lord Chancellor provide otherwise.
- (3) Regulations under this section may, in particular, include—
- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
  - (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
  - (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.”

*Further provision about costs*

- 6 After section 33A insert—
- “33B Further provision about costs**
- (1) The Lord Chancellor may by regulations—
- (a) make provision as to the sums that may be directed or ordered to be paid under section 31, 33 or 33A, whether by specifying rates or scales or by making other provision as to the calculation of the sums,
  - (b) make provision as to the circumstances in which and conditions under which such sums may be paid or directed or ordered to be paid,
  - (c) make provision requiring such sums to be fixed having regard to regulations under paragraphs (a) and (b),
  - (d) make provision requiring such sums to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient to compensate the person concerned), and
  - (e) make provision as to the review of determinations of sums directed to be paid under section 31.
- (2) Regulations under this section may provide that provision as to the calculation of sums (whether in the form of rates or scales or other provision) may be determined by the Lord Chancellor with the consent of the Treasury.”

*Regulations*

- 7 After section 33B insert—
- “33C Regulations**
- (1) Regulations under sections 31, 31A, 33, 33A and 33B may, in particular—



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- (a) make different provision in relation to different cases and different classes of case, including different provision in relation to different expenses, trouble and loss, different directions and orders and different areas, and
  - (b) make different provision in relation to the fixing of a sum in a direction or order and the fixing of a sum by means of a determination.
- (2) A power to make regulations under those sections is exercisable by statutory instrument.
- (3) A statutory instrument containing regulations under those sections is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (4).
- (4) A statutory instrument containing (whether alone or with other provision) regulations under section 31A, 33 or 33A may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

#### *Consequential repeal*

- 8 In consequence of the amendment made by paragraph 2(2), omit paragraph 1(6) of Schedule 2 to the Armed Forces Act 1971.

## **PART 2**

### APPEALS FROM COURT MARTIAL APPEAL COURT

#### *Introduction*

- 9 Part 3 of the Court Martial Appeals Act 1968 (appeals from Court Martial Appeal Court) is amended as follows.

#### *Application to Appeal Court*

- 10 Before section 47 insert—

#### **Costs: application to Appeal Court by Director of Service Prosecutions**

- “46A(1) Where the Appeal Court dismiss an application for leave to appeal to the Supreme Court made by the Director of Service Prosecutions, the Appeal Court may direct the payment by the Secretary of State of such sums as appear to them to be reasonably sufficient to compensate the accused for any expenses properly incurred by the accused in resisting the application, subject to—
- (a) subsection (2), and
  - (b) regulations under section 47A(1)(d).
- (2) The sums which the Appeal Court may direct the Secretary of State to pay do not include legal costs (as defined in section 31A), except where regulations made by the Lord Chancellor provide otherwise.

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- (3) Regulations under subsection (2) may, in particular, include—
- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
  - (b) provision requiring the Appeal Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
  - (c) provision that the Appeal Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.

### **Costs: application to Appeal Court by accused**

- 46B Where the Appeal Court dismiss an application for leave to appeal to the Supreme Court made by the accused—
- (a) the Appeal Court may make the like order as may be made by the Court under section 32(1) of this Act where they dismiss an application for leave to appeal to the Court,
  - (b) an order made under this section may be enforced in the manner described in section 32(2) of this Act, and
  - (c) section 32(3) of this Act applies in relation to any sum recovered by virtue of section 32(2)(a) (as applied by this section)."

### *Application to Supreme Court*

- 11 (1) Section 47 (costs) is amended as follows.
- (2) In subsections (1) and (2) omit “the Appeal Court or” (in each place).
- (3) After subsection (2) insert—
- “(2A) Section 32(3) of this Act applies in relation to any sum recovered by virtue of section 32(2)(a) (as applied by subsection (2)).”
- (4) In subsection (3), at the end insert “subject to—
- (a) subsection (3A), and
  - (b) regulations under section 47A(1)(d).”
- (5) After subsection (3) insert—
- “(3A) The costs which the Supreme Court may direct the Secretary of State to pay do not include legal costs (as defined in section 31A) incurred in proceedings in a court below, except where regulations made by the Lord Chancellor provide otherwise.
- (3B) Regulations under subsection (3A) may, in particular, include—
- (a) provision for an exception to arise where a determination has been made by a person specified in the regulations,
  - (b) provision requiring the Supreme Court, when they direct the payment of a sum that includes a sum in respect of legal costs, to include a statement to that effect in the direction, and
  - (c) provision that the Supreme Court may not direct the payment of a sum in respect of legal costs exceeding an amount specified in the regulations.”

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- (6) In subsection (4) for “the foregoing provisions of” substitute “ sections 46A, 46B and ”.
- 12 Accordingly, in the heading of section 47, at the end insert “ : application to Supreme Court ”.

*Further provision about costs*

- 13 After section 47 insert—

**“47A Further provision about costs**

- (1) The Lord Chancellor may by regulations—
- (a) make provision as to the sums that may be directed to be paid under section 46A or 47(3), whether by specifying rates or scales or by making other provision as to the calculation of the sums,
  - (b) make provision as to the circumstances in which and conditions under which such sums may be paid or directed to be paid,
  - (c) make provision requiring such sums to be fixed having regard to regulations under paragraphs (a) and (b), and
  - (d) make provision requiring such sums to be calculated in accordance with such regulations (whether or not that results in the fixing of an amount that the court considers reasonably sufficient to compensate the person concerned).
- (2) The power under subsection (1)(d) may not be exercised in respect of sums ordered to be paid by the Supreme Court in respect of expenses incurred in proceedings before that court.
- (3) Regulations under this section may provide that provision as to the calculation of sums (whether in the form of rates or scales or other provision) may be determined by the Lord Chancellor with the consent of the Treasury.”

*Regulations*

- 14 After section 47A insert—

**“47B Regulations**

- (1) Regulations under sections 46A, 47 and 47A may, in particular, make different provision in relation to different cases and different classes of case, including different provision in relation to different expenses, trouble and loss, different directions and orders and different areas.
- (2) A power to make regulations under those sections is exercisable by statutory instrument.
- (3) A statutory instrument containing regulations under those sections is subject to annulment in pursuance of a resolution of either House of Parliament, subject to subsection (4).
- (4) A statutory instrument containing (whether alone or with other provision) regulations under section 46A or 47 may not be made unless a draft of the

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instrument has been laid before, and approved by a resolution of, each House of Parliament.”

### PART 3

#### SAVINGS

- 15 The amendments made by this Schedule do not have effect in relation to directions and orders made by a court in proceedings commenced before the relevant day.
- 16 For the purposes of paragraph 15—
- (a) “the relevant day”, in relation to an amendment, means the day on which the amendment comes into force;
  - (b) proceedings commence in the Court Martial Appeal Court when an application for leave to appeal is made or (in the absence of such an application) when notice of appeal is given;
  - (c) proceedings commence in the Supreme Court when an application for leave to appeal is made.

## SCHEDULE 9

Section 68

### CHANGES TO POWERS TO MAKE SUSPENDED SENTENCE ORDERS: CONSEQUENTIAL AND TRANSITORY PROVISION

#### PART 1

##### CONSEQUENTIAL AMENDMENTS

##### *Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 1 In section 163(1) of the Powers of Criminal Courts (Sentencing) Act 2000 omit the definition of “operational period”.

##### *Criminal Justice Act 2003 (c. 44)*

- 2 The Criminal Justice Act 2003 is amended as follows.
- 3 For the heading of Chapter 3 of Part 12 substitute “SUSPENDED SENTENCE ORDERS”.
- 4 In section 190(2) (limits on power to impose requirements by suspended sentence order), for “189(1)(a)” substitute “189(1A)”.
- 5 In section 191(1) (power to provide for review of suspended sentence order), after “suspended sentence order” insert “that imposes one or more community requirements”.
- 6 (1) Section 195 (interpretation of Chapter 3) is amended as follows.
- (2) For the definition of “operational period” and “supervision period” substitute—

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““the operational period”, in relation to a suspended sentence, has the meaning given by section 189(1)(a);”.

(3) After the definition of “sentence of imprisonment” insert—

““the supervision period”, in relation to a suspended sentence, has the meaning given by section 189(1A).”

7 (1) Section 196 (meaning of “relevant order”) is amended as follows.

(2) In the heading, after “ “relevant order”” insert “ etc ”.

(3) After subsection (1) insert—

“(1A) In this Chapter “suspended sentence order” means a suspended sentence order that imposes one or more community requirements.”

8 In section 200(4) (supervision period and operational period where unpaid work requirement imposed by suspended sentence order)—

(a) for “189(1)(a)” substitute “ 189(1A) ”, and

(b) for “189(1)(b)(ii)” substitute “ 189(1)(a) ”.

9 In section 213(3)(d) (supervision requirement: meaning of “relevant period”) for “189(1)(a)” substitute “ 189(1A) ”.

10 (1) Paragraph 8 of Schedule 12 (powers of court in case of breach of community requirement or conviction of further offence) is amended as follows.

(2) In sub-paragraph (2), at the beginning of paragraph (c) insert “ in the case of a suspended sentence order that imposes one or more community requirements, ”.

(3) After that paragraph insert—

“(d) in the case of a suspended sentence order that does not impose any community requirements, the court may, subject to section 189(3), amend the order by extending the operational period.”

(4) In sub-paragraph (4)(a), for “the community requirements” substitute “ any community requirements ”.

(5) In sub-paragraph (8), for “the community” substitute “ any community ”.

11 In Part 3 of Schedule 12 (amendment of suspended sentence order), before paragraph 13 (and before the italic heading before that paragraph) insert—

#### *“Application of Part*

12B This Part of this Schedule applies only in relation to a suspended sentence order that imposes one or more community requirements.”

12 (1) Schedule 13 (transfer of suspended sentence orders to Scotland or Northern Ireland) is amended as follows.

(2) In paragraph 1(1) (suspended sentence order in respect of an offender residing in Scotland)—

(a) after “a suspended sentence order” in the first place those words appear insert “ that imposes one or more community requirements ”, and

(b) before “a suspended sentence order” in the second place those words appear insert “ such ”.

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(3) In paragraph 6(1) (suspended sentence order in respect of an offender residing in Northern Ireland)—

- (a) after “a suspended sentence order” in the first place those words appear insert “ that imposes one or more community requirements ”, and
- (b) before “a suspended sentence order” in the second place those words appear insert “ such ”.

*Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 (S.I. 2005/643)*

13 In the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 omit—

- (a) article 2(2) (modifications to section 189 of the Criminal Justice Act 2003 pending the commencement of the repeal of section 78 of the Powers of Criminal Courts (Sentencing) Act 2000), and
- (b) article 3(2)(a) (modifications to section 189 of the Criminal Justice Act 2003 pending the commencement of section 61 of the Criminal Justice and Court Services Act 2000).

*Armed Forces Act 2006 (c. 52)*

14 The Armed Forces Act 2006 is amended as follows.

15 (1) Section 200 (suspended sentence orders with or without community requirements) is amended as follows.

- (2) In the heading omit “with or without community requirements”.
- (3) Omit subsections (1) to (4) (power of relevant service court to make suspended sentence order with or without community requirements, and meanings of those terms).
- (4) In subsection (5) (modification of section 189(1) of the Criminal Justice Act 2003 in its application to a relevant service court)—
  - (a) for “(b)(ii)” substitute “ (a) ”,
  - (b) for “the end of sub-paragraph (ii)” substitute “ (imprisonment),””, and
  - (c) in the words treated as substituted, for “(a)” substitute “(i)” and for “(b)” substitute “ (ii) ”.

(5) After subsection (6) insert—

“(7) In this Chapter “a suspended sentence order with community requirements” means a suspended sentence order that imposes one or more community requirements within the meaning of section 189(7)(c) of the 2003 Act.”

16 Omit section 201 (provisions of the Criminal Justice Act 2003 that do not apply to suspended sentence orders without community requirements).

17 In section 207 (definitions for purposes of Chapter 4 of Part 8)—

- (a) in the definition of “suspended sentence order with community requirements” for “200(3)” substitute “ 200(7) ”, and
- (b) omit the definition of “suspended sentence order without community requirements”.

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- 18 (1) Schedule 7 (suspended prison sentence: further conviction or breach of requirement) is amended as follows.
- (2) For the heading before paragraph 1 substitute “ Modifications of Part 2 of Schedule 12 to the 2003 Act ”.
- (3) In paragraph 1 (modifications of Part 2 of Schedule 12 to the Criminal Justice Act 2003 in case of suspended sentence orders with community requirements) omit “with community requirements”.
- (4) Omit paragraph 2 (modifications of Part 2 of Schedule 12 to the Criminal Justice Act 2003 in case of suspended sentence orders without community requirements) and the heading before that paragraph.
- (5) After paragraph 6 insert—
- “6A Paragraph 8(2)(ba) of that Schedule has effect as if at the beginning there were inserted “where the court dealing with the offender is the Crown Court.”.”

*Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 (SI 2009/1059)*

- 19 In Schedule 2 to the Armed Forces Act 2006 (Transitional Provisions etc) Order 2009 omit paragraph 2(2) (modifications to section 189 of the Criminal Justice Act 2003 pending the commencement of the repeal of section 78 of the Powers of Criminal Courts (Sentencing) Act 2000).

**PART 2**

TRANSITORY PROVISION

- 20 In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution, custody for life etc), section 189 of the Criminal Justice Act 2003 has effect with the following modifications—
- (a) in subsection (1), after the first “imprisonment” insert “ or, in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution ”,
- (b) in that subsection, after the second “imprisonment” insert “ or detention in a young offender institution ”, and
- (c) in subsection (1B), after “imprisonment” insert “ or detention in a young offender institution ”.

SCHEDULE 10

Section 89

REPEAL OF SECTIONS 181 TO 188 OF CRIMINAL  
JUSTICE ACT 2003: CONSEQUENTIAL AMENDMENTS

*Prison Act 1952 (c. 52)*

- 1 Omit section 49(4A) of the Prison Act 1952 (persons unlawfully at large).

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*Criminal Justice Act 1961 (c. 39)*

- 2 In section 23 of the Criminal Justice Act 1961 (prison rules)—
- (a) in subsection (3), for “Subject to subsection (3A), the days” substitute “The days”;
  - (b) omit subsection (3A).

*Firearms Act 1968 (c. 27)*

- 3 In section 21 of the Firearms Act 1968 (possession of firearms by persons previously convicted of crime), omit—
- (a) subsection (2A)(d);
  - (b) subsection (2B);
  - (c) in subsection (6), “, (2B)”.

*Magistrates' Courts Act 1980 (c. 43)*

- 4 Omit section 131(2A) of the Magistrates' Courts Act 1980 (remand of accused already in custody).

*Road Traffic Offenders Act 1988 (c. 53)*

- 5 In section 35A of the Road Traffic Offenders Act 1988 (extension of disqualification where custodial sentence also imposed), omit subsection (4)(c) and (d).

*Football Spectators Act 1989 (c. 37)*

- 6 In the Football Spectators Act 1989, omit—
- (a) section 14E(7) (banning orders);
  - (b) section 18(5) (information).

*Prisoners (Return to Custody) Act 1995 (c. 3)*

- 7 Omit section 1(1A) of the Prisoners (Return to Custody) Act 1995 (remaining at large after temporary release).

*Goods Vehicles (Licensing of Operators) Act 1995 (c. 23)*

- 8 In Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995 (qualifications for standard licence), in paragraph 3(2)(a), for the words from “of 12 months or more” to the end substitute “exceeding 3 months”.

*Crime (Sentences) Act 1997 (c. 43)*

- 9 (1) Schedule 1 to the Crime (Sentences) Act 1997 (transfers of prisoners within the British Islands) is amended as follows.
- (2) In paragraph 6(4), omit the definitions of “custody plus order” and “intermittent custody order”.
  - (3) In paragraph 8, in sub-paragraphs (2) and (4)—
    - (a) after paragraph (aa) insert “ and ”;



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(b) omit paragraph (ab).

(4) In paragraph 9, in sub-paragraphs (2) and (4)—

(a) after paragraph (aa) insert “ and ”;

(b) omit paragraph (ab).

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

10 In section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 (extension of disqualification where custodial sentence also imposed), omit subsection (4)(c) and (d).

*Extradition Act 2003 (c. 41)*

11 (1) The Extradition Act 2003 is amended as follows.

(2) In the following provisions, omit “(other than temporarily on licence pursuant to an intermittent custody order under section 183(1)(b) of the Criminal Justice Act 2003)” —

(a) section 59(11)(b) (return of person to serve remainder of sentence);

(b) section 132(11)(b) (return of person to serve remainder of sentence);

(c) section 153B(10)(a)(ii) (return of person in pursuance of undertaking).

(3) In section 216 (interpretation), omit subsection (6A).

*Criminal Justice Act 2003 (c. 44)*

12 The Criminal Justice Act 2003 is amended as follows.

13 In section 195 (interpretation of Chapter 3), omit the definitions of “custodial period”, “licence period” and “the number of custodial days”.

14 (1) Section 196 (meaning of “relevant order” in Chapter 4) is amended as follows.

(2) In subsection (1)—

(a) at the end of paragraph (a) insert “ or ”;

(b) omit paragraph (b);

(c) omit paragraph (d) and the word “or” preceding it.

(3) Omit subsection (2).

15 In section 197(1)(a)(i) (meaning of “responsible officer), omit “182(1) or”.

16 In section 202(4)(b) (circumstances in which court must not include programme requirement), omit “(or, where the relevant order is a custody plus order or an intermittent custody order, will be)”.

17 Omit section 204(4) and (5) (restrictions on imposing curfew requirement).

18 In section 213(3) (definition of “relevant period” for supervision requirement), omit paragraphs (b) and (c).

19 Omit section 216(2) (requirement to specify area in which offender will reside).

20 In section 241 (effect of direction under section 240 or 240A)—

(a) in subsection (1), omit “or Chapter 3 (prison sentences of less than twelve months)”;

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- (b) omit subsection (2).
- 21 (1) Section 244 (duty to release prisoners) is amended as follows.
- (2) Omit subsection (2).
- (3) In subsection (3)—
- (a) omit paragraphs (b) and (c);
- (b) in paragraph (d), omit “none of which falls within paragraph (c)”.
- 22 Omit section 245 (restrictions on duty to release intermittent custody prisoners).
- 23 (1) Section 246 (power to release prisoners on licence early) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a), omit “, other than an intermittent custody prisoner,”;
- (b) omit paragraph (b) and the word “and” preceding it.
- (3) Omit subsection (3).
- (4) In subsection (4)(i), omit from “or, where the sentence is one of intermittent custody” to the end.
- (5) In subsection (5)—
- (a) in paragraph (a), omit “or (b), (3)”;
- (b) in paragraph (c), omit “or (3)(b)(ii)”.
- (6) In subsection (6)—
- (a) omit the definition of “the required custodial days”;
- (b) in the definition of “the requisite custodial period”, omit “other than a sentence of intermittent custody” and “, (b)”;
- (c) omit the definition of “sentence of intermittent custody”.
- 24 In section 249 (duration of licence)—
- (a) in subsection (1), for “subsections (2) and (3)” substitute “ subsection (3) ”;
- (b) omit subsection (2);
- (c) in subsection (3), omit the words from “and subsection (2)” to the end;
- (d) omit subsection (4).
- 25 In section 250 (licence conditions)—
- (a) omit subsections (2), (2A), (3) and (6);
- (b) in subsection (7), for the words from “section 264(3)” to the end substitute “ and section 264(3) (consecutive terms) ”.
- 26 Omit section 251 (licence conditions on re-release of those serving less than 12 months).
- 27 In section 252(2) (duty to comply with licence conditions: overseas)—
- (a) at the end of paragraph (a) insert “ and ”;
- (b) omit paragraph (b).
- 28 Omit section 253(4) (curfew conditions for those subject to intermittent custody order).
- 29 In section 260(7) (early removal of persons liable to removal from UK: definition of “requisite custodial period”), omit “, (b)”.

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- 30 In section 261(6) (re-entry to UK of offender removed early: definitions), in the definition of “requisite custodial period”, omit “, (b)”.
- 31 Omit section 263(3) (concurrent terms: requirements of licence).
- 32 (1) Section 264 (consecutive terms) is amended as follows.
- (2) Omit subsection (1)(c) and the “and” preceding it.
- (3) In subsection (6) omit—
- (a) paragraph (a)(iii) and the “and” preceding it;
- (b) paragraph (b).
- 33 Omit section 264A (consecutive terms: intermittent custody).
- 34 Omit section 265(1B) (restriction on consecutive sentences: intermittent custody).
- 35 In section 268 (interpretation of Chapter 6), omit the definitions of “intermittent custody prisoner”, “release” and “relevant court order”.
- 36 In section 302 (execution of process between England and Wales and Scotland), omit “paragraph 8(1) of Schedule 10”.
- 37 In section 305(1) (interpretation of Part 12)—
- (a) omit the definition of “custody plus order”;
- (b) omit the definition of “intermittent custody order”;
- (c) omit the words “custody plus order, intermittent custody order” (wherever they appear);
- (d) in the definition of “responsible officer”, omit the words “a custody plus order, an intermittent custody order”.
- 38 (1) Schedule 12 (breach or amendment of suspended sentence order etc) is amended as follows.
- (2) In paragraph 8(2) (powers of court on breach of community requirement or conviction of further offence)—
- (a) in paragraph (a), omit “and custodial period”;
- (b) in paragraph (b), for the words from “with either or both” to the end substitute “with the substitution for the original term of a lesser term”.
- (3) In paragraph 9(1) (further provision as to order that suspended sentence is to take effect)—
- (a) omit “and custodial period”;
- (b) omit paragraph (a).
- 39 In Schedule 32 (amendments relating to sentencing), omit paragraphs 12(2), (3) and (6), 29, 57, 58 and 68(2).

*Domestic Violence, Crime and Victims Act 2004 (c. 28)*

- 40 (1) The Domestic Violence, Crime and Victims Act 2004 is amended as follows.
- (2) Omit section 31 and Schedule 6 (intermittent custody).
- (3) In Schedule 11 (repeals), omit the entries relating to the Criminal Justice Act 2003.

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*Armed Forces Act 2006 (c. 52)*

- 41 (1) The Armed Forces Act 2006 is amended as follows.
- (2) In section 196 (term of sentence etc), omit—
- (a) the reference to sections 181 and 182 of the Criminal Justice Act 2003;
  - (b) in the reference to Chapter 4 of Part 12 of that Act, the words “custody plus order or”.
- (3) Omit sections 197 to 199 (imprisonment with or without custody plus order).
- (4) In section 207 (definitions), omit the definition of “custody plus order”.
- (5) In Schedule 7 (suspended sentence: further conviction or breach of requirement), omit paragraph 9(1)(a) (modification of paragraph 9(1)(a) of Schedule 12 to the Criminal Justice Act 2003).
- (6) In Schedule 16 (minor and consequential amendments), omit paragraphs 222 and 223.

*Criminal Justice and Immigration Act 2008 (c. 4)*

- 42 Omit section 20(2) and (3) of the Criminal Justice and Immigration Act 2008.

*Policing and Crime Act 2009 (c. 26)*

- 43 Omit section 71(10) of the Policing and Crime Act 2009.

*Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 (S.I. 2005/643)*

- 44 Article 2(4) of the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005 is revoked.

SCHEDULE 11

Section 90

AMENDMENT OF ENACTMENTS RELATING TO BAIL

*Bail Act 1976 (c. 63)*

- 1 The Bail Act 1976 is amended as follows.
- 2 In section 2(2) (definitions)—
- (a) insert the following definitions at the appropriate places—
    - ““bail in non-extradition proceedings” means bail in criminal proceedings of the kind mentioned in section 1(1)(a),”;
    - ““custodial sentence” means a sentence or order mentioned in section 76(1) of the Powers of Criminal Courts (Sentencing) Act 2000 or any corresponding sentence or order imposed or made under any earlier enactment,”;
    - ““imprisonable offence” means an offence punishable in the case of an adult with imprisonment,”;

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- “sexual offence” means an offence specified in Part 2 of Schedule 15 to the Criminal Justice Act 2003,”;
- “violent offence” means murder or an offence specified in Part 1 of Schedule 15 to the Criminal Justice Act 2003,” and
- (b) in the definition of “young person” for “seventeen” substitute “eighteen”.
- 3 (1) Section 3 (general provisions) is amended as follows.
- (2) In subsection (6ZAA), for “person),” substitute “ person granted bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b)), section 3AAA (in the case of a child or young person granted bail in connection with extradition proceedings), ”.
- (3) In subsection (7)—
- (a) for “a child or young person” substitute “ a person under the age of seventeen ”,
- (b) for the words “the child or young person”, in both places they appear, substitute “ the person ”, and
- (c) in paragraph (a)—
- (i) omit “of a young person”, and
- (ii) omit “young” in the second place it appears.
- 4 (1) Section 3AA (conditions for the imposition of electronic monitoring requirements: children and young persons) is amended as follows.
- (2) In the heading after “young persons” insert “ released on bail other than in extradition proceedings ”.
- (3) In subsection (1) (conditions for the imposition of electronic monitoring conditions: children and young persons) after “young person” insert “ released on bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b) ”.
- 5 After section 3AA insert—
- “3AAA Conditions for the imposition of electronic monitoring requirements: children and young persons released on bail in extradition proceedings**
- (1) A court may not impose electronic monitoring requirements on a child or young person released on bail in connection with extradition proceedings unless each of the following conditions is met.
- (2) The first condition is that the child or young person has attained the age of twelve years.
- (3) The second condition is that—
- (a) the conduct constituting the offence to which the extradition proceedings relate, or one or more of those offences, would, if committed in England and Wales, constitute 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) the offence or offences to which the extradition proceedings relate, together with any other imprisonable offences of which the child or young person has been convicted in any proceedings—

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- (i) amount, or
  - (ii) would, if the child or young person were convicted of that offence or those offences, amount,
- to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.
- (4) The third condition is that the court is satisfied that the necessary provision for dealing with the child or young person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.
  - (5) The fourth condition is that a youth offending team has informed the court that in its opinion the imposition of electronic monitoring requirements will be suitable in the case of the child or young person.
  - (6) The references in subsection (3)(b) to an imprisonable offence include a reference to an offence—
    - (a) of which the child or young person has been accused or convicted outside England and Wales, and
    - (b) which is equivalent to an offence that is punishable with imprisonment in England and Wales.
  - (7) The reference in subsection (3)(b) to a child or young person being subject to a custodial remand is to the child or young person being—
    - (a) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
    - (b) remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 or to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948, or
    - (c) subject to a form of custodial detention in a country or territory outside England and Wales while awaiting trial or sentence in that country or territory or during a trial in that country or territory.”
- 6 (1) Section 3AB (conditions for the imposition of electronic monitoring requirements: other persons) is amended as follows.
- (2) In subsection (1) for “seventeen” substitute “ eighteen ”.
  - (3) Omit subsection (4).
- 7 In section 3AC (electronic monitoring: general provisions) in each of subsections (7) and (8) after “3AA” insert “ , 3AAA ”.
- 8 (1) Section 7 (liability to arrest for absconding or breaking conditions of bail) is amended as follows.
- (2) In subsection (5) for “subsection (6)” substitute “ subsections (5A) and (6) ”.
  - (3) After subsection (5) insert—
    - “(5A) A justice of the peace may not remand a person in, or commit a person to, custody under subsection (5) if—
      - (a) the person has attained the age of eighteen,
      - (b) the person was released on bail in non-extradition proceedings,

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- (c) the person has not been convicted of an offence in those proceedings, and
    - (d) it appears to the justice of the peace that there is no real prospect that the person will be sentenced to a custodial sentence in the proceedings.”
  - (4) In subsection (6) for “the person so brought before the justice” substitute “ a person brought before a justice under subsection (4) or (4B) ”.
- 9 (1) Section 9A (bail decisions relating to persons aged under 18 who are accused of offences mentioned in Schedule 2 to the Magistrates' Courts Act 1980) is amended as follows.
  - (2) In the heading for “persons aged under 18” substitute “ children or young persons ”.
  - (3) In subsection (1)(a) for “person aged under 18” substitute “ child or young person ”.
  - (4) In subsections (2) and (3)(b) after “accused” insert “ child or young ”.
- 10 Part 1 of Schedule 1 (bail for defendants accused or convicted of certain imprisonable offences) is amended in accordance with paragraphs 11 to 21.
- 11 For the heading immediately before paragraph 1 (defendants to whom Part 1 applies) substitute “ Application of Part 1 ”.
- 12 In paragraph 1 (defendants to whom Part 1 applies) in sub-paragraph (1) after “sub-paragraph (2)” insert “ and paragraph 1A ”.
- 13 After paragraph 1 insert—
  - “1A (1) The paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in non-extradition proceedings where—
    - (a) the defendant has attained the age of 18,
    - (b) the defendant has not been convicted of an offence in those proceedings, and
    - (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.
  - (2) The paragraphs are—
    - (a) paragraph 2 (refusal of bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses),
    - (b) paragraph 2A (refusal of bail where defendant appears to have committed indictable or either way offence while on bail), and
    - (c) paragraph 6 (refusal of bail where defendant has been arrested under section 7).”
- 14 In paragraph 2 (exceptions to bail where defendant may fail to surrender to custody, commit offences on bail or interfere with witnesses) for sub-paragraph (2) substitute—
  - “(2) Where the defendant falls within paragraph 6B, this paragraph does not apply unless—
    - (a) the court is of the opinion mentioned in paragraph 6A, or
    - (b) paragraph 6A does not apply by virtue of paragraph 6C.”
- 15 After paragraph 2 insert—

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- “2ZA(1) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—
- (a) physical or mental injury to an associated person; or
  - (b) an associated person to fear physical or mental injury.
- (2) In sub-paragraph (1) “associated person” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.”
- 16 For paragraph 2A (refusal of bail where defendant appears to have committed offence while on bail) substitute—
- “2A The defendant need not be granted bail if—
- (a) the offence is an indictable offence or an offence triable either way, and
  - (b) it appears to the court that the defendant was on bail in criminal proceedings on the date of the offence.”
- 17 For paragraph 6 (refusal of bail where defendant fails to surrender to custody or has been arrested under section 7) substitute—
- “6 The defendant need not be granted bail if, having previously been released on bail in, or in connection with, the proceedings, the defendant has been arrested in pursuance of section 7.”
- 18 In paragraph 6A (certain drug users to be refused bail unless no significant risk of offending while on bail) for “is satisfied” substitute “ is of the opinion ”.
- 19 In paragraph 9 (considerations to which the court must have regard)—
- (a) for “2A(1), 6(1) or 6A” substitute “ 2ZA(1) ”, and
  - (b) after “paragraph 6ZA” insert “ or 6A ”.
- 20 In paragraph 9AA (court to give particular weight to the fact that an under 18 defendant was on bail when the offence was committed) in sub-paragraph (1)(a) for “under the age of 18” substitute “ a child or young person ”.
- 21 In paragraph 9AB (factors to be given particular weight by the court when making a decision for the purposes of section 2(1)(a), in the case of an under 18 defendant who has failed to surrender) in sub-paragraph (1)(a) for “under the age of 18” substitute “ a child or young person ”.
- 22 Part 1A of Schedule 1 (bail for defendants accused or convicted of imprisonable offences to which Part 1 of that Schedule does not apply) is amended in accordance with paragraphs 23 to 26.
- 23 For the heading immediately before paragraph 1 (defendants to whom Part 1A applies) substitute “ Application of Part 1A ”.
- 24 In paragraph 1 (defendants to whom Part 1A applies) for “The” substitute “ Subject to paragraph 1A, the ”.
- 25 After paragraph 1 insert—
- “1A (1) The paragraphs of this Part of this Schedule mentioned in sub-paragraph (2) do not apply in relation to bail in, or in connection with, proceedings where—
- (a) the defendant has attained the age of 18,



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- (b) the defendant has not been convicted of an offence in those proceedings, and
    - (c) it appears to the court that there is no real prospect that the defendant will be sentenced to a custodial sentence in the proceedings.
  - (2) The paragraphs are—
    - (a) paragraph 2 (refusal of bail for failure to surrender to custody),
    - (b) paragraph 3 (refusal of bail where defendant would commit further offences on bail), and
    - (c) paragraph 7 (refusal of bail in certain circumstances when arrested under section 7).”
- 26 (1) Paragraph 4 (refusal of bail to defendants who are likely to cause injury or fear of injury) is amended as follows.
  - (2) The existing words become sub-paragraph (1).
  - (3) In paragraphs (a) and (b) of that sub-paragraph for “any person other than the defendant”, in both places those words appear, substitute “an associated person”.
  - (4) After that sub-paragraph insert—
    - “ (2) In sub-paragraph (1) “associated person” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.”
- 27 Part 2 of Schedule 1 (bail for defendants accused or convicted of non-imprisonable offences) is amended in accordance with paragraphs 28 to 30.
- 28 In paragraph 2 (refusal of bail for failure to surrender to custody) after “bail if—” insert—
  - “(za) the defendant—
    - (i) is a child or young person, or
    - (ii) has been convicted in the proceedings of an offence;”.
- 29 In paragraph 5 (refusal of bail in certain circumstances when arrested under section 7) after “bail if—” insert—
  - “(za) the defendant—
    - (i) is a child or young person, or
    - (ii) has been convicted in the proceedings of an offence;”.
- 30 After paragraph 5 insert—
  - “6 (1) The defendant need not be granted bail if—
    - (a) having been released on bail in, or in connection with, the proceedings for the offence, the defendant has been arrested in pursuance of section 7, and
    - (b) the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail by engaging in conduct that would, or would be likely to, cause—
      - (i) physical or mental injury to an associated person, or
      - (ii) an associated person to fear physical or mental injury.

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(2) In sub-paragraph (1) “associated person” means a person who is associated with the defendant within the meaning of section 62 of the Family Law Act 1996.”

- 31 (1) Paragraph 2 of Part 3 of Schedule 1 (references to previous grants of bail) is amended as follows.
- (2) In paragraph (b) for “section 14(1) of the Criminal Justice Act 2003” substitute “ paragraph 16 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- (3) In paragraph (c) for “section 15(1) of the Criminal Justice Act 2003” substitute “ paragraph 17 of Schedule 11 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- (4) After paragraph (f) insert “;
- (g) as respects the reference in paragraph 6 of Part 2 of this Schedule, bail granted before the coming into force of that paragraph.”

*Bail (Amendment) Act 1993 (c. 26)*

- 32 (1) Section 1 of the Bail (Amendment) Act 1993 (prosecution right of appeal where bail is granted) is amended as follows.
- (2) After subsection (1A) insert—
- “(1B) Where a judge of the Crown Court grants bail to a person who is charged with, or convicted of, an offence punishable by imprisonment, the prosecution may appeal to the High Court against the granting of bail.
- (1C) An appeal under subsection (1B) may not be made where a judge of the Crown Court has granted bail on an appeal under subsection (1).”
- (3) In subsection (2) for “Subsection (1) above applies” substitute “ Subsections (1) and (1B) above apply ”.
- (4) In subsections (3), (4) and (8) for “or (1A)” substitute “ , (1A) or (1B) ”.
- (5) In subsection (10)(a)—
- (a) for “reference in subsection (1)” substitute “ references in subsections (1) and (1B) ”, and
- (b) for “is to be read as a reference” substitute “ are to be read as references ”.

*Criminal Justice and Public Order Act 1994 (c. 33)*

- 33 In section 25 of the Criminal Justice and Public Order Act 1994 (no bail for defendants charged with or convicted of homicide or rape after previous conviction for such offences) in subsection (1) for “is satisfied” substitute “ is of the opinion ”.

*Consequential amendments*

- 34 In section 38(2A) of the Police and Criminal Evidence Act 1984 (considerations applicable to paragraph 2 of Part 1 of Schedule 1 to the 1976 Act to be taken into account by custody officer when making decision about bail after charge) for “paragraph 2(2)” substitute “ paragraphs 1A and 2(2) ”.

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- 35 In section 200 of the Extradition Act 2003 (amendments to section 1 of the Bail (Amendment) Act 1993) omit subsections (4)(a) and (7)(a).

## SCHEDULE 12

Section 105

### REMANDS OF CHILDREN OTHERWISE THAN ON BAIL: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Criminal Justice Act 1948 (c. 58)*

- 1 Section 27 of the Criminal Justice Act 1948 (remand of persons aged 17 to 20) is amended as follows.
- 2 In the heading, for “17” substitute “ 18 ”.
- 3 In subsection (1) for “seventeen” substitute “ eighteen ”.

#### *Prison Act 1952 (c. 52)*

- 4 In section 43(1) of the Prison Act 1952 (power of Secretary of State to provide young offender institutions, secure training centres etc), at the end of paragraph (d) insert “ and in which children who have been remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 may be detained ”.

#### *Children and Young Persons Act 1969 (c. 54)*

- 5 The Children and Young Persons Act 1969 is amended as follows.
- 6 Omit section 23 (remands and committals to local authority accommodation).

#### **Commencement Information**

**I1** Sch. 12 para. 6 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 7 Omit section 23AA (electronic monitoring of conditions of remand).

#### **Commencement Information**

**I2** Sch. 12 para. 7 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 8 Omit section 23A (liability to arrest for breaking conditions of remand).

#### **Commencement Information**

**I3** Sch. 12 para. 8 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 9 (1) Section 23B (report by local authority in certain cases where person remanded on bail) is amended as follows.
- (2) In subsection (2), at the end insert “ under section 91(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012. ”

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- (3) In subsection (3), for “section 23(2) of this Act” substitute “ section 92(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.
- (4) In subsection (6)—
- (a) in paragraph (a), for “17” substitute “ 18 ”, and
  - (b) for paragraph (b) and the “and” at the end of that paragraph substitute—
    - “(b) the requirements in section 94(3) and (4) or 95(3) and (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 would have been fulfilled if the person had not been remanded on bail, and”.
- (5) In subsection (7), in the definition of “serious offence”, after “means” insert “ (subject to subsection (8)) ”.
- (6) After subsection (7) insert—
- “(8) For the purposes of the application of this section to a person remanded on bail in connection with proceedings under the Extradition Act 2003—
    - (a) an offence is a “serious offence” if the conduct constituting the offence would, if committed in England and Wales, constitute an offence punishable in the case of an adult with imprisonment for a term of two years or more, and
    - (b) the reference in subsection (1)(a) to a person being charged with a serious offence includes a reference to the person having been accused of such an offence.”
- 10 (1) Section 32 (detention of absentees) is amended as follows.
- (2) In subsection (1A)—
- (a) in paragraph (b), omit sub-paragraph (iii), and
  - (b) after that paragraph insert—
    - “(c) from a place in which the child or young person has been accommodated pursuant to a remand under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,”.
- (3) In subsection (1B), for the “or” at the end of paragraph (b) substitute—
- “(ba) the place mentioned in subsection (1A)(c); or”.
- (4) In subsection (1C), for paragraph (d) and the “or” preceding that paragraph substitute—
- “(d) where the child or young person was accommodated pursuant to a remand under section 91(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands to local authority accommodation), the designated authority within the meaning of section 107(1) of that Act; or
  - (e) where the child or young person was accommodated pursuant to a remand under section 91(4) of that Act (remands to youth detention accommodation), the Secretary of State.”

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**Commencement Information**

**I4** Sch. 12 para. 10 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 11 In section 34(1) (transitional modifications of Part 1 for persons of specified ages)
- 
- (a) in paragraph (c) omit “, 23(1)”, and
  - (b) omit paragraph (e).

**Commencement Information**

**I5** Sch. 12 para. 11 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 12 In section 69 (orders and regulations etc) omit subsection (4A).

**Commencement Information**

**I6** Sch. 12 para. 12 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Local Authority Social Services Act 1970 (c. 42)*

- 13 In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions for the purposes of the Act), at the end insert—

“Legal Aid, Sentencing and Punishment  
of Offenders Act 2012

Section 92

Functions in relation to a child remanded  
to local authority accommodation.”

*Bail Act 1976 (c. 63)*

- 14 The Bail Act 1976 is amended as follows.
- 15 (1) Section 3AA (conditions for the imposition of electronic monitoring requirements: children and young persons) is amended as follows.
- (2) In subsection (3)(b), for “to local authority accommodation” substitute “ subject to a custodial remand ”.
- (3) For subsection (11) substitute—
- “(11) The references in subsection (3)(b) to an imprisonable offence include a reference to an offence—
- (a) of which the child or young person has been convicted outside England and Wales, and
  - (b) which is equivalent to an offence that is punishable with imprisonment in England and Wales.
- (12) The reference in subsection (3)(b) to a child or young person being subject to a custodial remand is to the child or young person being—

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- (a) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012,
  - (b) remanded to local authority accommodation under section 23 of the Children and Young Persons Act 1969 or to prison under that section as modified by section 98 of the Crime and Disorder Act 1998 or under section 27 of the Criminal Justice Act 1948, or
  - (c) subject to a form of custodial detention in a country or territory outside England and Wales while awaiting trial or sentence in that country or territory or during a trial in that country or territory.”
- 16 In section 7(6) (arrest for absconding or breaking conditions of bail: powers of justice), for the words from “section 23” to the end of the subsection substitute “section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail)”.
- 17 In Part 3 of Schedule 1 (supplementary provisions about persons entitled to bail: interpretation), in paragraph 3, for the words from “the care of” to the end of the paragraph substitute “accommodation pursuant to a remand under section 91(3) or (4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands to local authority accommodation or youth detention accommodation).”

**Commencement Information**

**17** Sch. 12 para. 17 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Child Abduction Act 1984 (c. 37)*

- 18 The Child Abduction Act 1984 is amended as follows.
- 19 In section 1(8) (offence of child abduction: modifications in relation to children remanded to local authority accommodation etc), for “to a local authority accommodation” substitute “otherwise than on bail”.
- 20 In paragraph 2 of the Schedule (modifications of section 1 in case of children in places of safety etc)—
- (a) in sub-paragraph (1), in paragraph (b) omit “section 23 of the Children and Young Persons Act 1969”,
  - (b) in that sub-paragraph, at the end of paragraph (ba) insert “; or
    - (bb) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”,
 and
  - (c) in sub-paragraph (2)(a), after “place of safety” insert “, local authority accommodation or youth detention accommodation”.

**Commencement Information**

**18** Sch. 12 para. 20 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

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*Police and Criminal Evidence Act 1984 (c. 60)*

- 21 In section 17(1)(ca) of the Police and Criminal Evidence Act 1984 (powers of entry and search of premises for purpose of arresting child or young person remanded to local authority accommodation), for the words from “or committed” to “that Act” substitute “ to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

**Commencement Information**

- I9** Sch. 12 para. 21 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Prosecution of Offences Act 1985 (c. 23)*

- 22 In section 22(11) of the Prosecution of Offences Act 1985 (time limits in relation to preliminary stages of criminal proceedings: interpretation), in the definition of “custody” for the words from “to which” to “Act 1969” substitute “ or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

*Children Act 1989 (c. 41)*

- 23 The Children Act 1989 is amended as follows.

**Commencement Information**

- I10** Sch. 12 para. 23 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 24 In section 21(2)(c) (duty to receive and provide accommodation for certain kinds of children) omit sub-paragraph (i) (children on remand under section 23(1) of the Children and Young Persons Act 1969).

**Commencement Information**

- I11** Sch. 12 para. 24 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 25 In Schedule 12 (minor amendments), omit paragraph 28(b).

**Commencement Information**

- I12** Sch. 12 para. 25 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Criminal Justice Act 1991 (c. 53)*

- 26 The Criminal Justice Act 1991 is amended as follows.
- 27 Omit section 60(1).
- 28 In section 60(3) (applications under section 25 of the Children Act 1989 in case of child remanded or committed to local authority accommodation)—
- (a) omit “or committed”, and

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- (b) after “local authority accommodation” insert “ under section 91(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

**Commencement Information**

**I13** Sch. 12 para. 28 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 29 Omit section 61 (provision by local authorities of secure accommodation).

**Commencement Information**

**I14** Sch. 12 para. 29 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 30 Omit section 61A (cost of secure accommodation).
- 31 In section 92(3) (application of prisoner escort provisions to persons remanded etc under section 23 of the Children and Young Persons Act 1969)—
- (a) in paragraph (a), for the words from “or committed” to “1969 Act” substitute “ to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”, and
- (b) in paragraph (b) for “such accommodation” substitute “ accommodation in which a person is or is to be accommodated pursuant to such a remand ”.

**Commencement Information**

**I15** Sch. 12 para. 31 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Bail (Amendment) Act 1993 (c. 26)*

- 32 In section 1(10) of the Bail (Amendment) Act 1993 (prosecution right of appeal against grant of bail: application to children and young persons)—
- (a) for the words from “child” to “Act 1969)” substitute “ person under the age of 18 ”, and
- (b) in paragraph (b) for the words from “section 23” to “accommodation)” substitute “ Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail) ”.

*Criminal Justice and Public Order Act 1994 (c. 33)*

- 33 The Criminal Justice and Public Order Act 1994 is amended as follows.

**Commencement Information**

**I16** Sch. 12 para. 33 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 34 Omit sections 19(1) and (3), 21 and 23.



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**Commencement Information**

**I17** Sch. 12 para. 34 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

35 In Schedule 9 (minor amendments) omit paragraph 38.

**Commencement Information**

**I18** Sch. 12 para. 35 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Crime and Disorder Act 1998 (c. 37)*

36 The Crime and Disorder Act 1998 is amended as follows.

**Commencement Information**

**I19** Sch. 12 para. 36 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

37 In section 38(4)(d) (definition of “youth justice services”: placements pursuant to remands to local authority accommodation), for the words from “or committed” to “1969 Act”)” substitute “ to such accommodation under section 91(3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

**Commencement Information**

**I20** Sch. 12 para. 37 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

38 In section 41(5) (functions of the Youth Justice Board for England and Wales) omit—

- (a) paragraph (i)(iii) (agreements for the provision of accommodation for detention under section 23(4)(c) of the Children and Young Persons Act 1969 as modified by section 98 of the Crime and Disorder Act 1998), and
- (b) paragraph (k) (assistance to local authorities in discharging duty under section 61 of the Criminal Justice Act 1991).

**Commencement Information**

**I21** Sch. 12 para. 38 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

39 In section 57A(3) (use of live link for accused's attendance at preliminary or sentencing hearing: interpretation), in paragraph (a) of the definition of “custody”, for the words from “to which” to “Act 1969” substitute “ or youth detention accommodation to which a person is remanded under section 91 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”.

**Commencement Information**

**I22** Sch. 12 para. 39 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

40 Omit sections 97 and 98.

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**Commencement Information**

**I23** Sch. 12 para. 40 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Access to Justice Act 1999 (c. 22)*

- 41 In Schedule 4 to the Access to Justice Act 1999 (amendments consequential on Part 1), omit paragraphs 4, 6 and 7.

**Commencement Information**

**I24** Sch. 12 para. 41 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 42 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.

**Commencement Information**

**I25** Sch. 12 para. 42 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 43 In section 101 (taking account of remands in relation to a detention and training order)—
- (a) in subsection (11), for paragraph (c) and the “or” at the end of that paragraph substitute—
    - “(c) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; or”, and
  - (b) in subsection (12) omit the words from “and in that subsection” to the end of the subsection.

**Commencement Information**

**I26** Sch. 12 para. 43 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 44 In Schedule 9 (consequential amendments), omit paragraphs 93 and 126.

**Commencement Information**

**I27** Sch. 12 para. 44 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Care Standards Act 2000 (c. 14)*

- 45 In Schedule 4 to the Care Standards Act 2000 (minor and consequential amendments), omit paragraphs 3 and 17.

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**Commencement Information**

**I28** Sch. 12 para. 45 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Criminal Justice and Court Services Act 2000 (c. 43)*

- 46 (1) Schedule 7 to the Criminal Justice and Court Services Act 2000 (minor and consequential amendments) is amended as follows.
- (2) In paragraph 4(2), in the entry for the Children and Young Persons Act 1969, omit the words from “section 23(4)” to “15 and 16 year old boys)”,.
- (3) Omit paragraph 39.

**Commencement Information**

**I29** Sch. 12 para. 46 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Criminal Justice and Police Act 2001 (c. 16)*

- 47 In the Criminal Justice and Police Act 2001, omit sections 130, 132 and 133(1).

**Commencement Information**

**I30** Sch. 12 para. 47 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Courts Act 2003 (c. 39)*

- 48 In Schedule 8 to the Courts Act 2003 (minor and consequential amendments), omit paragraph 135.

**Commencement Information**

**I31** Sch. 12 para. 48 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Extradition Act 2003 (c. 41)*

- 49 In the Extradition Act 2003, omit section 201.

**Commencement Information**

**I32** Sch. 12 para. 49 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Criminal Justice Act 2003 (c. 44)*

- 50 The Criminal Justice Act 2003 is amended as follows.

*Status: Point in time view as at 01/04/2016.*

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**Commencement Information**

**I33** Sch. 12 para. 50 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 51 In section 242 (interpretation of provisions about crediting periods of remand in custody)—
- (a) in subsection (2)(b), for the words from “or committed” to “that section” substitute “ to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ”, and
  - (b) omit subsection (3).

**Commencement Information**

**I34** Sch. 12 para. 51 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

- 52 In Schedule 32 (amendments relating to sentencing), omit paragraph 15.

**Commencement Information**

**I35** Sch. 12 para. 52 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Criminal Defence Service Act 2006 (c. 9)*

- 53 In section 4(2) of the Criminal Defence Service Act 2006 (provisions to which certain consequential amendments apply), omit paragraphs (a) and (b).

**Commencement Information**

**I36** Sch. 12 para. 53 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Violent Crime Reduction Act 2006 (c. 38)*

- 54 In the Violent Crime Reduction Act 2006, omit section 61.

**Commencement Information**

**I37** Sch. 12 para. 54 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Criminal Justice and Immigration Act 2008 (c. 4)*

- 55 In Schedule 26 to the Criminal Justice and Immigration Act 2008 (minor and consequential amendments), omit paragraph 5.

**Commencement Information**

**I38** Sch. 12 para. 55 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

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*Children and Young Persons Act 2008 (c. 23)*

- 56 In Schedule 1 to the Children and Young Persons Act 2008 (children looked after by local authorities: supplementary and consequential provision), omit paragraph 8.

**Commencement Information**

**I39** Sch. 12 para. 56 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Offender Management Act 2007 (Consequential Amendments) Order 2008 (SI 2008/912)*

- 57 In Schedule 1 to the Offender Management Act 2007 (Consequential Amendments) Order 2008 (amendments of Acts), omit paragraph 13(6).

**Commencement Information**

**I40** Sch. 12 para. 57 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

*Policing and Crime Act 2009 (c. 26)*

- 58 In paragraph 14(3) of Schedule 5A to the Policing and Crime Act 2009 (detention order for breach of injunction: meaning of youth detention accommodation) for paragraph (c) substitute—  
“(c) a secure children's home, as defined by section 102(11) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.”

**Commencement Information**

**I41** Sch. 12 para. 58 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(j) (with art. 7(2)(3))

SCHEDULE 13

Section 110

CREDITING OF TIME IN CUSTODY

**PART 1**

ARMED FORCES AMENDMENTS

- 1 The Armed Forces Act 2006 is amended as follows.
- 2 (1) Section 246 (crediting of time in service custody: terms of imprisonment and detention) is amended as follows.
- (2) For subsections (2) to (5) substitute—  
“(2) The number of days for which the offender was kept in service custody in connection with the offence in question or any related offence since being so charged is to count as time served by the offender as part of the sentence.  
But this is subject to subsections (2A) to (2C).”

*Status: Point in time view as at 01/04/2016.*

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- (2A) If, on any day on which the offender was kept in service custody, the offender was also detained in connection with any other matter, that day is not to count as time served.
- (2B) A day counts as time served—
- (a) in relation to only one sentence, and
  - (b) only once in relation to that sentence.
- (2C) A day is not to count as time served as part of any period of 28 days served by the offender before automatic release (see section 255B(1) of the 2003 Act).”
- (3) In subsection (6)—
- (a) omit “and” at the end of paragraph (a), and
  - (b) after paragraph (b) insert “, and
  - (c) a determinate sentence of detention in a young offender institution,”.
- 3 (1) Section 247 (crediting of time in service custody: supplementary) is amended as follows.
- (2) In subsection (2)—
- (a) after “in connection with other offences” insert “ (but see section 246(2B))”, and
  - (b) omit “, or has also been detained in connection with other matters”.
- (3) After subsection (2) insert—
- “(2A) The reference in section 246(2A) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes—
- (a) detention pursuant to any custodial sentence;
  - (b) committal in default of payment of any sum of money;
  - (c) committal for want of sufficient distress to satisfy any sum of money;
  - (d) committal for failure to do or abstain from doing anything required to be done or left undone.”
- (4) In subsection (4) for “the reference in section 246(2)” substitute “ the references in section 246(2) and (2B) ”.
- 4 In section 373(3) (orders, regulations and rules) in paragraph (g) omit “or 246”.
- 5 In Schedule 16 (minor and consequential amendments), omit paragraph 228.

## PART 2

### OTHER AMENDMENTS

#### *Criminal Appeal Act 1968 (c. 19)*

- 6 In Schedule 2 to the Criminal Appeal Act 1968 (procedural and other provisions applicable on order for retrial), in paragraph 2(4), for “Sections 240” substitute “ Sections 240ZA ”.

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*Immigration Act 1971 (c. 77)*

- 7 In section 7 of the Immigration Act 1971 (exemption from deportation for certain existing residents), in subsection (4), after “section 240” insert “, 240ZA or 240A ”.

*Road Traffic Offenders Act 1988 (c. 53)*

F48g .....

**Textual Amendments**

**F48** Sch. 13 para. 8 omitted (13.4.2015) by virtue of [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 30\(3\)](#), [95\(1\)](#); [S.I. 2015/778](#), art. 3, Sch. 1 para. 25

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 9 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.  
10 In section 82A (determination of tariffs), in subsection (3)(b), for “section 240” substitute “ section 240ZA ”.  
11 In section 101 (term of detention and training order), in subsection (12A), for “the reference in subsection (2) of that section to section 240” substitute “ the reference in subsection (2A) of that section to section 240ZA ”.

F4912 .....

**Textual Amendments**

**F49** Sch. 13 para. 12 omitted (13.4.2015) by virtue of [Criminal Justice and Courts Act 2015 \(c. 2\)](#), [ss. 30\(3\)](#), [95\(1\)](#); [S.I. 2015/778](#), art. 3, Sch. 1 para. 25

*International Criminal Court Act 2001 (c. 17)*

- 13 In Schedule 7 to the International Criminal Court Act 2001 (domestic provisions not applicable to ICC prisoners), in paragraph 2(1)(d), for “sections 240” substitute “ sections 240ZA ”.

SCHEDULE 14

Section 111

PRISONERS SERVING LESS THAN 12 MONTHS: CONSEQUENTIAL AMENDMENTS

*Road Traffic Offenders Act 1988 (c. 53)*

- 1 In section 35A of the Road Traffic Offenders Act 1988 (extension of disqualification where custodial sentence also imposed)—  
(a) in subsection (8), after “section” insert “ 243A(3)(a), ”;  
(b) in subsection (9)(a), after “in respect of section” insert “ 243A(3)(a) or ”.

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*Crime (Sentences) Act 1997 (c. 43)*

- 2 In Schedule 1 to the Crime (Sentences) Act 1997 (transfer of prisoners within the British Islands), in paragraphs 8(2)(a) and 9(2)(a), after “sections 241,” insert “243A,”.

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 3 In section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 (extension of disqualification where custodial sentence also imposed)—
- (a) in subsection (8), after “section” insert “243A(3)(a),”;
  - (b) in subsection (9)(a), after “in respect of section” insert “243A(3)(a) or”.

*International Criminal Court Act 2001 (c. 17)*

- 4 In Schedule 7 to the International Criminal Court Act 2001 (domestic provisions not applicable to ICC prisoners), in paragraph 3(1), for “sections 244” substitute “sections 243A”.

*Criminal Justice Act 2003 (c. 44)*

- 5 The Criminal Justice Act 2003 is amended as follows.
- 6 (1) Section 244 (duty to release prisoners on licence) is amended as follows.
- (2) In subsection (1)—
- (a) after “section” in the first place it appears insert “243A or”;
  - (b) after “the requisite custodial period” insert “for the purposes of this section”.
- (3) In subsection (3)—
- (a) for “In this section” substitute “For the purposes of this section”;
  - (b) in paragraph (a)—
    - (i) for “any” substitute “a”;
    - (ii) after “the Sentencing Act” insert “for such a term”.
- 7 In section 246(6) (power to release prisoners early: definitions), in the definition of “the requisite custodial period”, after “has the meaning given by” insert “paragraph (a) or (b) of section 243A(3) or (as the case may be)”.
- 8 (1) Section 249 (duration of licence) is amended as follows.
- (2) In subsection (1), after “a fixed-term prisoner” insert “, other than one to whom section 243A applies,”.
- (3) After subsection (1) insert—
- “(1A) Where a prisoner to whom section 243A applies is released on licence, the licence shall, subject to any revocation under section 254 or 255, remain in force until the date on which, but for the release, the prisoner would have served one-half of the sentence.
- This is subject to subsection (3).”
- (4) In subsection (3)—
- (a) for “Subsection (1) has” substitute “Subsections (1) and (1A) have”;



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- (b) omit “and (4)”.
- 9 In section 250(4) (licence conditions) omit “for a term of twelve months or more” and “such” in the first place it appears.
- 10 In section 253(3) (period for which curfew condition to remain in force), after “fall to be released” insert “ unconditionally under section 243A or ”.
- 11 In section 260 (early removal of prisoners liable to removal from UK)—
- (a) in subsection (5), after “section” in the second place it appears insert “ 243A, ”;
  - (b) in subsection (7), after “has the meaning given by” insert “ paragraph (a) or (b) of section 243A(3) or (as the case may be) ”.
- 12 (1) Section 261 (re-entry to UK of offender removed early) is amended as follows.
- (2) In subsection (5), for “section 244” substitute “ section 243A or 244 (as the case may be) ”.
- (3) In subsection (6)—
- (a) in the definition of “requisite custodial period”, after “has the meaning given by” insert “ paragraph (a) or (b) of section 243A(3) or (as the case may be) ”;
  - (b) in the definition of “sentence expiry date”—
    - (i) after “but for his” insert “ release from prison and ”;
    - (ii) for “ceased to be subject to a licence” substitute “ served the whole of the sentence ”.
- 13 In section 263(2) (concurrent terms)—
- (a) after paragraph (a) insert—
    - “(aa) the offender's release is to be unconditional if section 243A so requires in respect of each of the sentences (and in any other case is to be on licence),”;
  - (b) in paragraph (b), after “each of the others” insert “ to which that section applies ”;
  - (c) in paragraph (c), after “release under this Chapter” insert “ (unless that release is unconditional) ”.
- 14 In section 264 (consecutive terms)—
- (a) in subsection (2), omit “on licence”;
  - (b) in subsection (3), for “any of the terms of imprisonment is a term of twelve months or more” substitute “ the aggregate length of the terms of imprisonment is 12 months or more ”;
  - (c) after subsection (3) insert—
    - “(3A) Where the aggregate length of the terms of imprisonment is less than 12 months, the offender's release under this Chapter is to be unconditional.”;
  - (d) omit subsections (4) and (5);
  - (e) in subsection (6)(a)(ii)—
    - (i) for “a term of twelve months or more” substitute “ any other sentence ”;
    - (ii) for “the term” substitute “ the sentence ”;
  - (f) in subsection (7), omit “of 12 months or more”.

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- 15 In section 267 (alteration by order of proportion of sentence), after “any reference in” insert “ section 243A(3)(a), ”.
- 16 The heading of Chapter 6 of Part 12 becomes “ Release, licences and recall ”.

*Commencement of repeal*

- 17 The repeal by section 303(a) of the Criminal Justice Act 2003 of sections 33 to 51 of the Criminal Justice Act 1991 has effect in relation to any sentence of imprisonment which—
- (a) is of less than 12 months (whether or not such a sentence is imposed to run concurrently or consecutively with another such sentence), and
  - (b) is imposed in respect of an offence committed on or after 4 April 2005, and paragraph 14 of Schedule 2 to the Criminal Justice Act 2003 (Commencement No. 8 and Transitional and Savings Provisions) Order 2005 (S.I. 2005/950) is accordingly revoked.

SCHEDULE 15

Section 120

APPLICATION OF SECTIONS 108 TO 119 AND TRANSITIONAL AND TRANSITORY PROVISION

- 1 In this Schedule—
- (a) “the commencement date”, in relation to any of sections 108 to 118, means the day appointed under section 151 for the coming into force of that section;
  - (b) “Chapter 6” means Chapter 6 of Part 12 of the 2003 Act, as amended by those sections;
  - (c) “the 2003 Act” means the Criminal Justice Act 2003.
- 2 (1) The following provisions apply in relation to any person who falls to be released under Chapter 6 on or after the commencement date—
- (a) section 108 (but this is subject to sub-paragraph (3));
  - (b) in section 110—
    - (i) subsections (1) to (7), (9) and (12) so far as they relate to section 240ZA of the 2003 Act, and
    - (ii) subsection (10);
  - (c) section 111;
  - (d) section 115;
  - (e) section 116;
  - (f) Part 1 of Schedule 13 and section 110(13) so far as it relates to that Part (but this is subject to sub-paragraph (3)).
- (2) Section 117 applies in relation to any person who falls to be released under Chapter 6, or (as the case may be) under Chapter 2 of Part 2 of the Crime (Sentences) Act 1997, on or after the commencement date.
- (3) Where a court, before the commencement date, has given a direction under section 240(3) of the 2003 Act or section 246(2) of the Armed Forces Act 2006—

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- (a) if the number of days in relation to which the direction is given is greater than the number of days calculated under the new provisions, the direction continues to have effect (in place of the new provisions);
  - (b) in any other case, the direction ceases to have effect.
- (4) In sub-paragraph (3) “the new provisions” means—
- (a) where the direction was given under section 240(3) of the 2003 Act, section 240ZA of that Act;
  - (b) where the direction was given under section 246(2) of the Armed Forces Act 2006, section 246 of that Act as amended by Part 1 of Schedule 13.
- 3 The following provisions apply in relation to any person sentenced on or after the commencement date—
- (a) section 109;
  - (b) in section 110—
    - (i) subsections (1) to (7), (9) and (12) so far as they relate to section 240A of the 2003 Act, and
    - (ii) subsection (8).
- 4 The amendments made by section 112 do not affect the release under Chapter 6 of any prisoner before the commencement date.
- 5 Section 113 applies in relation to any person recalled under section 254 of the 2003 Act before the commencement date (as well as in relation to any person recalled under that section on or after that date).
- 6 Section 114 applies in relation to any person recalled under that section on or after the commencement date.
- 7 Section 119 applies in relation to any person who, on the day on which this Act is passed, has served the relevant part of the sentence (as well as in relation to any person who, on that date, has not served that part).

## SCHEDULE 16

Section 121

### AMENDMENTS OF CRIMINAL JUSTICE ACT 2003: TRANSITIONAL AND CONSEQUENTIAL PROVISION

#### PART 1

##### TRANSITIONAL PROVISION

- 1 The Criminal Justice Act 2003 is amended as follows.
- 2 After section 267 insert—

#### “267A Application of Chapter 6 to pre-4 April 2005 cases

Schedule 20A (which modifies certain provisions of this Chapter as they apply to persons serving a sentence for an offence committed before 4 April 2005) has effect.”

- 3 After Schedule 20 insert—

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“SCHEDULE  
20A

Section 267A

APPLICATION OF CHAPTER 6 OF PART 12 TO PRE-4 APRIL 2005 CASES

- 1 In this Schedule—
  - “the 1991 Act” means the Criminal Justice Act 1991;
  - “the commencement date” means the date on which section 121 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.
- 2 Paragraphs 3 to 9 apply in relation to any person serving a sentence for an offence committed before 4 April 2005, whenever that sentence was imposed (see section 121(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012).
- 3 (1) Any relevant period is to be treated, for the purposes of section 240ZA, as if it were a period for which the offender was remanded in custody in connection with the offence.
- (2) “Relevant period” means any period which would (but for the repeal of section 67 of the Criminal Justice Act 1967) be a relevant period within the meaning of that section (reduction of sentences by period spent in custody etc).
- 4 Section 246 applies as if, in subsection (4)—
  - (a) the reference in paragraph (a) to section 227 or 228 were a reference to section 85 of the Sentencing Act;
  - (b) the reference in paragraph (d) to paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 were a reference to paragraph 4(1)(d) or 5(1)(d) of Schedule 3 to the Sentencing Act;
  - (c) in paragraph (g)—
    - (i) the reference to section 246 included a reference to section 34A of the 1991 Act,
    - (ii) the reference to section 255(1)(a) included a reference to section 38A(1)(a) or 39(1) or (2) of the 1991 Act, and
    - (iii) the reference to section 255(3) included a reference to section 38A(3) of the 1991 Act;
  - (d) the references in paragraph (h) to sections 248 and 254 included references to, respectively, sections 36 and 39(1) or (2) of the 1991 Act; and
  - (e) in paragraph (i), the words from “in the case of” to “relates” were omitted.
- 5 (1) Where the person has been released on licence under Part 2 of the 1991 Act or under section 60 of the Criminal Justice Act 1967 before the commencement date, the person is to be treated as if the release had been under this Chapter.
- (2) In particular, the following provisions apply.
- (3) A licence under section 34A of the 1991 Act is to be treated as if it were a licence under section 246.

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- (4) A licence under section 36 of the 1991 Act is to be treated as if it were a licence under section 248.
  - (5) Any condition of a licence specified under section 37 of the 1991 Act is to have effect as if it were included under section 250 (whether or not the condition is of a kind which could otherwise be included under that section).
  - (6) Where the licence is, on the commencement date, subject to a suspension under section 38(2) of the 1991 Act, the suspension continues to have effect for the period specified by the court despite the repeal of that section.
  - (7) A licence under section 40A of the 1991 Act is to be treated as if it were a licence under this Chapter, except that in respect of any failure (before or after the commencement date) to comply with the conditions of the licence, the person is liable to be dealt with in accordance with section 40A(4) to (6) (despite the repeal of that section) and is not liable to be dealt with in any other way.
  - (8) Sub-paragraph (1) does not affect the duration of the licence.
- 6
- (1) Where a person has been recalled under Part 2 of the 1991 Act before the commencement date, the person is to be treated as if the recall had been under section 254.
  - (2) In particular, the following provisions apply.
  - (3) If the Secretary of State has not referred the person's case to the Board under section 39(4) or 44A of the 1991 Act, the Secretary of State must refer the case under section 255C(4).
  - (4) If the Secretary of State has referred the person's case to the Board under section 39(4) or 44A of the 1991 Act, that reference is to be treated as if it had been made under section 255C(4).
  - (5) A determination of a reference under section 39(4) or 44A of the 1991 Act is to be treated as a determination under section 256(1).
  - (6) If the person is released on licence, the duration of that licence is determined in accordance with section 249 (subject to paragraphs 17, 19 and 26 of Schedule 20B).
- 7
- Rules made by virtue of section 42 of the 1991 Act have effect as if made by virtue of section 257.
- 8
- (1) A person removed from prison under section 46A of the 1991 Act before the commencement date is to be treated as having been removed from prison under section 260.
  - (2) Section 260 applies as if, in subsection (7)—
    - (a) the reference to an extended sentence imposed under section 227 or 228 were a reference to an extended sentence imposed under section 85 of the Sentencing Act, and
    - (b) the reference to the appropriate custodial term determined under section 227 or 228 were a reference to the custodial term determined under section 85.

*Status: Point in time view as at 01/04/2016.*

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- 9 An order made under section 47 of the 1991 Act is to have effect as if it were an order made under section 243.
- 10 Section 264 applies as if the definition of “custodial period” in subsection (6) included, in relation to an extended sentence imposed under section 85 of the Sentencing Act, one-half of the custodial term determined under that section.”

## PART 2

### CONSEQUENTIAL AMENDMENTS

#### *Repatriation of Prisoners Act 1984 (c. 47)*

- 4 In section 2(4)(b)(i) of the Repatriation of Prisoners Act 1984 (power to provide for prisoner to be treated as having been released) for “section 244 or 246” substitute “ Chapter 6 of Part 12 ”.

#### *Criminal Justice Act 1991 (c. 53)*

- 5 In Schedule 12 to the Criminal Justice Act 1991, omit paragraphs 8 to 13 (transitional provisions relating to the coming into force of Part 2 of that Act).

#### *Crime (Sentences) Act 1997 (c. 43)*

- 6 Schedule 1 to the Crime (Sentences) Act 1997 (transfer of prisoners within the British Islands) is amended as follows.
- 7 In paragraph 8 (transfers to Scotland)—
- (a) in sub-paragraph (2)(a), after “246 to 264A” insert “ , 267A and 267B ”;
  - (b) in sub-paragraph (4)(a), for “and 249 to 264A” substitute “ , 249 to 264A, 267A and 267B ”.
- 8 In paragraph 9(2)(a) and (4)(a) (transfers to Northern Ireland), for “and 254 to 264A” substitute “ , 254 to 264A, 267A and 267B ”.

#### *Extradition Act 2003 (c. 41)*

- 9 The Extradition Act 2003 is amended as follows.
- 10 In section 59 (return of person to serve remainder of sentence), in subsection (11)—
- (a) omit paragraph (a);
  - (b) in paragraph (b), for “section 244” substitute “ Chapter 6 of Part 12 ”.
- 11 In section 132 (return of person to serve remainder of sentence), in subsection (11)—
- (a) omit paragraph (a);
  - (b) in paragraph (b), for “section 244” substitute “ Chapter 6 of Part 12 ”.
- 12 In section 153B (return of person in pursuance of undertaking), in subsection (10) (a)—
- (a) omit sub-paragraph (i);
  - (b) in sub-paragraph (ii), for “section 244” substitute “ Chapter 6 of Part 12 ”.

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*Criminal Justice Act 2003 (c. 44)*

- 13 The Criminal Justice Act 2003 is amended as follows.
- 14 In section 240A(1)(a) (crediting of periods of remand on bail), omit the words “committed on or after 4th April 2005”.
- 15 (1) The repeal by section 25 of the Criminal Justice and Immigration Act 2008 of provisions in section 247 of the Criminal Justice Act 2003 comes fully into force.
- (2) Accordingly, in paragraph 2 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (Commencement No.2 and Transitional and Savings Provisions) Order 2008 (S.I. 2008/1586), omit “and 25”.
- 16 Omit section 262 and Schedule 20 (prisoners liable to removal from United Kingdom).
- 17 Omit section 265(1A) (restriction on consecutive sentences for released prisoners).

*Domestic Violence, Crime and Victims Act 2004 (c. 28)*

- 18 Omit paragraph 46 of Schedule 10 to the Domestic Violence, Crime and Victims Act 2004.

*Police and Justice Act 2006 (c. 48)*

- 19 Omit paragraph 33 of Schedule 13 to the Police and Justice Act 2006.

*Criminal Justice and Immigration Act 2008 (c. 4)*

- 20 In the Criminal Justice and Immigration Act 2008, omit—
- (a) sections 20(4)(b), 26 to 28, 32 and 33(1), (3), (5) and (6);
  - (b) paragraph 29(2) to (5) of Schedule 26;
  - (c) paragraphs 8 and 9 of Schedule 27.

*Coroners and Justice Act 2009 (c. 25)*

- 21 In the Coroners and Justice Act 2009, omit—
- (a) section 145;
  - (b) paragraph 43 of Schedule 22.

*Criminal Justice and Immigration Act 2008 (Commencement No.1 and Transitional Provisions) Order 2008 (S.I. 2008/1466)*

- 22 Article 3 of the Criminal Justice and Immigration Act 2008 (Commencement No.1 and Transitional Provisions) Order 2008 (S.I. 2008/1466) is revoked.

SCHEDULE 17

Section 121

CRIMINAL JUSTICE ACT 2003: RESTATEMENT OF TRANSITIONAL PROVISION

- 1 The Criminal Justice Act 2003 is amended as follows.
- 2 In section 244 (duty to release prisoners on licence), after subsection (3) insert—

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- “(4) This section is subject to paragraphs 5, 6, 8, 25 and 28 of Schedule 20B (transitional cases).”
- 3 In section 247 (release on licence of prisoner serving extended sentence), after subsection (7) insert—
- “(8) In its application to a person serving a sentence imposed before 14 July 2008, this section is subject to the modifications set out in paragraph 15 of Schedule 20B (transitional cases).”
- 4 In section 249 (duration of licence), at the end insert—
- “(5) This section is subject to paragraphs 17, 19 and 26 of Schedule 20B (transitional cases).”
- 5 (1) Section 258 (early release of fine defaulters and contemnors) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Subsection (2) is subject to paragraph 35 of Schedule 20B (transitional cases).”
- (3) In subsection (3) after “in this section” insert “ or in paragraph 35 of Schedule 20B ”.
- 6 In section 260 (early removal of prisoners liable to removal from UK), after subsection (7) insert—
- “(8) Paragraphs 36 and 37 of Schedule 20B (transitional cases) make further provision about early removal of certain prisoners.”
- 7 In section 263 (concurrent terms), after subsection (4) insert—
- “(5) This section is subject to paragraphs 21, 31 and 32 of Schedule 20B (transitional cases).”
- 8 In section 264 (consecutive terms), after subsection (7) insert—
- “(8) This section is subject to paragraphs 21, 22, 31, 32 and 33 of Schedule 20B (transitional cases).”
- 9 After section 267A (inserted by Schedule 16) insert—
- “**267B Modification of Chapter 6 in certain transitional cases**
- Schedule 20B (which modifies this Chapter so as to restate, with minor amendments, the effect of transitional provisions relating to the coming into force of this Chapter) has effect.”
- 10 After Schedule 20A (inserted by Schedule 16) insert—



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“SCHEDULE  
20B

Section 267B

MODIFICATIONS OF CHAPTER 6 OF PART 12 IN CERTAIN TRANSITIONAL CASES

**PART 1**

INTRODUCTORY

*Interpretation*

- 1 (1) The following provisions apply for the purposes of this Schedule.
- (2) “The commencement date” means the date on which section 121 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force.
- (3) “The 1967 Act” means the Criminal Justice Act 1967.
- (4) “The 1991 Act” means the Criminal Justice Act 1991.
- (5) A “section 85 extended sentence” means an extended sentence under section 85 of the Sentencing Act and includes (in accordance with paragraph 1(3) of Schedule 11 to that Act) a sentence under section 58 of the Crime and Disorder Act 1998.
- (6) In relation to a section 85 extended sentence, “the custodial term” and “the extension period” have the meaning given by that section.
- (7) References to section 86 of the Sentencing Act include (in accordance with paragraph 1(3) of Schedule 11 to that Act) section 44 of the 1991 Act as originally enacted.
- (8) A “1967 Act sentence” is a sentence imposed before 1 October 1992.
- (9) A “1991 Act sentence” is a sentence which is—
  - (a) imposed on or after 1 October 1992 but before 4 April 2005, or
  - (b) imposed on or after 4 April 2005 but before the commencement date and is either—
    - (i) imposed in respect of an offence committed before 4 April 2005, or
    - (ii) for a term of less than 12 months.
- (10) A “2003 Act sentence” is a sentence which is—
  - (a) imposed on or after the commencement date, or
  - (b) imposed on or after 4 April 2005 but before the commencement date and is both—
    - (i) imposed in respect of an offence committed on or after 4 April 2005, and
    - (ii) for a term of 12 months or more.
- (11) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it is to be

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taken for the purposes of this Schedule to have been committed on the last of those days.

#### *Explanation of dates*

- 2 The following dates (which are mentioned in this Schedule) are dates on which changes to the law relating to the release and recall of prisoners came into force—
- 1 October 1992 is the date on which Part 2 of the 1991 Act came into force;
  - 30 September 1998 is the date on which certain provisions of the Crime and Disorder Act 1998 came into force;
  - 4 April 2005 is the date on which this Chapter came into force;
  - 9 June 2008 is the date on which section 26 of the Criminal Justice and Immigration Act 2008 came into force;
  - 14 July 2008 is the date on which certain other provisions of that Act came into force;
  - 2 August 2010 is the date on which section 145 of the Coroners and Justice Act 2009 came into force.

## PART 2

### PRISONERS SERVING 1991 ACT SENTENCES ETC

- 3 (1) This Part applies to certain persons serving a 1991 Act sentence.
- (2) This Part also applies to a person serving a 2003 Act sentence which is—
- (a) a section 85 extended sentence, or
  - (b) an extended sentence imposed under section 227 or 228 before 14 July 2008.
- (3) But this Part does not apply to a person who—
- (a) has been released on licence under Part 2 of the 1991 Act,
  - (b) has been recalled to prison, and
  - (c) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date.

#### *Duty to release on licence at two-thirds of sentence*

- 4 (1) This paragraph applies to a person in relation to whom—
- (a) all the conditions in sub-paragraph (2) are met, and
  - (b) the condition in any one or more of sub-paragraphs (3) to (5) is met.
- (2) The conditions in this sub-paragraph are that—
- (a) the person has been convicted of an offence committed before 4 April 2005,
  - (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before the commencement date,
  - (c) the sentence or (in the case of a section 85 extended sentence) the custodial term is for a term of 4 years or more, and

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- (d) the person has not previously been released from prison on licence in respect of that sentence.
- (3) The condition in this sub-paragraph is that the offence (or one of the offences) in respect of which the sentence was imposed is—
- (a) an offence specified in Schedule 15 (specified violent offences and specified sexual offences) as it had effect on 4 April 2005,
  - (b) an offence under any of sections 11, 12, 15 to 18, 54 and 56 to 63 of the Terrorism Act 2000,
  - (c) an offence under any of sections 47, 50 and 113 of the Anti-terrorism, Crime and Security Act 2001,
  - (d) an offence under section 12 of the Sexual Offences Act 1956,
  - (e) an offence of aiding, abetting counselling, procuring or inciting the commission of an offence listed in any of paragraphs (b) to (d), or
  - (f) an offence of conspiring or attempting to commit an offence listed in any of paragraphs (b) to (d).
- (4) The condition in this sub-paragraph is that the person has served one-half of the sentence or (in the case of a section 85 extended sentence) of the custodial term before 9 June 2008.
- (5) The condition in this sub-paragraph is that—
- (a) the person is serving the sentence by virtue of having been transferred to the United Kingdom in pursuance of a warrant under section 1 of the Repatriation of Prisoners Act 1984,
  - (b) the warrant was issued before 9 June 2008, and
  - (c) the offence (or one of the offences) for which the person is serving the sentence corresponds to murder or to any offence specified in Schedule 15 as it had effect on 4 April 2005.
- 5 (1) As soon as a person to whom paragraph 4 applies has served two-thirds of the sentence, it is the duty of the Secretary of State to release the person on licence under this paragraph.
- (2) If the person is serving a section 85 extended sentence, the reference in sub-paragraph (1) to two-thirds of the sentence is a reference to two-thirds of the custodial term.
- (3) Sub-paragraphs (1) and (2) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

*Duty to release on direction of Parole Board*

- 6 (1) After a person to whom paragraph 4 applies has served one-half of the sentence, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.
- (2) The Board must not give a direction under sub-paragraph (1) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.
- (3) If the person is serving a section 85 extended sentence, the reference in sub-paragraph (1) to one-half of the sentence is a reference to one-half of the custodial term.

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- (4) Sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving 12 months or more).

*Release on licence at one-half of sentence: section 85 extended sentence prisoners*

- 7 (1) This paragraph applies to a person if—
- (a) the person has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
  - (b) the person is serving a section 85 extended sentence in respect of that offence,
  - (c) the person has not previously been released from prison on licence in respect of that sentence, and
  - (d) paragraph 4 does not apply to the person.
- 8 (1) As soon as a person to whom paragraph 7 applies has served one-half of the custodial term, it is the duty of the Secretary of State to release the person on licence under this paragraph.
- (2) Sub-paragraph (1) applies in place of section 243A or 244, as the case may be (release of prisoners serving less than 12 months, or serving 12 months or more).

*Duty to release unconditionally at three-quarters of sentence*

- 9 (1) This paragraph applies to a person if—
- (a) the person has been convicted of an offence committed before 30 September 1998,
  - (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992,
  - (c) the sentence is for a term of 12 months or more,
  - (d) the person has been released on licence under Part 2 of the 1991 Act, and
  - (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).
- (2) But this paragraph does not apply if the court by which the person was sentenced ordered that section 86 of the Sentencing Act (extension of periods in custody and on licence in the case of certain sexual offences) should apply.
- 10 As soon as a person to whom paragraph 9 applies would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State to release the person unconditionally.

*Duty to release on licence at three-quarters of sentence*

- 11 (1) This paragraph applies to a person who—
- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
  - (b) is serving a sentence of imprisonment for a term of 12 months or more imposed in respect of that offence,
  - (c) has been released on licence under Part 2 of the 1991 Act, and

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- (d) has been recalled before 14 July 2008 (and has not been recalled after that date).
  - (2) But this paragraph does not apply if the person has been released and recalled more than once.
  - (3) Nor does this paragraph apply if the sentence is a section 85 extended sentence (paragraph 13 applying to such a case instead).
- 12 As soon as a person to whom paragraph 11 applies would (but for the earlier release) have served three-quarters of the sentence, it is the duty of the Secretary of State to release the person on licence.

*Release on licence: re-release of section 85 extended sentence prisoners*

- 13 (1) This paragraph applies to a person who—
- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
  - (b) is serving a section 85 extended sentence imposed in respect of that offence,
  - (c) has been released on licence under Part 2 of the 1991 Act, and
  - (d) has been recalled before 14 July 2008 (and has not been recalled after that date).
- (2) But this paragraph does not apply if the person has been released and recalled more than once.
- 14 (1) If a person to whom paragraph 13 applies is serving a sentence with a custodial term of less than 12 months, it is the duty of the Secretary of State to release the person on licence as soon as the person would (but for the earlier release) have served the period found by adding—
- (a) one-half of the custodial term, and
  - (b) the extension period.
- (2) If a person to whom paragraph 13 applies is serving a sentence with a custodial term of 12 months or more, it is the duty of the Secretary of State to release the person on licence as soon as the person would (but for the earlier release) have served the period found by adding—
- (a) three-quarters of the custodial term, and
  - (b) the extension period.

*Release of section 227 or 228 extended sentence prisoners: Parole Board direction*

- 15 (1) This paragraph applies to a person (“P”) who is serving an extended sentence imposed under section 227 or 228 before 14 July 2008.
- (2) Section 247 (release of prisoner on licence) applies to P with the following modifications.
- (3) The Secretary of State must not release P under subsection (2) of that section unless the Board has directed P’s release under that subsection.
- (4) The Board must not give a direction under sub-paragraph (3) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.

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- (5) As soon as P has served the appropriate custodial term, the Secretary of State must release P on licence, unless P has previously been recalled under section 254.

*Licence to remain in force to three-quarters of sentence*

- 16 (1) This paragraph applies to a person to whom paragraph 4 applies.
- (2) This paragraph also applies to a person if—
- (a) the person has been convicted of an offence committed before 4 April 2005,
  - (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992 but before the commencement date,
  - (c) that sentence is for a term of 12 months or more but less than 4 years, and
  - (d) the person has not previously been released from prison on licence in respect of that sentence.
- (3) This paragraph also applies to a person if—
- (a) the person has been convicted of an offence committed before 4 April 2005,
  - (b) the person is serving a sentence of imprisonment imposed in respect of that offence on or after 1 October 1992,
  - (c) that sentence is for a term of 12 months or more,
  - (d) the person has been released on licence under Part 2 of the 1991 Act, and
  - (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).
- (4) But this paragraph does not apply if the person has been released and recalled more than once.
- (5) Nor does this paragraph apply if—
- (a) the person is serving a section 85 extended sentence, or
  - (b) the court by which the person was sentenced ordered that section 86 of the Sentencing Act (extension of periods in custody and on licence in the case of certain sexual offences) should apply.
- (6) If a person has been—
- (a) released under section 34A of the 1991 Act or section 246 (home detention curfew), and
  - (b) recalled under section 38A(1)(b) of the 1991 Act or section 255(1)(b) (no longer possible to monitor curfew),
- the release and recall are to be disregarded for the purposes of this paragraph.
- 17 (1) Where a person to whom paragraph 16 applies is released on licence under section 244 or paragraph 5 or 6, the licence shall remain in force until the date on which the person would (but for the release) have served three-quarters of the sentence.
- (2) Sub-paragraph (1) is subject to any revocation under section 254.

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- (3) Sub-paragraphs (1) and (2) apply in place of section 249 (duration of licence).

*Period for which licence to remain in force: section 85 extended sentence prisoners*

- 18 This paragraph applies to a person who—
- (a) has been convicted of an offence committed on or after 30 September 1998 but before 4 April 2005,
  - (b) is serving a section 85 extended sentence imposed in respect of that offence, and
  - (c) has not previously been released from prison on licence in respect of that sentence.
- 19 (1) Where a person to whom paragraph 18 applies is released on licence and the custodial term is less than 12 months, the licence shall remain in force until the end of the period found by adding—
- (a) one-half of the custodial term, and
  - (b) the extension period.
- (2) Where a person to whom paragraph 18 applies is released on licence and the custodial term is 12 months or more, the licence shall remain in force until the end of the period found by adding—
- (a) three-quarters of the custodial term, and
  - (b) the extension period.
- (3) Sub-paragraphs (1) and (2) are subject to any revocation under section 254.
- (4) Sub-paragraphs (1) to (3) apply in place of section 249 (duration of licence).

*Concurrent or consecutive terms*

- 20 Paragraphs 21 and 22 apply where a person (“P”) is serving two or more sentences of imprisonment imposed on or after 1 October 1992 and—
- (a) the sentences were passed on the same occasion, or
  - (b) where they were passed on different occasions, the person has not been released under Part 2 of the 1991 Act or under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- 21 (1) This paragraph applies if each of the sentences is a 1991 Act sentence.
- (2) Sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences.
- (3) For the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served, the terms are to be treated as a single term.
- (4) If one or more of the sentences is a section 85 extended sentence—
- (a) for the purpose of determining the single term mentioned in sub-paragraph (3), the extension period or periods is or are to be disregarded, and

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- (b) the period for which P is to be on licence in respect of the single term is to be increased in accordance with sub-paragraph (5).
- (5) That period is to be increased—
  - (a) if only one of the sentences is a section 85 extended sentence, by the extension period;
  - (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods;
  - (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods.
- 22 (1) This paragraph applies where two or more sentences are to be served consecutively on each other and—
  - (a) one or more of those sentences is a 1991 Act sentence, and
  - (b) one or more of them is a 2003 Act sentence.
- (2) Section 264 does not affect the length of the period which P must serve in prison in respect of the 1991 Act sentence or sentences.
- (3) Nothing in this Chapter requires the Secretary of State to release P until P has served a period equal in length to the aggregate of the length of the periods which P must serve in relation to each of the sentences mentioned in sub-paragraph (1).
- (4) If P is also serving one or more 1967 Act sentences, paragraphs 32 and 33 apply instead of this paragraph.

### PART 3

#### PRISONERS SERVING 1967 ACT SENTENCES

- 23 (1) This Part applies to certain persons serving a 1967 Act sentence.
- (2) But this Part does not apply to a person who—
  - (a) has been released on licence,
  - (b) has been recalled to prison, and
  - (c) (whether or not having returned to custody in consequence of that recall) is unlawfully at large on the commencement date.
- (3) In this Part, references to release under Part 2 of the 1991 Act include release under section 60 of the 1967 Act.

#### *Sentence of more than 12 months imposed before 1 October 1992*

- 24 (1) This paragraph applies to a person if—
  - (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
  - (b) the sentence is for a term of more than 12 months, and
  - (c) the person has not previously been released from prison on licence in respect of that sentence.
- (2) This paragraph also applies to a person if—



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- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
  - (b) the sentence is for a term of more than 12 months,
  - (c) the person has been released on licence under Part 2 of the 1991 Act, and
  - (d) the person has been recalled before 14 July 2008 (and has not been recalled after that date).
- (3) But this paragraph does not apply if, on the passing of the sentence, an extended sentence certificate was issued (see paragraph 27).
- (4) If a person has been—
  - (a) released under section 34A of the 1991 Act or section 246 (home detention curfew), and
  - (b) recalled under section 38A(1)(b) of the 1991 Act or section 255(1)(b) (no longer possible to monitor curfew),the release and recall are to be disregarded for the purposes of this paragraph.
- 25 (1) It is the duty of the Secretary of State to release a person to whom paragraph 24 applies unconditionally under this paragraph—
  - (a) in the case of a person falling within paragraph 24(1), as soon as the person has served two-thirds of the sentence;
  - (b) in the case of a person falling within paragraph 24(2), as soon as the person would (but for the earlier release) have served two-thirds of the sentence.
- (2) After a person falling within paragraph 24(1) has served one-third of the sentence or six months, whichever is longer, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.
- (3) The Board must not give a direction under sub-paragraph (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.
- (4) Sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving 12 months or more).
- 26 (1) Where a person to whom paragraph 24 applies is released on licence under paragraph 25(2), the licence shall remain in force until the date on which the person would (but for the release) have served two-thirds of the sentence.
- (2) Sub-paragraph (1) is subject to any revocation under section 254.
- (3) Sub-paragraphs (1) and (2) apply in place of section 249 (duration of licence).

*Extended sentence of more than 12 months imposed before 1 October 1992*

- 27 (1) This paragraph applies to a person if—
  - (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
  - (b) the sentence is for a term of more than 12 months,

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- (c) on the passing of the sentence an extended sentence certificate was issued, and
  - (d) the person has not previously been released from prison on licence in respect of that sentence.
- (2) This paragraph also applies to a person if—
- (a) the person is serving a sentence of imprisonment imposed before 1 October 1992,
  - (b) the sentence is for a term of more than 12 months,
  - (c) on the passing of the sentence an extended sentence certificate was issued,
  - (d) the person has been released on licence under Part 2 of the 1991 Act, and
  - (e) the person has been recalled before 14 July 2008 (and has not been recalled after that date).
- (3) In this paragraph “extended sentence certificate” means a certificate was issued under section 28 of the Powers of Criminal Courts Act 1973 (punishment of persistent offenders) stating that an extended term of imprisonment was imposed on the person under that section.
- 28 (1) It is the duty of the Secretary of State to release a person to whom paragraph 27 applies on licence under this paragraph—
- (a) in the case of a person falling within paragraph 27(1), as soon as the person has served two-thirds of the sentence;
  - (b) in the case of a person falling within paragraph 27(2), as soon as the person would (but for the earlier release) have served two-thirds of the sentence.
- (2) After a person falling within paragraph 27(1) has served one-third of the sentence or six months, whichever is longer, the Secretary of State must, if directed to do so by the Board, release the person on licence under this paragraph.
- (3) The Board must not give a direction under sub-paragraph (2) unless the Board is satisfied that it is no longer necessary for the protection of the public that the person should be confined.
- (4) Sub-paragraphs (1) to (3) apply in place of section 244 (release on licence of prisoners serving twelve months or more).

*Additional days*

- 29 (1) Prison rules made by virtue of section 257 may include provision for applying any provisions of this Chapter, in relation to any person falling within sub-paragraph (2), as if the person had been awarded such number of additional days as may be determined by or under the rules.
- (2) A person falls within this sub-paragraph if—
- (a) the person was released on licence under section 60 of the 1967 Act before 1 October 1992 and the licence was in force on that date, or
  - (b) the person was, on that date, serving a custodial sentence,
- and (in either case) the person has forfeited any remission of the sentence.

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*Concurrent or consecutive terms*

- 30 Paragraphs 31 to 33 apply where a person (“P”) is serving two or more sentences of imprisonment and—
- (a) the sentences were passed on the same occasion, or
  - (b) where they were passed on different occasions, the person has not been released under Part 2 of the 1991 Act or under this Chapter at any time during the period beginning with the first and ending with the last of those occasions.
- 31 (1) This paragraph applies where each of the sentences is a 1967 Act sentence.
- (2) Sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences.
  - (3) For the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served, the terms are to be treated as a single term.
- 32 (1) This paragraph applies where—
- (a) one or more of the sentences is a 1967 Act sentence, and
  - (b) one or more of them is a 1991 Act sentence.
- (2) Sections 263 and 264 (consecutive and concurrent terms) do not apply in relation to the sentences mentioned in sub-paragraph (1).
  - (3) For the purposes of any reference in this Chapter, however expressed, to the term of imprisonment to which P has been sentenced or which, or part of which, P has served—
    - (a) the terms mentioned in sub-paragraph (1) are to be treated as a single term, and
    - (b) that single term is to be treated as if it were a 1967 Act sentence.
  - (4) If one or more of the sentences is a section 85 extended sentence—
    - (a) for the purpose of determining the single term mentioned in sub-paragraph (3), the extension period or periods is or are to be disregarded, and
    - (b) the period for which P is to be on licence in respect of the single term is to be increased in accordance with sub-paragraph (5).
  - (5) That period is to be increased—
    - (a) if only one of the sentences is a section 85 extended sentence, by the extension period;
    - (b) if there is more than one such sentence and they are wholly or partly concurrent, by the longest of the extension periods;
    - (c) if there is more than one such sentence and they are consecutive, by the aggregate of the extension periods.
  - (6) If P is also serving a 2003 Act sentence, sub-paragraph (3) is to be applied before the period mentioned in section 263(2)(c) (concurrent terms) or paragraph 33(3) (consecutive terms) is calculated.
- 33 (1) This paragraph applies where two or more sentences are to be served consecutively on each other and—

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- (a) one or more of those sentences is a 1967 Act sentence, and
  - (b) one or more of them is a 2003 Act sentence.
- (2) Section 264 does not affect the length of the period which P must serve in prison in respect of the 1967 Act sentence or sentences.
- (3) Nothing in this Chapter requires the Secretary of State to release P until P has served a period equal in length to the aggregate of the length of the periods which P must serve in relation to each of the sentences mentioned in sub-paragraph (1).

## PART 4

### PROVISIONS APPLYING GENERALLY

#### *Licence conditions*

- 34 (1) This paragraph applies to any licence (a “Parole Board licence”) which falls within sub-paragraph (2) or (3).
- (2) A licence falls within this sub-paragraph if—
- (a) it is or was granted to a person (“P”) on P's release (at any time) on the recommendation or direction of the Board, and
  - (b) P has not been released otherwise than on such a recommendation or direction.
- (3) A licence falls within this sub-paragraph if—
- (a) it is or was granted to a person (“P”) on P's release (at any time), and
  - (b) condition A or condition B is met.
- (4) Condition A is that, before 2 August 2010, the Board exercised the function under section 37(5) of the 1991 Act of making recommendations as to any condition to be included or inserted as a condition in a licence granted to P (including by making a recommendation that no condition should be included in such a licence).
- (5) Condition B is that, before 2 August 2010—
- (a) P was released on licence under section 33(2), (3) or (3A) or 35(1) of the 1991 Act, and
  - (b) the Board exercised the function under section 37(5) of that Act of—
    - (i) making recommendations as to the inclusion or insertion of a condition in a licence granted to P (including by making a recommendation that no condition should be included in such a licence), or
    - (ii) making recommendations as to the variation or cancellation of any such condition (including a recommendation that the condition should not be varied or cancelled).
- (6) The Secretary of State must not—
- (a) include on release, or subsequently insert, a condition in a Parole Board licence, or
  - (b) vary or cancel any such condition,

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except in accordance with directions of the Board.

*Fine defaulters and contemnors*

- 35 (1) This paragraph applies to any person if—
- (a) the person has been committed to prison or to be detained under section 108 of the Sentencing Act—
    - (i) in default of payment of a sum adjudged to be paid by a conviction, or
    - (ii) for contempt of court or any kindred offence,
  - (b) the person was so committed or detained before 4 April 2005, and
  - (c) the term for which the person was committed or detained is 12 months or more.
- (2) As soon as a person to whom this paragraph applies has served two-thirds of the term, it is the duty of the Secretary of State to release the person unconditionally.
- (3) Sub-paragraph (2) applies in place of section 258(2) (early release of fine defaulters and contemnors).

*Early removal of prisoners liable to removal from UK*

- 36 (1) This paragraph applies to any person who—
- (a) has served one-half of a sentence of imprisonment, and
  - (b) has not been released on licence under this Chapter.
- (2) The reference in sub-paragraph (1)(a) to one-half of a sentence is—
- (a) in the case of a section 85 extended sentence, a reference to one-half of the custodial term;
  - (b) in the case of an extended sentence imposed under section 227 or 228, a reference to one-half of the appropriate custodial term.
- 37 (1) If a person to whom paragraph 36 applies—
- (a) is liable to removal from the United Kingdom, and
  - (b) has not been removed from prison under section 260 during the period mentioned in subsection (1) of that section,
- the Secretary of State may remove the person from prison under that section at any time after the end of that period.
- (2) Sub-paragraph (1) applies whether or not the Board has directed the person's release under paragraph 6, 15, 25 or 28.”

SCHEDULE 18

Section 122

LIFE SENTENCE FOR SECOND LISTED OFFENCE ETC:  
NEW SCHEDULE 15B TO CRIMINAL JUSTICE ACT 2003

In the Criminal Justice Act 2003, after Schedule 15A insert—

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## “SCHEDULE 15B

Sections 224A, 226A and 246A

### OFFENCES LISTED FOR THE PURPOSES OF SECTIONS 224A, 226A AND 246A

#### PART 1

##### OFFENCES UNDER THE LAW OF ENGLAND AND WALES LISTED FOR THE PURPOSES OF SECTIONS 224A(1), 224A(4), 226A AND 246A

The following offences to the extent that they are offences under the law of England and Wales—

- 1       Manslaughter.
- 2       An offence under section 4 of the Offences against the Person Act 1861 (soliciting murder).
- 3       An offence under section 18 of that Act (wounding with intent to cause grievous bodily harm).
- 4       An offence under section 16 of the Firearms Act 1968 (possession of a firearm with intent to endanger life).
- 5       An offence under section 17(1) of that Act (use of a firearm to resist arrest).
- 6       An offence under section 18 of that Act (carrying a firearm with criminal intent).
- 7       An offence of robbery under section 8 of the Theft Act 1968 where, at some time during the commission of the offence, the offender had in his possession a firearm or an imitation firearm within the meaning of the Firearms Act 1968.
- 8       An offence under section 1 of the Protection of Children Act 1978 (indecent images of children).
- 9       An offence under section 56 of the Terrorism Act 2000 (directing terrorist organisation).
- 10      An offence under section 57 of that Act (possession of article for terrorist purposes).
- 11      An offence under section 59 of that Act (inciting terrorism overseas) if the offender is liable on conviction on indictment to imprisonment for life.
- 12      An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).
- 13      An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).
- 14      An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate).
- 15      An offence under section 1 of the Sexual Offences Act 2003 (rape).
- 16      An offence under section 2 of that Act (assault by penetration).
- 17      An offence under section 4 of that Act (causing a person to engage in sexual activity without consent) if the offender is liable on conviction on indictment to imprisonment for life.
- 18      An offence under section 5 of that Act (rape of a child under 13).
- 19      An offence under section 6 of that Act (assault of a child under 13 by penetration).
- 20      An offence under section 7 of that Act (sexual assault of a child under 13).

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- 21 An offence under section 8 of that Act (causing or inciting a child under 13 to engage in sexual activity).
- 22 An offence under section 9 of that Act (sexual activity with a child).
- 23 An offence under section 10 of that Act (causing or inciting a child to engage in sexual activity).
- 24 An offence under section 11 of that Act (engaging in sexual activity in the presence of a child).
- 25 An offence under section 12 of that Act (causing a child to watch a sexual act).
- 26 An offence under section 14 of that Act (arranging or facilitating commission of a child sex offence).
- 27 An offence under section 15 of that Act (meeting a child following sexual grooming etc).
- 28 An offence under section 25 of that Act (sexual activity with a child family member) if the offender is aged 18 or over at the time of the offence.
- 29 An offence under section 26 of that Act (inciting a child family member to engage in sexual activity) if the offender is aged 18 or over at the time of the offence.
- 30 An offence under section 30 of that Act (sexual activity with a person with a mental disorder impeding choice) if the offender is liable on conviction on indictment to imprisonment for life.
- 31 An offence under section 31 of that Act (causing or inciting a person with a mental disorder to engage in sexual activity) if the offender is liable on conviction on indictment to imprisonment for life.
- 32 An offence under section 34 of that Act (inducement, threat or deception to procure sexual activity with a person with a mental disorder) if the offender is liable on conviction on indictment to imprisonment for life.
- 33 An offence under section 35 of that Act (causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement etc) if the offender is liable on conviction on indictment to imprisonment for life.
- 34 An offence under section 47 of that Act (paying for sexual services of a child) against a person aged under 16.
- 35 An offence under section 48 of that Act (causing or inciting child prostitution or pornography).
- 36 An offence under section 49 of that Act (controlling a child prostitute or a child involved in pornography).
- 37 An offence under section 50 of that Act (arranging or facilitating child prostitution or pornography).
- 38 An offence under section 62 of that Act (committing an offence with intent to commit a sexual offence) if the offender is liable on conviction on indictment to imprisonment for life.
- 39 An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).
- 40 An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).

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- 41 An offence under section 9 of that Act (making or possession of radioactive device or materials).
- 42 An offence under section 10 of that Act (misuse of radioactive devices or material and misuse and damage of facilities).
- 43 An offence under section 11 of that Act (terrorist threats relating to radioactive devices, materials or facilities).
- 44 (1) An attempt to commit an offence specified in the preceding paragraphs of this Part of this Schedule (“a listed offence”) or murder.
- (2) Conspiracy to commit a listed offence or murder.
- (3) Incitement to commit a listed offence or murder.
- (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which a listed offence or murder is the offence (or one of the offences) which the person intended or believed would be committed.
- (5) Aiding, abetting, counselling or procuring the commission of a listed offence.

## PART 2

### FURTHER OFFENCES UNDER THE LAW OF ENGLAND AND WALES LISTED FOR THE PURPOSES OF SECTIONS 224A(4), 226A AND 246A

The following offences to the extent that they are offences under the law of England and Wales—

- 45 Murder.
- 46 (1) Any offence that—
- (a) was abolished (with or without savings) before the coming into force of this Schedule, and
- (b) would, if committed on the relevant day, have constituted an offence specified in Part 1 of this Schedule.
- (2) “Relevant day”, in relation to an offence, means—
- (a) for the purposes of this paragraph as it applies for the purposes of section 246A(2), the day on which the offender was convicted of that offence, and
- (b) for the purposes of this paragraph as it applies for the purposes of sections 224A(4) and 226A(2), the day on which the offender was convicted of the offence referred to in section 224A(1)(a) or 226A(1)(a) (as appropriate).

## PART 3

### OFFENCES UNDER SERVICE LAW LISTED FOR THE PURPOSES OF SECTIONS 224A(4), 226A AND 246A

- 47 An offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 as respects which the corresponding civil offence (within the meaning of the Act in question) is an offence specified in Part 1 or 2 of this Schedule.



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- 48 (1) An offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is an offence specified in Part 1 or 2 of this Schedule.
- (2) Section 48 of the Armed Forces Act 2006 (attempts, conspiracy etc) applies for the purposes of this paragraph as if the reference in subsection (3)(b) of that section to any of the following provisions of that Act were a reference to this paragraph.

#### PART 4

OFFENCES UNDER THE LAW OF SCOTLAND, NORTHERN IRELAND  
OR A MEMBER STATE OTHER THAN THE UNITED KINGDOM  
LISTED FOR THE PURPOSES OF SECTIONS 224A(4) AND 226A

- 49 An offence for which the person was convicted in Scotland, Northern Ireland or a member State other than the United Kingdom and which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 or 2 of this Schedule.

#### PART 5

INTERPRETATION

- 50 In this Schedule “imprisonment for life” includes custody for life and detention for life.”

### SCHEDULE 19

Section 122

LIFE SENTENCE FOR SECOND LISTED OFFENCE:  
CONSEQUENTIAL AND TRANSITORY PROVISION

#### PART 1

CONSEQUENTIAL PROVISION

*Mental Health Act 1983 (c. 20)*

- 1 In section 37 of the Mental Health Act 1983 (powers of courts to order hospital admission), in subsection (1A), after paragraph (b) insert—  
“(ba) under section 224A of the Criminal Justice Act 2003,”.

*Criminal Justice Act 1988 (c. 33)*

- 2 In section 36 of the Criminal Justice Act 1988 (reviews of sentencing), in subsection (2)(b)(iii), after “section” insert “ 224A,”.

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 3 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.

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- 4 In section 12 (absolute and conditional discharge), in subsection (1), before “225(2)” insert “ 224A, ”.
- 5 In section 130 (compensation orders against convicted persons), in subsection (2), before “225(2)” insert “ 224A, ”.
- 6 In section 146 (driving disqualification for any offence), in subsection (2), before “225(2)” insert “ 224A, ”.
- 7 In section 164 (interpretation), in subsection (3)(c), after “section” insert “ 224A, ”.

*Criminal Justice Act 2003 (c. 44)*

- 8 The Criminal Justice Act 2003 is amended as follows.
- 9 In section 142 (purposes of sentencing: offenders aged 18 and over), in subsection (2)(c)—
- (a) after “weapon” insert “ , under section 224A of this Act (life sentence for second listed offence for certain dangerous offenders) ”, and
- (b) for “(dangerous offenders)” substitute “ (imprisonment or detention for life for certain dangerous offenders) ”.
- 10 In section 150 (community sentence not available where sentence fixed by law etc), at the end of paragraph (ca) (but before the “or”) insert—
- “(cb) falls to be imposed under section 224A of this Act (life sentence for second listed offence for certain dangerous offenders),”.
- 11 In section 152 (general restrictions on imposing discretionary custodial sentence), in subsection (1)(b), before “225(2)” insert “ 224A, ”.
- 12 In section 153 (length of discretionary custodial sentences: general provision), in subsection (1), before “225” insert “ 224A, ”.
- 13 In section 156 (pre-sentence reports and other requirements), after subsection (8) insert—
- “(9) References in subsections (1) and (3) to a court forming the opinions mentioned in sections 152(2) and 153(2) include a court forming those opinions for the purposes of section 224A(3).”
- 14 In section 163 (general power of Crown Court to fine offender convicted on indictment) before “225(2)” insert “ 224A, ”.
- 15 Before section 224 insert— “ Interpretation ”.
- 16 In section 224 (meaning of “specified offence” etc), in subsection (2)(b), for “225” substitute “ 224A ”.
- 17 After section 224 (and before section 224A) insert— “ Life sentences ”.
- 18 After section 226 insert— “ Extended sentences ”.
- 19 Before section 231 insert— “ Supplementary ”.
- 20 (1) Section 231 (appeals where convictions set aside) is amended as follows.
- (2) Before subsection (1) insert—
- “(A1) Subsection (2) applies where—
- (a) a sentence has been imposed on a person under section 224A,

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- (b) a previous conviction of that person has been subsequently set aside on appeal, and
    - (c) without that conviction, the previous offence condition in section 224A(4) would not have been met.”
  - (3) In subsection (1), for “This section” substitute “ Subsection (2) also ”.
  - (4) After subsection (2) insert—
    - “(3) Subsection (4) applies where—
      - (a) a sentence has been imposed on a person under section 224A,
      - (b) a previous sentence imposed on that person has been subsequently modified on appeal, and
      - (c) taking account of that modification, the previous offence condition in section 224A(4) would not have been met.
    - (4) Notwithstanding anything in section 18 of the Criminal Appeal Act 1968, notice of appeal against the sentence mentioned in subsection (3)(a) may be given at any time within 28 days from the date on which the previous sentence was modified.”
- 21 After section 232 insert—

#### “232A Certificates of conviction

Where—

- (a) on any date after the commencement of Schedule 15B a person is convicted in England and Wales of an offence listed in that Schedule, and
    - (b) the court by or before which the person is so convicted states in open court that the person has been convicted of such an offence on that date, and
    - (c) that court subsequently certifies that fact,
- that certificate is evidence, for the purposes of section 224A, that the person was convicted of such an offence on that date.”
- 22 In section 305(4) (interpretation of Part 12), after paragraph (ba) insert—  
“(bb) a sentence falls to be imposed under section 224A if the court is obliged by that section to pass a sentence of imprisonment for life,”.

*Coroners and Justice Act 2009 (c. 25)*

- 23 In section 125(6) of the Coroners and Justice Act 2009 (sentencing guidelines: duty of court) after paragraph (d) insert—  
“(da) section 224A of that Act (life sentence for second listed offence for certain dangerous offenders);”.

## PART 2

### TRANSITORY PROVISION

- 24 (1) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young

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offender institution, custody for life etc), Part 12 of the Criminal Justice Act 2003 (sentencing) has effect with the following modifications.

- (2) In section 224A (life sentence for second listed offence)—
- (a) in subsection (2), after “imprisonment for life” insert “ or, in the case of a person aged at least 18 but under 21, custody for life under section 94 of the Sentencing Act ”, and
  - (b) in subsection (3), after “more” insert “ or, if the person is aged at least 18 but under 21, a sentence of detention in a young offender institution for such a period ”.
- (3) In section 305(4) (interpretation of Part 12), in paragraph (bb) (inserted by paragraph 22 of this Schedule), after “imprisonment for life” insert “ or, if the person is aged at least 18 but under 21, custody for life ”.

## SCHEDULE 20

Section 125

### RELEASE OF NEW EXTENDED SENTENCE PRISONERS: CONSEQUENTIAL AMENDMENTS OF CHAPTER 6 OF PART 12 OF THE CRIMINAL JUSTICE ACT 2003

- 1 Chapter 6 of Part 12 of the Criminal Justice Act 2003 (sentencing: release and  
recall) (as amended by Chapter 4 of Part 3 of this Act) is amended as follows.
- 2 (1) Section 237 (meaning of “fixed-term prisoner” etc) is amended as follows.
- (2) In subsection (1)(b), before “227” insert “ 226A, 226B, ”.
- (3) In subsection (3), before “227” insert “ 226A or ”.
- 3 In section 238 (power of court to recommend licence conditions), in subsection (4),  
for “228” substitute “ 226B ”.
- 4 In section 240ZA (time remanded in custody to count as time served), in  
subsection (11), before “227” insert “ 226A, 226B, ”.
- 5 (1) Section 246 (power to release prisoners on licence) is amended as follows.
- (2) In subsection (4)(a), after “section” insert “ 226A, ”.
- (3) In subsection (6), in the definition of “term of imprisonment”, before “227” insert  
“ 226A, 226B, ”.
- 6 (1) Section 250 (licence conditions) is amended as follows.
- (2) In subsection (4)—
- (a) before the first “227” insert “ 226A or ”, and
  - (b) before the second “227” insert “ 226A, 226B, ”.
- (3) After subsection (5) insert—
- “(5A) In respect of a prisoner serving an extended sentence imposed under  
section 226A or 226B whose release is directed by the Board under  
section 246A(5), a licence under—
- (a) section 246A(5) (initial release), or
  - (b) section 255C (release after recall),

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- may not include conditions referred to in subsection (4)(b)(ii) unless the Board directs the Secretary of State to include them.”
- 7 In section 255A (further release after recall), in subsection (7)(a) (meaning of “extended sentence prisoner”), after “section” insert “ 226A, 226B, ”.
- 8 In section 258 (early release of fine defaulters and contemnors), in subsection (3A), before “227” insert “ 226A, 226B, ”.
- 9 (1) Section 260 (early removal of prisoners liable to removal from UK) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) If a fixed-term prisoner serving an extended sentence imposed under section 226A or 226B—
- (a) is liable to removal from the United Kingdom, and
- (b) has not been removed from prison under this section during the period mentioned in subsection (1),
- the Secretary of State may remove the prisoner from prison under this section at any time after the end of that period.
- (2B) Subsection (2A) applies whether or not the Board has directed the prisoner's release under section 246A.”
- (3) In subsection (5), after “244” (but before “, 247”) insert “ , 246A ”.
- (4) In subsection (7), before paragraph (a) insert—
- “(za) in relation to a prisoner serving an extended sentence imposed under section 226A or 226B, has the meaning given by paragraph (a) or (b) of the definition in section 246A(8);”.
- 10 (1) Section 261 (re-entry to UK of offender removed early) is amended as follows.
- (2) In subsection (5)(b), for “or 244” substitute “ , 244 or 246A ”.
- (3) In subsection (6), in the definition of “requisite custodial period”, before paragraph (a) insert—
- “(za) in relation to a prisoner serving an extended sentence imposed under section 226A or 226B, has the meaning given by paragraph (a) or (b) of the definition in section 246A(8);”.
- 11 In section 263 (concurrent terms), in subsection (4), before “227” insert “ 226A, 226B, ”.
- 12 (1) Section 264 (consecutive terms) is amended as follows.
- (2) In subsection (6)(a) (definition of “custodial period”), before sub-paragraph (i) insert—
- “(zi) in relation to an extended sentence imposed under section 226A or 226B, means two-thirds of the appropriate custodial term determined by the court under that section,”.
- (3) In subsection (7), before “227” insert “ 226A, 226B, ”.
- 13 In section 265 (restriction on consecutive sentences for released prisoners), in subsection (2), before “227” insert “ 226A, 226B, ”.

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## SCHEDULE 21

Section 126

### ABOLITION OF CERTAIN SENTENCES FOR DANGEROUS OFFENDERS AND NEW EXTENDED SENTENCES: CONSEQUENTIAL AND TRANSITORY PROVISION

#### PART 1

##### CONSEQUENTIAL PROVISION

###### *Juries Act 1974 (c. 23)*

- 1 In Part 2 of Schedule 1 to the Juries Act 1974 (persons disqualified from jury service) in paragraph 6(d), before “227” insert “ 226A, 226B, ”.

###### *Rehabilitation of Offenders Act 1974 (c. 53)*

- 2 In section 5 of the Rehabilitation of Offenders Act 1974 (sentences excluded from rehabilitation under that Act), in subsection (1)(f), before “227” insert “ 226A, 226B, ”.

###### *Criminal Justice Act 1982 (c. 48)*

- 3 In section 32 of the Criminal Justice Act 1982 (early release of prisoners), in subsection (1)(a), before “227” insert “ 226A or ”.

###### *Road Traffic Offenders Act 1988 (c. 53)*

- 4 (1) Section 35A of the Road Traffic Offenders Act 1988 (extension of disqualification where custodial sentence imposed as well as driving disqualification) is amended as follows.
- (2) In subsection (4)(e)—
- (a) for “227” substitute “ 226A ”,
  - (b) for “half” substitute “ two-thirds of ”, and
  - (c) for “227(2C)(a)” substitute “ 226A(5)(a) ”.
- (3) In subsection (4)(f)—
- (a) for “228” substitute “ 226B ”,
  - (b) for “half” substitute “ two-thirds of ”, and
  - (c) for “228(2B)(a)” substitute “ 226B(3)(a) ”.
- (4) In subsection (8), omit “or 247(2)”.
- (5) In subsection (9), omit paragraph (b).

###### *Crime (Sentences) Act 1997 (c. 43)*

- 5 In Schedule 1 to the Crime (Sentences) Act 1997 (transfer of prisoners within the British Islands), in paragraph 9(2)(a), after “244,” insert “ 246A, ”.

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*Crime and Disorder Act 1998 (c. 37)*

- 6 In section 51A of the Crime and Disorder Act 1998 (sending cases to the Crown Court: children and young persons), in subsection (3)(d), for “226(3) or 228(2)” substitute “ 226B ”.

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 7 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- 8 In section 3A (committal for sentence of dangerous adult offenders), in subsection (2), for “225(3) or 227(2)” substitute “ 226A ”.
- 9 In section 3C (committal for sentence of dangerous young offenders), in subsection (2), for “226(3) or 228(2)” substitute “ 226B ”.
- 10 In section 76 (meaning of “custodial sentence”), in subsection (1)(bc), after “section” insert “ 226B or ”.
- 11 (1) Section 82A (determination of tariffs of life prisoners) is amended as follows.
- (2) Omit subsection (4A).
- (3) In subsection (7), for the definition of “life sentence” substitute—
- ““life sentence” means a sentence mentioned in subsection (2) of section 34 of the Crime (Sentences) Act 1997 other than a sentence mentioned in paragraph (d) or (e) of that subsection.”
- 12 (1) Section 99 (conversion of sentence of detention to sentence of imprisonment) is amended as follows.
- (2) In subsection (3), omit the words from “; and” to the end.
- (3) After that subsection insert—
- “(3A) Where the Secretary of State gives a direction under subsection (1) above in relation to an offender serving an extended sentence of detention imposed under Chapter 5 of Part 12 of the Criminal Justice Act 2003—
- (a) if the sentence was imposed under section 226B of that Act, the offender shall be treated as if the offender had been sentenced under section 226A of that Act, and
- (b) if the sentence was imposed under section 228 of that Act, the offender shall be treated as if the offender had been sentenced under section 227 of that Act.”
- (4) In subsection (5)(c), after “section” insert “ 226B or ”.
- 13 In section 100 (offenders under 18: detention and training orders), in subsection (1), for “228” substitute “ 226B ”.
- 14 (1) Section 106A (interaction of detention and training orders with sentences of detention) is amended as follows.
- (2) In subsection (1), in paragraph (b) of the definition of “sentence of detention”, after “section” insert “ 226B or ”.
- (3) In subsection (6)—
- (a) before “228” insert “ 226B or ”, and

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- (b) after “Board under” insert “ subsection (5)(b) of section 246A or (as the case may be) ”.
- 15 (1) Section 147A (extension of driving disqualification where custodial sentence also imposed) is amended as follows.
- (2) In subsection (4)(e)—
- (a) for “227” substitute “ 226A ”,
- (b) for “half” substitute “ two-thirds of ”, and
- (c) for “227(2C)(a)” substitute “ 226A(5)(a) ”.
- (3) In subsection (4)(f)—
- (a) for “228” substitute “ 226B ”,
- (b) for “half” substitute “ two-thirds of ”, and
- (c) for “228(2B)(a)” substitute “ 226B(3)(a) ”.
- (4) In subsection (8), omit “or 247(2)”.
- (5) In subsection (9), omit paragraph (b).

*Criminal Justice and Court Services Act 2000 (c. 43)*

- 16 The Criminal Justice and Court Services Act 2000 is amended as follows.
- 17 In section 62 (release on licence etc: conditions as to monitoring), in subsection (5) (f), after “226” insert “ , 226B ”.
- 18 In section 64 (release on licence: drug testing requirements), in subsection (5)(f), after “226” insert “ , 226B ”.

*Sexual Offences Act 2003 (c. 42)*

- 19 In section 131 of the Sexual Offences Act 2003 (young offenders: application), in paragraph (l), before “228” insert “ 226B or ”.

*Criminal Justice Act 2003 (c. 44)*

- 20 The Criminal Justice Act 2003 is amended as follows.
- 21 In section 153 (length of discretionary custodial sentences: general provision), in subsection (2), for “227(2) and 228(2)” substitute “ 226A(4) and 226B(2) ”.
- 22 (1) Section 156 (pre-sentence reports and other requirements) is amended as follows.
- (2) In subsection (3)(a), for “section 227(1)(b) or section 228(1)(b)(i)” substitute “ section 226A(1)(b) or section 226B(1)(b) ”.
- (3) After subsection (9) (inserted by paragraph 13 of Schedule 19) insert—
- “(10) The reference in subsection (1) to a court forming the opinion mentioned in section 153(2) includes a court forming that opinion for the purposes of section 226A(6) or 226B(4).”
- 23 In the heading of section 225 (life sentence or imprisonment for public protection for serious offences) omit “or imprisonment for public protection”.



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- 24 In the heading of section 226 (detention for life or detention for public protection for serious offences by those aged under 18) omit “or detention for public protection”.
- 25 In section 231 (appeals where convictions set aside), in subsection (1)—
- (a) in paragraph (a), after “225(3)” insert “, 226A ”,
  - (b) in paragraph (b)—
    - (i) before “227(2A)” insert “ 226A(2) or ”, and
    - (ii) before “227(2B)” insert “ 226A(3) or ”, and
  - (c) in paragraph (c), after “may be)” insert “ 226A(2) or ”.
- 26 Omit section 232 (certificates of convictions for the purposes of sections 225 and 227).
- 27 In section 235 (detention under sections 226 and 228) after “226” insert “, 226B ”.
- 28 In the heading of that section after “226” insert “, 226B ”.
- 29 In section 327 (arrangements for assessing etc risks posed by certain offenders: interpretation), in subsection (3)(b)(vi), after “section” insert “ 226B or ”.
- 30 In section 330 (orders and rules), in subsection (5)(a), omit—
- (a) “227(6),”, and
  - (b) “228(7)”.
- 31 Omit Schedule 15A (offences specified for the purposes of sections 225(3A) and 227(2A)).

*Offender Management Act 2007 (c. 21)*

- 32 (1) Section 28 of the Offender Management Act 2007 (application of polygraph conditions for certain offenders released on licence) is amended as follows.
- (2) In subsection (3)(a), after “section” insert “ 226A or ”.
  - (3) In subsection (3)(f), after “226” insert “, 226B ”.

*Counter-Terrorism Act 2008 (c. 28)*

- 33 In section 45(1)(a) of the Counter-Terrorism Act 2008 (sentences or orders triggering notification requirements under Part 4 of that Act), after sub-paragraph (vi) (but before the “or” at the end of that sub-paragraph), insert—
- “(via) detention under section 226B of that Act (extended sentence of detention for certain dangerous offenders aged under 18),”.

*Coroners and Justice Act 2009 (c. 25)*

- 34 (1) Section 126 of the Coroners and Justice Act 2009 (determination of tariffs etc) is amended as follows.
- (2) In subsection (1)—
    - (a) omit paragraphs (a) and (b),
    - (b) in paragraph (c), for “227 of that Act” substitute “ 226A of the Criminal Justice Act 2003 ”, and
    - (c) in paragraph (d), for “228” substitute “ 226B ”.

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- (3) In subsection (2)—
- (a) omit paragraph (b),
  - (b) in paragraph (c), for “227(3) of that Act” substitute “226A(6) of the Criminal Justice Act 2003”, and
  - (c) in paragraph (d), for “228(3)” substitute “226B(4)”.
- (4) In subsection (4), for the words from “has” to the end substitute “means a sentence mentioned in subsection (2) of section 34 of the Crime (Sentences) Act 1997 other than a sentence mentioned in paragraph (d) or (e) of that subsection”.

#### *Consequential repeals*

- 35 In consequence of amendments made by section 123, 124 or 125 or this Schedule—
- (a) in the Criminal Justice Act 2003, omit paragraph 4 of Schedule 18, and
  - (b) in the Criminal Justice and Immigration Act 2008 omit—
    - (i) sections 13, 14, 15, 16 and 18(2);
    - (ii) Schedule 5;
    - (iii) in Schedule 26, paragraph 76.

## PART 2

### TRANSITORY PROVISION

- 36 (1) In relation to any time before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution, custody for life etc), Chapter 5 of Part 12 of the Criminal Justice Act 2003 (sentencing: dangerous offenders) has effect with the modifications in sub-paragraphs (2) and (3).
- (2) In section 226A (extended sentence for certain violent or sexual offences: persons 18 or over), at the end insert—
- “(12) In the case of a person aged at least 18 but under 21, this section has effect as if—
- (a) the reference in subsection (1)(c) to imprisonment for life were to custody for life, and
  - (b) other references to imprisonment (including in the expression “extended sentence of imprisonment”) were to detention in a young offender institution.”
- (3) In section 226B (extended sentence for certain violent or sexual offences: persons under 18), in subsection (7), for “18” substitute “21”.
- 37 (1) In relation to any time before the repeal of section 30 of the Criminal Justice and Court Services Act 2000 (protection of children: supplemental) by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006, that section has effect with the modification in sub-paragraph (2).
- (2) In subsection (1), in paragraph (dd) of the definition of “qualifying sentence”, after “226” insert “, 226B”.

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## SCHEDULE 22

Section 127

### DANGEROUS OFFENDERS SUBJECT TO SERVICE LAW ETC

#### PART 1

##### SENTENCES FOR DANGEROUS OFFENDERS SUBJECT TO SERVICE LAW ETC

###### *Armed Forces Act 2006 (c. 52)*

- 1 The Armed Forces Act 2006 is amended as follows.
- 2 After section 218 and the italic heading “Required or discretionary sentences for particular offences” insert—

###### **“218A Life sentence for second listed offence**

- (1) This section applies where—
  - (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct);
  - (b) the corresponding offence under the law of England and Wales is an offence listed in Part 1 of Schedule 15B to the 2003 Act;
  - (c) the offence was committed after this section comes into force; and
  - (d) the sentence condition and the previous offence condition are met.
- (2) Section 224A(2) of the 2003 Act applies in relation to the offender.
- (3) In section 224A(2)(a) of that Act as applied by subsection (2)—
  - (a) the reference to “the offence” is to be read as a reference to the offence under section 42; and
  - (b) the reference to “the previous offence referred to in subsection (4)” is to be read as a reference to the previous offence referred to in subsection (5) of this section.
- (4) The sentence condition is that, but for this section, the Court Martial would, in compliance with sections 260(2) and 261(2), impose a sentence of imprisonment for 10 years or more, disregarding any extension period imposed under section 226A of the 2003 Act as applied by section 219A of this Act.
- (5) The previous offence condition is that—
  - (a) at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act (“the previous offence”); and
  - (b) a relevant life sentence or a relevant sentence of imprisonment or detention for a determinate period was imposed on the offender for the previous offence.
- (6) A sentence is relevant for the purposes of subsection (5)(b) if it would be relevant for the purposes of section 224A(4)(b) of the 2003 Act (see subsections (5) to (10) of that section).

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(7) A sentence required to be imposed by section 224A(2) of that Act as a result of this section is not to be regarded as a sentence fixed by law.”

3 (1) Section 219 (dangerous offenders aged 18 or over) is amended as follows.

(2) For subsection (2) substitute—

“(2) Section 225(2) of the 2003 Act applies in relation to the offender.”

(3) In subsection (3), omit “and (3A)”.

#### Commencement Information

**I42** Sch. 22 para. 3 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

4 In the heading of that section for “Dangerous” substitute “ Life sentence for certain dangerous ”.

#### Commencement Information

**I43** Sch. 22 para. 4 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

5 After that section insert—

#### “219A Extended sentence for certain violent or sexual offenders aged 18 or over

(1) This section applies where—

- (a) a person aged 18 or over is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
- (b) the corresponding offence under the law of England and Wales is a specified offence;
- (c) the court is of the required opinion (defined by section 223);
- (d) the court is not required to impose a sentence of imprisonment for life by section 224A(2) of the 2003 Act (as applied by section 218A of this Act) or section 225(2) of that Act (as applied by section 219 of this Act); and
- (e) condition A or B is met.

(2) Condition A is that, at the time the offence under section 42 was committed, the offender had been convicted of an offence listed in Schedule 15B to the 2003 Act.

(3) Condition B is that, if the court were to impose an extended sentence of imprisonment under section 226A of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.

(4) Subsections (4) to (9) of section 226A of the 2003 Act apply in relation to the offender.

(5) In section 226A(4) to (9) of the 2003 Act as applied by this section—

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- (a) the reference in subsection (6) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
- (b) the reference in subsection (7) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
- (c) the reference in subsection (8)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
- (d) the reference in subsection (8)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.

(6) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.”

6 Omit section 220 (certain violent or sexual offenders aged 18 or over).

**Commencement Information**

**I44** Sch. 22 para. 6 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

7 In section 221 (dangerous offenders aged under 18) for subsection (2) substitute—  
“(2) Section 226(2) of the 2003 Act applies in relation to the offender.”

**Commencement Information**

**I45** Sch. 22 para. 7 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

8 In the heading of that section for “Dangerous” substitute “ Life sentence for certain dangerous ”.

**Commencement Information**

**I46** Sch. 22 para. 8 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

9 After that section insert—

**“221A Extended sentence for certain violent or sexual offenders aged under 18**

(1) This section applies where—

- (a) a person aged under 18 is convicted by the Court Martial of an offence under section 42 (criminal conduct) (whether the offence was committed before or after the commencement of this section);
- (b) the corresponding offence under the law of England and Wales is a specified offence;
- (c) the court is of the required opinion (defined by section 223);
- (d) the court is not required by section 226(2) of the 2003 Act (as applied by section 221 of this Act) to impose a sentence of detention for life under section 209 of this Act; and

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- (e) if the court were to impose an extended sentence of detention under section 226B of the 2003 Act as a result of this section, the term that it would specify as the appropriate custodial term would be at least 4 years.
- (2) Subsections (2) to (7) of section 226B of the 2003 Act apply in relation to the offender.
- (3) In section 226B(2) to (7) of the 2003 Act as applied by this section—
- (a) the reference in subsection (4) to section 153(2) of the 2003 Act is to be read as a reference to section 261(2) of this Act;
  - (b) the reference in subsection (5) to further specified offences includes a reference to further acts or omissions that would be specified offences if committed in England and Wales;
  - (c) the reference in subsection (6)(a) to a specified violent offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified violent offence; and
  - (d) the reference in subsection (6)(b) to a specified sexual offence is to be read as a reference to an offence under section 42 as respects which the corresponding offence under the law of England and Wales is a specified sexual offence.
- (4) In this section “specified offence”, “specified sexual offence” and “specified violent offence” have the meanings given by section 224 of the 2003 Act.”
- 10 Omit section 222 (offenders aged under 18: certain violent or sexual offences).

**Commencement Information**

**I47** Sch. 22 para. 10 wholly in force at 3.12.2012, see s. 151(1) and S.I. 2012/2906, art. 2(t) (with art. 6)

**PART 2**

CONSEQUENTIAL PROVISION

*Juries Act 1974 (c. 23)*

- 11 In Part 2 of Schedule 1 to the Juries Act 1974 (persons disqualified from jury service), in paragraph 6(d), after “2003” insert “ (including such a sentence imposed as a result of section 219A, 220, 221A or 222 of the Armed Forces Act 2006) ”.

*Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27))*

- 12 In article 6(1) of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (sentences excluded from rehabilitation under the Order), in sub-paragraph (g)(iii), after “section” insert “ 226A, 226B, ”.

*Criminal Justice Act 1982 (c. 48)*

- 13 In section 32 of the Criminal Justice Act 1982 (early release of prisoners), in subsection (1A)—

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- (a) before “227” insert “ 226A or ”, and
- (b) after “219” insert “ , 219A ”.

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 14 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- 15 In section 99 (conversion of sentence of detention to sentence of imprisonment), in subsection (6)—
- (a) after “226” insert “ , 226B ”, and
  - (b) after “221” insert “ , 221A ”.
- 16 In section 106A(1) (interaction with sentence of detention), in the definition of “sentence of detention”—
- (a) before “228”, in the second place it appears, insert “ 226B or ”, and
  - (b) before “222” insert “ 221A or ”.

*Criminal Justice and Court Services Act 2000 (c. 43)*

- 17 The Criminal Justice and Court Services Act 2000 is amended as follows.
- 18 In section 62 (release on licence etc: conditions as to monitoring), in subsection (5) (f), after “221” insert “ , 221A ”.
- 19 In section 64 (release on licence etc: drug testing requirements), in subsection (5) (f), after “221” insert “ , 221A ”.

*Sexual Offences Act 2003 (c. 42)*

- 20 In section 131 of the Sexual Offences Act 2003 (young offenders: application), in paragraph (l), before “222” insert “ 221A or ”.

*Criminal Justice Act 2003 (c. 44)*

- 21 In section 237 of the Criminal Justice Act 2003 (meaning of fixed term prisoner etc), in subsection (1B), after paragraph (b) insert—
- “(ba) references to a sentence under section 226A of this Act include a sentence under that section passed as a result of section 219A of the Armed Forces Act 2006;
  - (bb) references to a sentence under section 226B of this Act include a sentence under that section passed as a result of section 221A of the Armed Forces Act 2006;”.

*Armed Forces Act 2006 (c. 52)*

- 22 The Armed Forces Act 2006 is amended as follows.
- 23 (1) Section 188 (consecutive custodial sentences) is amended as follows.
- (2) In subsection (2), in paragraph (c)—
    - (a) for “228” substitute “ 226B ”, and
    - (b) for “222” substitute “ 221A ”.
  - (3) In subsection (4), in paragraph (c)—

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- (a) before “228” insert “ 226B or ”, and
  - (b) before “222” insert “ 221A or ”.
- 24 In section 209 (offenders aged under 18 convicted of certain serious offences: power to detain for specified period), in subsection (7)—
- (a) for “section 226(2)” substitute “ sections 224A and 226(2) ”, and
  - (b) for “section 221(2)” substitute “ sections 218A and 221(2) ”.
- 25 In section 211 (offenders aged under 18: detention and training orders), in subsection (4)—
- (a) after “218,” insert “ 218A, ”, and
  - (b) for “222” substitute “ 221A ”.
- 26 In section 221(3) (dangerous offenders aged under 18), after “as applied” insert “ by ”.
- 27 In section 223 (the “required opinion” for the purposes of sections 219 to 222), in subsection (1)—
- (a) for “220(1)” substitute “ 219A(1) ”, and
  - (b) for “222(1)” substitute “ 221A(1) ”.
- 28 In the heading of that section for “222” substitute “ 221A ”.
- 29 For section 224 (place of detention under certain sentences) substitute—

**“224 Place of detention under certain sentences**

Section 235 of the 2003 Act (detention under sections 226, 226B and 228) applies to a person sentenced to be detained under section 226(3), 226B or 228 of that Act as applied by section 221, 221A or 222 of this Act.”

- 30 (1) Section 228 (appeals where previous convictions set aside) is amended as follows.
- (2) For subsection (1) substitute—
- “(1A) Subsection (3) applies in the cases described in subsections (1B) to (2).
- (1B) The first case is where—
- (a) a sentence has been imposed on any person under section 224A of the 2003 Act (as applied by section 218A of this Act);
  - (b) a previous conviction of that person has been subsequently set aside on appeal; and
  - (c) without that conviction, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (1C) The second case is where—
- (a) a sentence has been imposed on any person under section 225(3) of the 2003 Act (as applied by section 219(2) of this Act);
  - (b) the condition in section 225(3A) of the 2003 Act was met but the condition in section 225(3B) of that Act was not; and
  - (c) any previous conviction of the person without which the condition in section 225(3A) would not have been met is subsequently set aside on appeal.
- (1D) The third case is where—



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- (a) a sentence has been imposed on any person under section 226A of the 2003 Act (as applied by section 219A of this Act);
  - (b) the condition in section 219A(2) was met, but the condition in section 219A(3) was not; and
  - (c) any previous conviction of the person without which the condition in section 219A(2) would not have been met is subsequently set aside on appeal.
- (1E) The fourth case is where—
- (a) a sentence has been imposed on any person under section 227(2) of the 2003 Act (as applied by section 220(2) of this Act);
  - (b) the condition in section 227(2A) of the 2003 Act was met but the condition in section 227(2B) of that Act was not; and
  - (c) any previous conviction of the person without which the condition in section 227(2A) would not have been met is subsequently set aside on appeal.”
- (3) In subsection (2)—
- (a) for “Subsection (3) also applies” substitute “ The fifth case is ”; and
  - (b) in paragraph (a) after “226” insert “ of this Act ”.
- (4) After subsection (3) insert—
- “(3A) Subsection (3B) applies where—
- (a) a sentence has been imposed on a person under section 224A of the 2003 Act (as applied by section 218A of this Act);
  - (b) a previous sentence imposed on that person has been subsequently modified on appeal; and
  - (c) taking account of that modification, the previous offence condition mentioned in section 218A(1)(d) would not have been met.
- (3B) An application for leave to appeal against the sentence mentioned in subsection (3A)(a) may be lodged at any time within 29 days beginning with the day on which the previous sentence was modified.”
- (5) In subsection (4), for “Subsection (3) has” substitute “ Subsections (3) and (3B) have ”.
- 31 In section 237 (duty to have regard to the purposes of sentencing etc), in subsection (3)(b)—
- (a) after “sections” insert “ 218A, ”, and
  - (b) before “225(2)” insert “ 224A, ”.
- 32 In section 246 (crediting of time in service custody: terms of imprisonment and detention), in subsection (6)(b)—
- (a) before “228” insert “ 226B or ”, and
  - (b) before “222” insert “ 221A or ”.
- 33 (1) Section 256 (pre-sentence reports) is amended as follows.
- (2) In subsection (1)(c)—
- (a) for “220(1)” substitute “ 219A(1) ”, and
  - (b) for “222(1)” substitute “ 221A(1) ”.

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- (3) After subsection (9) insert—
- “(10) The reference in subsection (1)(a) to a court forming any such opinion as is mentioned in section 260(2) or 261(2) includes a court forming such an opinion for the purposes of section 218A(4).”
- 34 (1) Section 260 (discretionary custodial sentences: general restrictions) is amended as follows.
- (2) In subsection (1)(b)—
- (a) before “225(2)” insert “ 224A, ”, and
- (b) before “219(2)” insert “ 218A, ”.
- (3) After subsection (4) insert—
- “(4A) The reference in subsection (4) to a court forming any such opinion as is mentioned in subsection (2) or section 261(2) includes a court forming such an opinion for the purposes of section 218A(4).
- (4B) The reference in subsection (4) to a court forming any such opinion as is mentioned in section 261(2) also includes a court forming such an opinion for the purposes of section 226A(6) or 226B(4) of the 2003 Act (as applied by section 219A or 221A of this Act).”
- 35 (1) Section 261 (length of discretionary custodial sentences: general provision) is amended as follows.
- (2) In subsection (1)—
- (a) before “225” insert “ 224A, ”, and
- (b) before “219(2)” insert “ 218A, ”.
- (3) In subsection (3), for “220, 222” substitute “ 219A, 221A ”.
- 36 In section 273 (review of unduly lenient sentence by Court Martial Appeal Court), in subsection (6)(b)—
- (a) before “225(2)” insert “ 224A, ”, and
- (b) before “219(2)” insert “ 218A, ”.
- 37 In section 374 (definitions applying for purposes of the whole Act), in the definition of “custodial sentence”, after paragraph (e) (but before the “or” at the end of that paragraph) insert—
- “(ea) a sentence of detention under section 226B of that Act passed as a result of section 221A of this Act;”.
- Counter-Terrorism Act 2008 (c. 28)*
- 38 In Schedule 6 to the Counter-Terrorism Act 2008 (notification requirements: application to service offences), in paragraph 5(1)(a), after sub-paragraph (vi) (but before the “or” at the end of that sub-paragraph) insert—
- “(via) detention under section 226B of that Act (extended sentence of detention for certain dangerous offenders aged under 18);”.

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### PART 3

#### TRANSITORY PROVISION

- 39 (1) In relation to any time before the repeal of section 30 of the Criminal Justice and Court Services Act 2000 (protection of children: supplemental) by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006, that section has effect with the modification in sub-paragraph (2).
- (2) In subsection (1), in paragraph (dd) of the definition of “qualifying sentence”, after “2003” insert “ (including such a sentence imposed as a result of section 221, 221A or 222 of the Armed Forces Act 2006) ”.

#### SCHEDULE 23

Section 132

#### PENALTY NOTICES FOR DISORDERLY BEHAVIOUR

##### *Criminal Justice and Police Act 2001 (c. 16)*

- 1 Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 (on the spot penalties for disorderly behaviour) is amended as follows.
- 2 In section 1 (offences leading to penalties on the spot) omit subsections (4) and (5) (provision about orders under subsections (2) and (3) of that section).
- 3 (1) Section 2 (penalty notices) is amended as follows
- (2) In subsection (1) for “10” substitute “ 18 ”.
- (3) After subsection (1) insert—
- “(1A) If the offence mentioned in subsection (1) is a relevant penalty offence, the constable may give the person a penalty notice with an education option.”
- (4) Omit subsection (2) (requirement that constable giving a penalty notice other than at a police station be in uniform).
- (5) Omit subsection (3) (requirement that constable giving a penalty notice at a police station be an authorised constable).
- (6) In subsection (4)—
- (a) after “Chapter”, in the first place it appears, insert “—
- approved educational course” means an educational course run as part of an educational course scheme established by—
- (a) in the case of a notice given by a constable of the British Transport Police Force, the Chief Constable of that force, and
- (b) in any other case, the chief officer of police for the area in which the notice is given;
- “educational course scheme” means a scheme established by a chief officer of police under section 2A;”, and
- (b) at the end insert “;

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penalty notice with an education option” means a penalty notice that also offers the opportunity to discharge any liability to be convicted of the offence to which the notice relates by—

- (a) completing an approved educational course, and
- (b) paying the course fee.”

(7) After subsection (4) insert—

“(4A) In this section, “relevant penalty offence” means a penalty offence in relation to which there is an approved educational course.

(4B) The Secretary of State may by regulations make provision about the revocation of penalty notices.”

(8) Omit subsection (5) (definition of “authorised constable”).

(9) Omit subsections (6) to (9) (Secretary of State order making power and associated provision).

4 After section 2 (penalty notices) insert—

#### “2A Educational course schemes

(1) A chief officer of police may establish an educational course scheme under this section in relation to one or more kinds of penalty offence committed in the chief officer’s area.

(2) An educational course scheme must include arrangements—

- (a) for educational courses relating to the penalty offences to which the scheme relates to be provided to persons who are given penalty notices with an education option, and
- (b) for a course fee set by the chief officer of police—
  - (i) to be paid by a person who attends an educational course, and
  - (ii) to be refunded in such circumstances (if any) as the chief officer considers appropriate.

(3) The purpose of an educational course mentioned in subsection (2) must be to reduce the likelihood of those who take the course committing the penalty offence, or penalty offences, to which the course relates.

(4) An educational course may be provided by any person who, and have any content that, the chief officer of police considers appropriate given its purpose.

(5) The Secretary of State may by regulations—

- (a) provide that the fee mentioned in subsection (2)(b) may not be—
  - (i) less than an amount specified in the regulations, or
  - (ii) more than an amount so specified;
- (b) make provision for and in connection with the disclosure, for the purpose of running an educational course scheme, of relevant personal information between—
  - (i) a person who is involved in the provision of an educational course under the scheme,

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- (ii) the chief officer of police who established the scheme, and
      - (iii) any other person specified or described in the regulations;
    - (c) make provision about the use of relevant personal information for that purpose;
    - (d) place restrictions on the disclosure or use of relevant personal information.
  - (6) In subsection (5) “relevant personal information” means any information that relates to, and identifies, a person who has been given a penalty notice with an education option.
  - (7) In this section's application in relation to the Chief Constable of the British Transport Police Force, subsection (1) has effect as if the reference to one or more kinds of penalty offence committed in a chief officer of police's area were a reference to one or more kinds of penalty offence—
    - (a) committed at, or in relation to, any of the places mentioned in section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 (places where a constable of the British Transport Police Force has the powers of a constable), or
    - (b) otherwise relating to a railway.
  - (8) In subsection (7) “railway” means—
    - (a) a railway within the meaning given by section 67(1) of the Transport and Works Act 1992 (interpretation), or
    - (b) a tramway within the meaning given by that section.”
- 5 (1) Section 3 (amount of penalty and form of penalty notice) is amended as follows.
- (2) Omit subsection (1A) (Secretary of State may specify different penalties for persons of different ages).
  - (3) After subsection (3) insert—

“(3A) The Secretary of State may by regulations require information in addition to that mentioned in subsection (3) to be included in, or to be provided with, a penalty notice with an education option.”
  - (4) Omit subsections (5) and (6) (provision relating to orders under that section).
- 6 (1) Section 4 (effect of penalty notice) is amended as follows.
- (2) In subsection (5) for “If” substitute “ In the case of a penalty notice that is not a penalty notice with an education option, if ”.
  - (3) After subsection (5) insert—

“(6) In the case of a penalty notice with an education option, a sum equal to one and a half times the amount of the penalty may be registered under section 8 for enforcement against A as a fine if subsection (7) or (8) applies.
  - (7) This subsection applies if, by the end of the suspended enforcement period, A does not—
    - (a) ask to attend an approved educational course relating to the offence to which the notice relates,
    - (b) pay the penalty, or
    - (c) request to be tried.

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- (8) This subsection applies if—
- (a) A has asked, by the end of the suspended enforcement period, to attend an approved educational course of the kind mentioned in subsection (7)(a), and
  - (b) A does not, in accordance with regulations made under subsection (9)—
    - (i) pay the course fee,
    - (ii) start such a course, or
    - (iii) complete such a course.
- (9) The Secretary of State may by regulations make provision—
- (a) as to the time by which A is required to do each of the things mentioned in subsection (8)(b)(i) to (iii) (including provision allowing those times to be specified by a chief officer of police for the purposes of an educational course scheme established by that officer);
  - (b) allowing A to request an extension of the time to do the things mentioned in subsection (8)(b)(i) to (iii) (including provision as to who should determine such a request and on what basis);
  - (c) as to the procedure to be followed in relation to requests for extensions of time (including provision allowing the procedure to be determined by a chief officer of police for the purposes of an educational course scheme established by that officer);
  - (d) as to the consequences of a request for an extension of time being granted (including provision specifying circumstances in which a chief officer of police may require a course fee to be paid again in order to avoid a sum being registered for enforcement as a fine under section 8);
  - (e) as to the consequences of A failing to attend a course that A has arranged to attend (including provision as to who should determine what those consequences are and on what basis);
  - (f) specifying circumstances in which A is, for the purposes of this Chapter, to be regarded as having completed, or having not completed, an approved educational course (including provision as to who should determine whether those circumstances have arisen and how that should be determined).
- (10) Regulations made under subsection (9)(b), (e) or (f) may permit a person to delegate the function of making a determination.”

- 7 (1) Section 5 (general restriction on proceedings) is amended as follows.
- (2) In subsection (1) for “until the end of” substitute “ during ”.
- (3) After subsection (2) insert—
- “(2A) Proceedings for an offence to which a penalty notice with an education option relates may not be brought against a person who has, by the end of the suspended enforcement period, asked to attend an approved educational course relating to the offence, unless section 4(8) applies.
- (2B) If the person to whom a penalty notice with an education option is given—

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- (a) completes, in accordance with regulations made under section 4(9), an approved educational course relating to the offence to which the notice relates, and
- (b) pays the course fee in accordance with those regulations,
- no proceedings may be brought for the offence.”
- 8 In section 6 (Secretary of State's guidance) after paragraph (b) insert—  
“(ba) about educational course schemes;”.
- 9 In section 8(4) (registration certificates) after “section 4(5)” insert “ or (6) ”.
- 10 (1) Section 10 (enforcement of fines) is amended as follows.
- (2) In subsection (6) for “If” substitute “ Subject to any regulations made under subsection (7), if ”.
- (3) After subsection (6) insert—  
“(7) The Secretary of State may by regulations make provision as to the directions that the court may, or must, give or the orders it may, or must, make if it sets aside a fine relating to a sum registered under section 8 on the basis that section 4(8) applies.”
- 11 After section 10 insert—

#### *“Orders and regulations*

#### **10A Orders and regulations under Chapter 1**

- (1) Any power of the Secretary of State to make an order or regulations under this Chapter is exercisable by statutory instrument.
- (2) Any power of the Secretary of State to make an order or regulations under this Chapter includes—
- (a) power to make different provision for different cases, circumstances or areas, and
- (b) power to make incidental, supplementary, consequential, transitional or transitory provision or savings.
- (3) The Secretary of State may not make an order under section 1(2) unless a draft of the statutory instrument containing the order (whether alone or with other provisions) has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument that contains an order or regulations made under this Chapter and is not subject to any requirement that a draft of the instrument be laid before, and approved by a resolution of, both Houses of Parliament, is subject to annulment in pursuance of a resolution of either House of Parliament.”
- 12 (1) Section 11 (interpretation of Chapter 1) is amended as follows.
- (2) Before the definition of “chief officer of police” insert—  
““approved educational course” has the meaning given in section 2(4);”.
- (3) After the definition of “defaulter” insert—

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““educational course scheme” has the meaning given in section 2(4);”.

(4) After the definition of “penalty notice” insert—

““penalty notice with an education option” has the meaning given in section 2(4);”.

### *Consequential amendments*

- 13        In section 64A of the Police and Criminal Evidence Act 1984 (photographing of suspects etc) in subsection (1B)(d) omit “in uniform” in the first place those words appear.
- 14        (1) The Police Reform Act 2002 is amended as follows.
- (2) In section 43(7) (railway safety accreditation schemes: Secretary of State power to give an accredited person the powers of a constable in uniform, or an authorised constable, to issue fixed penalty notices) omit “in uniform and of an authorised constable”.
- (3) In paragraph 1 of Schedule 4 (community support officers' powers to issue fixed penalty notices) in sub-paragraph (2)(a) omit “in uniform and of an authorised constable”.
- (4) In paragraph 1 of Schedule 5 (accredited persons' powers to issue fixed penalty notices) in sub-paragraph (2)(aa) omit “in uniform”.
- (5) In paragraph 1 of Schedule 5A (accredited inspectors' powers to issue fixed penalty notices) in sub-paragraph (2) omit “in uniform”.
- 15        In consequence of the amendments made by paragraphs 3 and 5 of this Schedule, omit section 87 of the Anti-social Behaviour Act 2003.

## SCHEDULE 24

Section 135

### YOUTH CAUTIONS: CONSEQUENTIAL AMENDMENTS

#### *Rehabilitation of Offenders Act 1974 (c. 53)*

- 1        The Rehabilitation of Offenders Act 1974 is amended as follows.
- 2        In section 8A(2) (meaning of “caution”)—
- (a) omit paragraph (c), and
- (b) in paragraph (d)—
- (i) omit “, reprimand or warning”, and
- (ii) for “paragraphs (a) to (c)” substitute “ paragraph (a) or (b) ”.
- 3        In Schedule 2 (protection for spent cautions) in paragraph 2(1)(e) (meaning of “ancillary circumstances”: things done in connection with a rehabilitation programme)—
- (a) for “warning under section 65” substitute “ youth caution given under section 66ZA ”, and
- (b) for “66(2)” substitute “ 66ZB(2) or (3) ”.



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*Police and Criminal Evidence Act 1984 (c. 60)*

- 4 The Police and Criminal Evidence Act 1984 is amended as follows.
- 5 In section 34(5)(b) (requirement to release without bail unless proceedings may be taken or person may be reprimanded or warned), for the words from “reprimanded” to “65” substitute “ given a youth caution under section 66ZA ”.
- 6 In section 37B(9)(b) (consultation with Director of Public Prosecutions: meaning of “caution”), for “warning or reprimand under section 65” substitute “ youth caution under section 66ZA ”.
- 7 (1) Section 61 (fingerprinting) is amended as follows.
- (2) In subsection (6) (power to fingerprint without consent in case of conviction etc for recordable offence)—
- (a) at the end of paragraph (a) insert “ or ”,
  - (b) for “or” at the end of paragraph (b) substitute “ and ”, and
  - (c) omit paragraph (c) and the “and” at the end of that paragraph.
- (3) In subsection (6ZA)(a) (conditions for application of subsection (6)), for “, cautioned or warned or reprimanded” substitute “ or cautioned ”.
- 8 (1) Section 63 (non-intimate samples) is amended as follows.
- (2) In subsection (3B) (power to take non-intimate sample without consent in case of conviction etc for recordable offence)—
- (a) at the end of paragraph (a) insert “ or ”,
  - (b) for “or” at the end of paragraph (b) substitute “ and ”, and
  - (c) omit paragraph (c) and the “and” at the end of that paragraph.
- (3) In subsection (3BA)(a) (conditions for application of subsection (3B)), for “, cautioned or warned or reprimanded” substitute “ or cautioned ”.
- 9 In section 64ZC(6)(a) (destruction of data relating to a person subject to a control order: persons to be treated as having been convicted of an offence)—
- (a) for “or” at the end of sub-paragraph (i) substitute “ and ”, and
  - (b) omit sub-paragraph (ii) and the “and” at the end of that sub-paragraph.
- 10 In section 64ZI(3) (persons to be treated as having been convicted of an offence for the purposes of sections 64ZB and 64ZD to 64ZH) omit paragraph (b) and the “or” preceding that paragraph.
- 11 (1) Schedule 2A (fingerprinting and samples: power to require attendance at police station) is amended as follows.
- (2) In paragraph 3 (attendance for fingerprinting: persons convicted etc of an offence in England and Wales)—
- (a) in sub-paragraph (2)(a) for “, cautioned or warned or reprimanded” substitute “ or cautioned ”, and
  - (b) in sub-paragraph (5) for “, caution or warning or reprimand” substitute “ or caution ”.
- (3) In paragraph 11 (attendance for taking of non-intimate sample: persons convicted etc of an offence in England and Wales)—
- (a) in sub-paragraph (2)(a) for “, cautioned or warned or reprimanded” substitute “ or cautioned ”, and

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- (b) in sub-paragraph (5)(a) for “, caution or warning or reprimand” substitute “ or caution ”.

*Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))*

- 12 In Article 64ZC(6)(a) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (persons to be treated as having been convicted of an offence for the purposes of paragraph (1))—
- (a) for “or” at the end of paragraph (i) substitute “ and ”, and
- (b) omit paragraph (ii) and the “and” at the end of that paragraph.

*Jobseekers Act 1995 (c. 18)*

- 13 In section 20D(6) of the Jobseekers Act 1995 (meaning of “cautioned” for the purposes of section 20C) omit paragraph (b) and the “or” preceding that paragraph.

*Crime and Disorder Act 1998 (c. 37)*

- 14 The Crime and Disorder Act 1998 is amended as follows.
- 15 In section 38(4) (meaning of “youth justice services”)—
- (a) for paragraph (aa) substitute—
- “(aa) the provision of assistance to persons determining whether youth cautions should be given under section 66ZA below;”, and
- (b) in paragraph (b) for “66(2)” substitute “ 66ZB(2) or (3) ”.
- 16 In section 66H (interpretation)—
- (a) in paragraph (a) (definition of “appropriate adult”) for “65(7)” substitute “ 66ZA(7) ”, and
- (b) after paragraph (e) insert—
- “(ea) youth caution” has the meaning given by section 66ZA(1);”.

- 17 In section 121(6) (provisions extending to Scotland) omit paragraph (c).

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 18 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- 19 In section 12(2) (which makes the provision for conditional discharge in that section subject to section 66(4) of the Crime and Disorder Act 1998)—
- (a) for “66(4)” substitute “ 66ZB(6) ”, and
- (b) for “reprimands and warnings” substitute “ youth cautions ”.
- 20 In Schedule 9 (consequential amendments) omit paragraph 198.

*Terrorism Act 2000 (c. 11)*

- 21 Schedule 8 to the Terrorism Act 2000 (detention) is amended as follows.
- 22 In paragraph 14F(3) (persons to be treated as having been convicted of an offence for the purposes of paragraphs 14B to 14E) omit paragraph (b) and the “or” preceding that paragraph.

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- 23 In paragraph 20F(3) (persons to be treated as having been convicted of an offence for the purposes of paragraphs 20B to 20E) omit “, or has been warned or reprimanded,”.

*Criminal Justice and Court Services Act 2000 (c. 43)*

- 24 In section 56 of the Criminal Justice and Court Services Act 2000 (young offenders: reprimands and warnings) omit subsection (1).

*Sexual Offences Act 2003 (c. 42)*

- 25 In section 133(1) of the Sexual Offences Act 2003 (interpretation of Part 2), in the definition of “cautioned” omit paragraph (b) and the “or” preceding that paragraph.

*Criminal Justice Act 2003 (c. 44)*

- 26 In section 327B(9) of the Criminal Justice Act 2003 (meaning of “cautioned” for the purposes of that section) omit paragraph (b) and the “or” preceding that paragraph.

*Childcare Act 2006 (c. 21)*

- 27 In section 75(6) of the Childcare Act 2006 (disqualification from registration: interpretation) omit the definition of “caution”.

*Criminal Justice and Immigration Act 2008 (c. 4)*

- 28 The Criminal Justice and Immigration Act 2008 is amended as follows.  
29 In section 48(1) (which introduces Schedule 9 to that Act) omit paragraph (b) and the “and” preceding that paragraph.  
30 In Schedule 9 (alternatives to prosecution for persons under 18) omit paragraph 2.

*Counter-Terrorism Act 2008 (c. 28)*

- 31 In section 18A(4) of the Counter-Terrorism Act 2008 (persons to be treated as having been convicted of an offence for the purposes of section 18(3B) and (3C)), omit paragraph (b) and the “or” preceding that paragraph.

*Terrorism Prevention and Investigation Measures Act 2011 (c. 23)*

- 32 In Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (fingerprints and samples), in paragraph 10(1)(a) (circumstances when an individual is to be treated as having been convicted of an offence)—  
(a) at the end of sub-paragraph (ii) insert “ or ”, and  
(b) omit sub-paragraph (iv) and the “or” preceding that sub-paragraph.

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## SCHEDULE 25

Section 141

### REHABILITATION OF OFFENDERS: CONSEQUENTIAL PROVISION

#### PART 1

##### REHABILITATION OF OFFENDERS: GENERAL

###### *Rehabilitation of Offenders Act 1974: England and Wales*

1 The Rehabilitation of Offenders Act 1974 is amended as follows.

#### Commencement Information

**I48** Sch. 25 para. 1 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

2 In section 1(4)(a) (references in Act to a conviction) for “Great Britain” substitute “England and Wales”.

#### Commencement Information

**I49** Sch. 25 para. 2 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

3 In section 2(5) (rehabilitation of persons dealt with in service disciplinary proceedings) for “Great Britain” substitute “England and Wales”.

#### Commencement Information

**I50** Sch. 25 para. 3 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

#### PROSPECTIVE

4 Omit section 3 (special provision with respect to certain disposals by children's hearings under the Social Work (Scotland) Act 1968).

5 In section 4(1)(a) (effect of rehabilitation) for “Great Britain” substitute “England and Wales”.

#### Commencement Information

**I51** Sch. 25 para. 5 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

6 (1) Section 7 (limitations on rehabilitation under the Act) is amended as follows.

(2) In subsection (2)(a) for “Great Britain” substitute “England and Wales”.

(3) In subsection (3) for “Great Britain” substitute “England and Wales”.

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**Commencement Information**

**I52** Sch. 25 para. 6 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

7 Omit section 8(8) (defamation actions: application of section to Scotland).

**Commencement Information**

**I53** Sch. 25 para. 7 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

8 In section 8A(2)(d) (definition of “caution”) after “Wales” insert “ and which is not an alternative to prosecution (within the meaning of section 8AA) ”.

**Commencement Information**

**I54** Sch. 25 para. 8 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

9 (1) Section 9 (unauthorised disclosure of spent convictions) is amended as follows.  
(2) In subsection (3) omit “(or, in Scotland, the accused person)”.  
(3) In subsection (8) omit “, in England and Wales,”.

**Commencement Information**

**I55** Sch. 25 para. 9 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

10 After section 10(1) (orders) insert—  
“(1A) Any power of the Secretary of State to make an order under any provision of this Act includes power—  
(a) to make different provision for different purposes, and  
(b) to make incidental, consequential, supplementary, transitional, transitory or saving provision.  
(1B) The power of the Secretary of State to make an order under section 5(6) includes power to make consequential provision which amends or repeals any provision of this Act or any other enactment.”

**Commencement Information**

**I56** Sch. 25 para. 10 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

11 Omit Schedule 1 (service disciplinary convictions referred to in section 6(6)(bb) of that Act).

**Commencement Information**

**I57** Sch. 25 para. 11 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

*Status: Point in time view as at 01/04/2016.*

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### Rehabilitation of Offenders Act 1974: Scotland

12 The Rehabilitation of Offenders Act 1974 is amended as follows.

#### Commencement Information

**I58** Sch. 25 para. 12 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

13 In section 1(4)(a) (references in Act to a conviction) for “Great Britain” substitute “Scotland”.

#### Commencement Information

**I59** Sch. 25 para. 13 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

14 In section 2(5) (rehabilitation of persons dealt with in service disciplinary proceedings) for “Great Britain” substitute “Scotland”.

#### Commencement Information

**I60** Sch. 25 para. 14 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

15 In section 4(1)(a) (effect of rehabilitation) for “Great Britain” substitute “Scotland”.

#### Commencement Information

**I61** Sch. 25 para. 15 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

16 (1) Section 7 (limitations on rehabilitation under the Act) is amended as follows.

(2) In subsection (2)(a) for “Great Britain” substitute “Scotland”.

(3) In subsection (3) for “Great Britain” substitute “Scotland”.

#### Commencement Information

**I62** Sch. 25 para. 16 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

17 (1) Section 9 (unauthorised disclosure of spent convictions) is amended as follows.

(2) In subsection (3) for “defendant (or, in Scotland, the accused person)” substitute “accused person”.

(3) Omit subsection (8).

#### Commencement Information

**I63** Sch. 25 para. 17 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

*Status: Point in time view as at 01/04/2016.*

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## PART 2

### REHABILITATION OF OFFENDERS: CONSEQUENTIAL REPEALS

#### Commencement Information

**I64** Sch. 25 Pt. 2 in force at 10.3.2014 by S.I. 2014/423, art. 2(c) (with art. 3)

<i>Short title</i>	<i>Extent of repeal</i>
Armed Forces Act 1976 (c. 52)	In Schedule 9, paragraph 21.
Criminal Law Act 1977 (c. 45)	In section 63(2), the words “Rehabilitation of Offenders Act 1974;”.
	In Schedule 12, the entry relating to the Rehabilitation of Offenders Act 1974.
Magistrates' Courts Act 1980 (c. 43)	In Schedule 7, paragraph 134.
Armed Forces Act 1981 (c. 55)	In Schedule 4, paragraph 2(2).
Criminal Justice Act 1982 (c. 48)	In Schedule 14, paragraph 37.
Mental Health (Amendment) Act 1982 (c. 51)	In Schedule 3, paragraph 49.
Mental Health Act 1983 (c. 20)	In Schedule 4, paragraph 39.
Criminal Justice Act 1988 (c. 33)	In Schedule 8, paragraph 9(b).
Children Act 1989 (c. 41)	In Schedule 14, paragraph 36(7).
Criminal Justice Act 1991 (c. 53)	In section 68, paragraph (c) (but not the word “and” at the end of the paragraph).
	In Schedule 8, paragraph 5.
	In Schedule 12, paragraph 22(2).
Criminal Justice and Public Order Act 1994 (c. 33)	In Schedule 9, paragraph 11.
	In Schedule 10, paragraph 30.
Armed Forces Act 1996 (c. 46)	Section 13(3) and (4).
	Schedule 4.
Crime and Disorder Act 1998 (c. 37)	In Schedule 8, paragraph 35.
Youth Justice and Criminal Evidence Act 1999 (c. 23)	In Schedule 4, paragraph 6.
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)	In Schedule 9, paragraph 48(3) to (10).
	In Schedule 11, paragraph 13.
Criminal Justice and Court Services Act 2000 (c. 43)	In Schedule 7, paragraph 49.
Criminal Justice Act 2003 (c. 44)	In Part 1 of Schedule 32, paragraph 18(3).
Armed Forces Act 2006 (c. 52)	In Schedule 16, paragraphs 65(4) to (8) and 66.

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Criminal Justice and Immigration Act In Part 1 of Schedule 4, paragraph 21.  
 2008 (c. 4) In Schedule 10, paragraphs 2 and 5.

Policing and Crime Act 2009 (c. 26) Section 18(2).

## SCHEDULE 26

Section 142

### KNIVES AND OFFENSIVE WEAPONS: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Prevention of Crime Act 1953 (c. 14)*

- 1 In section 2(3) of the Prevention of Crime Act 1953 (extent) for “shall not extend to Northern Ireland” substitute “ extends to England and Wales only ”.

#### *Mental Health Act 1983 (c. 20)*

- 2 (1) Section 37(1A) of the Mental Health Act 1983 (powers of courts to order hospital admission or guardianship) is amended as follows.
- (2) Before paragraph (a) insert—  
     “(za) under section 1A(5) of the Prevention of Crime Act 1953,”.
- (3) After paragraph (a) insert—  
     “(aa) under section 139AA(7) of the Criminal Justice Act 1988,”.

#### *Police and Criminal Evidence Act 1984 (c. 60)*

- 3 In section 1(8A) of the Police and Criminal Evidence Act 1984 (power of constable to stop and search persons, vehicles etc) after “139” insert “ or 139AA ”.

#### *Criminal Justice Act 1988 (c. 33)*

- 4 The Criminal Justice Act 1988 is amended as follows.
- 5 (1) Section 36(2)(b) (reviews of sentencing) is amended as follows.
- (2) Before sub-paragraph (i) insert—  
     “(zi) section 1A(5) of the Prevention of Crime Act 1953;”.
- (3) After sub-paragraph (i) insert—  
     “(ia) section 139AA(7) of this Act;”.
- 6 (1) Section 139B (power of entry to search for articles with a blade or point and offensive weapons) is amended as follows.
- (2) In subsection (1) after “139A” insert “ or 139AA ”.
- (3) In subsection (4)—  
     (a) after “In the application of this section to Northern Ireland” insert “—  
         (a)”;
- (b) at the end add “, and  
         “(b) the reference in subsection (1) to section 139AA is omitted.”



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- 7 In section 172(3) (provisions extending to Northern Ireland) for “sections 139 to 139B” substitute—
- “section 139;  
section 139A;  
section 139B;”.

*Youth Justice and Criminal Evidence Act 1999 (c. 23)*

- 8 (1) Schedule 1A to the Youth Justice and Criminal Evidence Act 1999 (relevant offences for the purposes of section 17: witnesses eligible for assistance on grounds of fear or distress about testifying) is amended as follows.
- (2) After paragraph 9 insert—
- “9A An offence under section 1A of that Act (threatening with offensive weapon in public).”
- (3) After paragraph 26 insert—
- “26A An offence under section 139AA of that Act (threatening with article with blade or point or offensive weapon).”

*Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)*

- 9 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.
- 10 In section 12(1) (absolute and conditional discharge) for “section 51A(2) of the Firearms Act 1968” substitute “section 1A(5) of the Prevention of Crime Act 1953, section 51A(2) of the Firearms Act 1968, section 139AA(7) of the Criminal Justice Act 1988 ”.
- 11 In section 100 (offenders under 18: detention and training orders) after subsection (1) insert—
- “(1A) Subsection (1) applies with the omission of paragraph (b) in the case of an offence the sentence for which falls to be imposed under these provisions—
- (a) section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for offence of threatening with offensive weapon in public);
- (b) section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for offence of threatening with article with blade or point or offensive weapon).”
- 12 In section 130(2) (compensation orders against convicted persons) for “section 51A(2) of the Firearms Act 1968” substitute “section 1A(5) of the Prevention of Crime Act 1953, section 51A(2) of the Firearms Act 1968, section 139AA(7) of the Criminal Justice Act 1988 ”.
- 13 In section 146(2) (driving disqualification for any offence) for “section 51A(2) of the Firearms Act 1968” substitute “section 1A(5) of the Prevention of Crime Act 1953, section 51A(2) of the Firearms Act 1968, section 139AA(7) of the Criminal Justice Act 1988 ”.
- 14 (1) Section 164(3) (further interpretative provisions) is amended as follows.

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(2) After paragraph (a) insert—

“(aa) under section 1A(5) of the Prevention of Crime Act 1953.”.

(3) After paragraph (b) insert—

“(ba) under section 139AA(7) of the Criminal Justice Act 1988.”.

*Criminal Justice Act 2003 (c 44)*

15 The Criminal Justice Act 2003 is amended as follows.

16 (1) Section 142(2)(c) (purposes of sentencing: offenders aged 18 or over) is amended as follows.

(2) After “falls to be imposed” insert “ under section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for offence of threatening with offensive weapon in public), ”.

(3) After “firearms offences),” insert “ under section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for offence of threatening with article with blade or point or offensive weapon), ”.

17 (1) Section 142A(4)(b) (purposes of sentencing: offenders under 18) is amended as follows.

(2) Before sub-paragraph (i) insert—

“(zi) section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for offence of threatening with offensive weapon in public),”.

(3) After sub-paragraph (i) insert—

“(ia) section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for offence of threatening with article with blade or point or offensive weapon),”.

18 (1) Section 144 (reduction in sentences for early guilty pleas) is amended as follows.

(2) In subsection (2)—

(a) for “subsection (2) of section 110 or 111 of the Sentencing Act” substitute “ a provision mentioned in subsection (3) ”;

(b) for “that subsection” in each place substitute “ that provision ”.

(3) After that subsection insert—

“(3) The provisions referred to in subsection (2) are—  
section 1A(6)(a) of the Prevention of Crime Act 1953;  
section 110(2) of the Sentencing Act;  
section 111(2) of the Sentencing Act;  
section 139AA(8)(a) of the Criminal Justice Act 1988.

(4) In the case of an offence the sentence for which falls to be imposed under a provision mentioned in subsection (5), nothing in that provision prevents the court from imposing any sentence that it considers appropriate after taking into account any matter referred to in subsection (1) of this section.

(5) The provisions referred to in subsection (4) are—

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section 1A(6)(b) of the Prevention of Crime Act 1953;  
section 139AA(8)(b) of the Criminal Justice Act 1988.”

PROSPECTIVE

F50 19

**Textual Amendments**

**F50** Sch. 26 para. 19 omitted (11.12.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(2), [Sch. 16 para. 23\(2\)](#); S.I. 2013/2981, art. 2(d)

20 In section 152(1)(b) (general restrictions on imposing discretionary custodial sentences) for “under section 51A(2) of the Firearms Act 1968 (c. 27),” substitute “under section 1A(5) of the Prevention of Crime Act 1953, under section 51A(2) of the Firearms Act 1968, under section 139AA(7) of the Criminal Justice Act 1988,”.

21 In section 153(2) (length of discretionary custodial sentences: general provision) for “section 51A(2) of the Firearms Act 1968 (c. 27),” substitute “ section 1A(5) of the Prevention of Crime Act 1953, section 51A(2) of the Firearms Act 1968, section 139AA(7) of the Criminal Justice Act 1988,”.

22 (1) Section 305(4) (interpretation of Part 12) is amended as follows.

(2) Before paragraph (a) insert—

“(za) a sentence falls to be imposed under subsection (5) of section 1A of the Prevention of Crime Act 1953 if it is required by that subsection and the court is not of the opinion there mentioned,”.

(3) After paragraph (a) insert—

“(aa) a sentence falls to be imposed under subsection (7) of section 139AA of the Criminal Justice Act 1988 if it is required by that subsection and the court is not of the opinion there mentioned,”.

*Armed Forces Act 2006 (c. 52)*

23 The Armed Forces Act 2006 is amended as follows.

24 After section 227 (firearms offences) insert—

**“227A Offences of threatening with a weapon in public or on school premises**

(1) This section applies if—

- (a) a person aged 18 or over is convicted by a court of an offence under section 42 (criminal conduct); and
- (b) the corresponding offence under the law of England and Wales is an offence under section 1A of the Prevention of Crime Act 1953 or section 139AA of the Criminal Justice Act 1988 (threatening with article with blade or point or offensive weapon in public or on school premises).

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- (2) The court must impose a sentence of imprisonment for a term of at least 6 months unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence or to the offender, and
  - (b) would make it unjust to do so in all the circumstances.
- (3) In relation to times before the coming into force of section 61 of the Criminal Justice and Court Services Act 2000, the reference in subsection (2) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.”
- 25 In section 237(3) (duty to have regard to purposes of sentencing etc) after paragraph (b) insert “;
- (c) an offence the sentence for which falls to be imposed under section 227A(2).”
- 26 In section 239 (reduction in sentences for guilty pleas) at the end insert—
- “(6) Nothing in section 227A(2) prevents the court, after taking into account any matter mentioned in subsection (2) of this section, from imposing any sentence which is at least 80% of that specified in section 227A(2).”
- 27 In section 260(1)(b) (discretionary custodial sentences: general restrictions) for “227” substitute “ 227A ”.
- 28 In section 261(3) (length of discretionary custodial sentences: general provision) for “and 227” substitute “ , 227 and 227A ”.
- 29 In section 273(6)(b) (review of unduly lenient sentence by Court Martial Appeal Court) for “or 227” substitute “ , 227 or 227A ”.
- 30 (1) Paragraph 12 of Schedule 2 (“Schedule 2 offences”) is amended as follows.
- (2) After sub-paragraph (r) insert—
- “(ra) an offence under section 1A of the Prevention of Crime Act 1953 (threatening with offensive weapon in public);”.
- (3) In sub-paragraph (ai)—
- (a) after “134” insert “ , 139AA ”;
  - (b) after “torture,” insert “ threatening with article with blade or point or offensive weapon, ”.

*Coroners and Justice Act 2009 (c. 25)*

- 31 (1) Section 125(6) of the Coroners and Justice Act 2009 (sentencing guidelines: duty of court) is amended as follows.
- (2) After paragraph (e) insert—
- “(ea) section 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for offence of threatening with offensive weapon in public);”.
- (3) After paragraph (f) insert—

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“(fa) section 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for offence of threatening with article with blade or point or offensive weapon);”.

## SCHEDULE 27

Section 143

### CAUSING SERIOUS INJURY BY DANGEROUS DRIVING: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Road Traffic Act 1988 (c. 52)*

- 1 In section 13A(1) of the Road Traffic Act 1988 (disapplication of sections 1 to 3 for authorised motoring events) after “sections 1,” insert “1A, ”.

#### *Road Traffic Offenders Act 1988 (c. 53)*

- 2 The Road Traffic Offenders Act 1988 is amended as follows.
- 3 In section 23(1A) (alternative verdicts in Scotland) after paragraph (a) insert—  
“(aa) an offence under section 1A of that Act (causing serious injury by dangerous driving),”.
- 4 (1) Section 24 (alternative verdicts: general) is amended as follows.
- (2) In subsection (A2) after paragraph (a) insert—  
“(aa) an offence under section 1A of that Act (causing serious injury by dangerous driving),”.
- (3) In the table in subsection (1) in the appropriate place insert—

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“Section 1A (causing serious injury by Section 2 (dangerous driving) dangerous driving)

Section 3 (careless, and inconsiderate, driving)”.

- 
- 5 In section 34(4) (disqualification for certain offences) after paragraph (a)(ii) and the “or” after it insert—  
“(iia) an offence under section 1A of that Act (causing serious injury by dangerous driving), or”.
- 6 In section 36(2)(b) (disqualification until test is passed) after “(causing death by dangerous driving)” insert “, section 1A (causing serious injury by dangerous driving) ”.

F51-7 .....

#### Textual Amendments

**F51** Sch. 27 para. 7 repealed (8.6.2015) by [The Road Safety Act 2006 \(Consequential Amendments\) Order 2015 \(S.I. 2015/583\)](#), art. 1(1), [Sch. 1](#) Table 1

*Status: Point in time view as at 01/04/2016.*

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- 8 In section 45A(4) (effect of endorsement of driving records) as substituted by the Road Safety Act 2006—
- (a) after “section 1” insert “, 1A”;
  - (b) after “causing death by dangerous driving” insert “, causing serious injury by dangerous driving”.

- 9 In the table in Schedule 1 (application of provisions including sections 11 and 12(1): evidence as to driver and proof of identity) in the appropriate place insert—

“RTA section 1A	Causing serious injury by dangerous driving.	by Sections 11 and 12(1) of this Act.”
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*Crime (International Co-operation) Act 2003 (c. 32)*

- 10 In paragraph 3 of Schedule 3 to the Crime (International Co-operation) Act 2003 (application of duty to give notice to foreign authorities of driving disqualification of a non-UK resident) after sub-paragraph (a) insert—
- “(aa) section 1A (causing serious injury by dangerous driving),”.

*Armed Forces Act 2006 (c. 52)*

- 11 In paragraph 12(aj) of Schedule 2 to the Armed Forces Act 2006 (“Schedule 2 offences”)—
- (a) after “section 1,” insert “ 1A, ”;
  - (b) after “causing death by dangerous driving,” insert “ causing serious injury by dangerous driving, ”.

**Status:**

Point in time view as at 01/04/2016.

**Changes to legislation:**

Legal Aid, Sentencing and Punishment of Offenders Act 2012 is up to date with all changes known to be in force on or before 29 June 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.