

SCHEDULE 1

(introduced by sections 16(4) and 26(6))

BREACH OF LIBERATION CONDITION

Offence of breaching condition

- 1 (1) A person commits an offence if, without reasonable excuse, the person breaches a liberation condition by reason of—
- (a) failing to comply with an investigative liberation condition,
 - (b) failing to appear at court as required by the terms of an undertaking, or
 - (c) failing to comply with the terms of an undertaking, other than the requirement to appear at court.
- (2) Sub-paragraph (1) does not apply where (and to the extent that) a person breaches a liberation condition by reason of committing an offence (in which case see paragraph 3).
- (3) It is competent to amend a complaint to include an additional charge of an offence under sub-paragraph (1) at any time before the trial of a person in summary proceedings for—
- (a) the original offence, or
 - (b) an offence arising from the same circumstances as the original offence.
- (4) In sub-paragraph (3), “the original offence” is the offence in connection with which—
- (a) an investigative liberation condition was imposed, or
 - (b) an undertaking was given.

Sentencing for the offence

- 2 (1) A person who commits an offence under paragraph 1(1) is liable on summary conviction to—
- (a) a fine not exceeding level 3 on the standard scale, or
 - (b) imprisonment for a period—
 - (i) where conviction is in the justice of the peace court, not exceeding 60 days,
 - (ii) where conviction is in the sheriff court, not exceeding 12 months.
- (2) A penalty under sub-paragraph (1) may be imposed in addition to any other penalty which it is competent for the court to impose, even if the total of penalties imposed exceeds the maximum penalty which it is competent to impose in respect of the original offence.
- (3) The reference in sub-paragraph (2) to a penalty being imposed in addition to another penalty means, in the case of sentences of imprisonment or detention—
- (a) where the sentences are imposed at the same time (whether or not in relation to the same complaint), framing the sentences so that they have effect consecutively,
 - (b) where the sentences are imposed at different times, framing the sentence imposed later so that (if the earlier sentence has not been served) the later sentence has effect consecutive to the earlier sentence.

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- (4) Sub-paragraph (3)(b) is subject to section 204A (restriction on consecutive sentences for released prisoners) of the 1995 Act.
- (5) Where a person is to be sentenced in respect of an offence under paragraph 1(1), the court may remit the person for sentence in respect of it to any court which is considering the original offence.
- (6) In sub-paragraphs (2) and (5), “the original offence” is the offence in connection with which—
 - (a) the investigative liberation condition was imposed, or
 - (b) the undertaking was given.

Breach by committing offence

- 3 (1) This paragraph applies—
 - (a) where (and to the extent that) a person breaches a liberation condition by reason of committing an offence (“offence O”), but
 - (b) only if the fact that offence O was committed while the person was subject to the liberation condition is specified in the complaint or indictment.
- (2) In determining the penalty for offence O, the court must have regard—
 - (a) to the fact that offence O was committed in breach of a liberation condition,
 - (b) if the breach is by reason of the person’s failure to comply with the terms of an investigative liberation condition, to the matters mentioned in paragraph 4(1),
 - (c) if the breach is by reason of the person’s failure to comply with the terms of an undertaking other than the requirement to appear at court, to the matters mentioned in paragraph 5(1).
- (3) Where the maximum penalty in respect of offence O is specified by (or by virtue of) an enactment, the maximum penalty is increased—
 - (a) where it is a fine, by the amount equivalent to level 3 on the standard scale,
 - (b) where it is a period of imprisonment—
 - (i) as respects conviction in the justice of the peace court, by 60 days,
 - (ii) as respects conviction in the sheriff court or the High Court, by 6 months.
- (4) The maximum penalty is increased by sub-paragraph (3) even if the penalty as so increased exceeds the penalty which it would otherwise be competent for the court to impose.
- (5) In imposing a penalty in respect of offence O, the court must state—
 - (a) where the penalty is different from that which the court would have imposed had sub-paragraph (2) not applied, the extent of and the reasons for that difference,
 - (b) otherwise, the reasons for there being no such difference.

Matters for paragraph 3(2)(b)

- 4 (1) For the purpose of paragraph 3(2)(b), the matters are—
 - (a) the number of offences in connection with which the person was subject to investigative liberation conditions when offence O was committed,

- (b) any previous conviction the person has for an offence under paragraph 1(1)(a),
- (c) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of paragraph 3(2), from that which the court would have imposed but for that paragraph.

(2) In sub-paragraph (1)—

- (a) in paragraph (b), the reference to any previous conviction includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union (other than the United Kingdom) for an offence that is equivalent to an offence under paragraph 1(1)(a),
- (b) in paragraph (c), the references to paragraph 3(2) are to be read, in relation to a previous conviction by a court referred to in paragraph (a) of this sub-paragraph, as references to any provision that is equivalent to paragraph 3(2).

- (3) Any issue of equivalence arising under sub-paragraph (2)(a) or (b) is for the court to determine.

Matters for paragraph 3(2)(c)

5 (1) For the purpose of paragraph 3(2)(c), the matters are—

- (a) the number of undertakings to which the person was subject when offence O was committed,
- (b) any previous conviction the person has for an offence under paragraph 1(1)(c),
- (c) the extent to which the sentence or disposal in respect of any previous conviction differed, by virtue of paragraph 3(2), from that which the court would have imposed but for that paragraph.

(2) In sub-paragraph (1)—

- (a) in paragraph (b), the reference to any previous conviction includes any previous conviction by a court in England and Wales, Northern Ireland or a member State of the European Union (other than the United Kingdom) for an offence that is equivalent to an offence under paragraph 1(1)(c),
- (b) in paragraph (c), the references to paragraph 3(2) are to be read, in relation to a previous conviction by a court referred to in paragraph (a) of this sub-paragraph, as references to any provision that is equivalent to paragraph 3(2).

- (3) Any issue of equivalence arising under sub-paragraph (2)(a) or (b) is for the court to determine.

Evidential presumptions

6 (1) In any proceedings in relation to an offence under paragraph 1(1), the facts mentioned in sub-paragraph (2) are to be held as admitted unless challenged by preliminary objection before the person's plea is recorded.

(2) The facts are—

- (a) that the person breached an undertaking by reason of failing to appear at court as required by the terms of the undertaking,
- (b) that the person was subject to a particular—
 - (i) investigative liberation condition, or

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(ii) condition under the terms of an undertaking.

- (3) In proceedings to which sub-paragraph (4) applies—
- (a) something in writing, purporting to impose investigative liberation conditions and bearing to be signed by a constable, is sufficient evidence of the terms of the investigative liberation conditions imposed under section 16(2),
 - (b) something in writing, purporting to be an undertaking and bearing to be signed by the person said to have given it, is sufficient evidence of the terms of the undertaking at the time that it was given,
 - (c) a document purporting to be a notice (or a copy of a notice) under section 18, 27 or 28, is sufficient evidence of the terms of the notice.
- (4) This sub-paragraph applies to proceedings—
- (a) in relation to an offence under paragraph 1(1), or
 - (b) in which the fact mentioned in paragraph 3(1)(b) is specified in the complaint or indictment.
- (5) In proceedings in which the fact mentioned in paragraph 3(1)(b) is specified in the complaint or indictment, that fact is to be held as admitted unless challenged—
- (a) in summary proceedings, by preliminary objection before the person's plea is recorded, or
 - (b) in the case of proceedings on indictment, by giving notice of a preliminary objection in accordance with section 71(2) or 72(6)(b)(i) of the 1995 Act.

Interpretation

- 7 In this schedule—
- (a) references to an investigative liberation condition are to a condition imposed under section 16(2) or 19(3)(b) subject to any modification by notice under section 18(1) or (5)(a),
 - (b) references to an undertaking are to an undertaking given under section 25(2)(a),
 - (c) references to the terms of an undertaking are to the terms of an undertaking subject to any modification by—
 - (i) notice under section 27(1), or
 - (ii) the sheriff under section 30(3)(b).