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SCHEDULES

SCHEDULE 3

BREACH, REVOCATION AND AMENDMENT OF CURFEW, PROBATION, COMMUNITY SERVICE, COMBINATION AND DRUG TREATMENT AND TESTING ORDERS

PART III

REVOCATION OF ORDER

Revocation of order with or without re-sentencing: powers of magistrates' court

- 10 (1) This paragraph applies where a relevant order made by a magistrates' court is in force in respect of any offender and on the application of the offender or the responsible officer it appears to the appropriate magistrates' court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—
- (a) for the order to be revoked; or
 - (b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.
- (2) In this paragraph “the appropriate magistrates court” means—
- (a) in the case of a drug treatment and testing order, the magistrates' court responsible for the order;
 - (b) in the case of any other relevant order, a magistrates' court acting for the petty sessions area concerned.
- (3) The appropriate magistrates' court may—
- (a) revoke the order; or
 - (b) both—
 - (i) revoke the order; and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.
- (4) The circumstances in which a probation, combination or drug treatment and testing order may be revoked under sub-paragraph (3)(a) above shall include the offender's making good progress or his responding satisfactorily to supervision or, as the case may be, treatment.
- (5) In dealing with an offender under sub-paragraph (3)(b) above, a magistrates' court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

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- (6) A person sentenced under sub-paragraph (3)(b) above for an offence may appeal to the Crown Court against the sentence.
- (7) Where a magistrates' court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it shall summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.
- (8) No application may be made by the offender under sub-paragraph (1) above while an appeal against the relevant order is pending.

Revocation of order with or without re-sentencing: powers of Crown Court on conviction etc.

- 11 (1) This paragraph applies where—
 - (a) a relevant order made by the Crown Court is in force in respect of an offender and the offender or the responsible officer applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made; or
 - (b) an offender in respect of whom a relevant order is in force is convicted of an offence before the Crown Court or, having been committed by a magistrates' court to the Crown Court for sentence, is brought or appears before the Crown Court.
- (2) If it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may—
 - (a) revoke the order; or
 - (b) both—
 - (i) revoke the order; and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could deal with him if he had just been convicted of that offence by or before the court which made the order.
- (3) The circumstances in which a probation, combination or drug treatment and testing order may be revoked under sub-paragraph (2)(a) above shall include the offender's making good progress or his responding satisfactorily to supervision or, as the case may be, treatment.
- (4) In dealing with an offender under sub-paragraph (2)(b) above, the Crown Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

Substitution of conditional discharge for probation or combination order

- 12 (1) This paragraph applies where a probation order or combination order is in force in respect of any offender and on the application of the offender or the responsible officer to the appropriate court it appears to the court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

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- (a) for the order to be revoked; and
 - (b) for an order to be made under section 12(1)(b) of this Act discharging the offender conditionally for the offence for which the probation or combination order was made.
- (2) In this paragraph “the appropriate court” means—
 - (a) where the probation or combination order was made by a magistrates’ court, a magistrates’ court acting for the petty sessions area concerned;
 - (b) where the probation or combination order was made by the Crown Court, the Crown Court.
- (3) No application may be made under paragraph 10 or 11 above for a probation order or combination order to be revoked and replaced with an order for conditional discharge under section 12(1)(b); but otherwise nothing in this paragraph shall affect the operation of paragraphs 10 and 11 above.
- (4) Where this paragraph applies—
 - (a) the appropriate court may revoke the probation or combination order and make an order under section 12(1)(b) of this Act discharging the offender in respect of the offence for which the probation or combination order was made, subject to the condition that he commits no offence during the period specified in the order under section 12(1)(b); and
 - (b) the period specified in the order under section 12(1)(b) shall be the period beginning with the making of that order and ending with the date when the probation period specified in the probation or combination order would have ended.
- (5) For the purposes of sub-paragraph (4) above, subsection (1) of section 12 of this Act shall apply as if—
 - (a) for the words from the beginning to “may make an order either” there were substituted the words “Where paragraph 12 of Schedule 3 to this Act applies, the appropriate court may (subject to the provisions of sub-paragraph (4) of that paragraph) make an order in respect of the offender”; and
 - (b) paragraph (a) of that subsection were omitted.
- (6) An application under this paragraph may be heard in the offender’s absence if—
 - (a) the application is made by the responsible officer; and
 - (b) that officer produces to the court a statement by the offender that he understands the effect of an order for conditional discharge and consents to the making of the application;and where the application is so heard section 12(4) of this Act shall not apply.
- (7) No application may be made under this paragraph while an appeal against the probation or combination order is pending.
- (8) Without prejudice to paragraph 15 below, on the making of an order under section 12(1)(b) of this Act by virtue of this paragraph the court shall forthwith give copies of the order to the responsible officer, and the responsible officer shall give a copy to the offender.
- (9) Each of sections 1(11), 2(9) and 66(4) of the ^{M1}Crime and Disorder Act 1998 (which prevent a court from making an order for conditional discharge in certain cases) shall have effect as if the reference to the court by or before which a person is convicted of

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an offence there mentioned included a reference to a court dealing with an application under this paragraph in respect of the offence.

Marginal Citations

M1 1998 c. 37.

Revocation following custodial sentence by magistrates' court unconnected with order

- 13 (1) This paragraph applies where—
- (a) an offender in respect of whom a relevant order is in force is convicted of an offence by a magistrates' court unconnected with the order;
 - (b) the court imposes a custodial sentence on the offender; and
 - (c) it appears to the court, on the application of the offender or the responsible officer, that it would be in the interests of justice to exercise its powers under this paragraph, having regard to circumstances which have arisen since the order was made.
- (2) In sub-paragraph (1) above “a magistrates' court unconnected with the order” means—
- (a) in the case of a drug treatment and testing order, a magistrates' court which is not responsible for the order;
 - (b) in the case of any other relevant order, a magistrates' court not acting for the petty sessions area concerned.
- (3) The court may—
- (a) if the order was made by a magistrates' court, revoke it;
 - (b) if the order was made by the Crown Court, commit the offender in custody or release him on bail until he can be brought or appear before the Crown Court.
- (4) Where the court deals with an offender's case under sub-paragraph (3)(b) above, it shall send to the Crown Court such particulars of the case as may be desirable.
- 14 Where by virtue of paragraph 13(3)(b) above an offender is brought or appears before the Crown Court and it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the relevant order was made, the Crown Court may revoke the order.

Supplementary

- 15 (1) On the making under this Part of this Schedule of an order revoking a relevant order, the proper officer of the court shall forthwith give copies of the revoking order to the responsible officer.
- (2) In sub-paragraph (1) above “proper officer” means—
- (a) in relation to a magistrates' court, the justices' chief executive for the court; and
 - (b) in relation to the Crown Court, the appropriate officer.

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- (3) A responsible officer to whom in accordance with sub-paragraph (1) above copies of a revoking order are given shall give a copy to the offender and to the person in charge of any institution in which the offender was required by the order to reside.
- 16 Paragraph 9(3) above shall apply for the purposes of paragraphs 10 and 11 above as it applies for the purposes of paragraph 4 above, but as if for the words “paragraph 4(1)(d) above” there were substituted “ paragraph 10(3)(b)(ii) or 11(2)(b)(ii) below ”.
- 17 Where under this Part of this Schedule a relevant order is revoked and replaced by an order for conditional discharge under section 12(1)(b) of this Act and—
- (a) the order for conditional discharge is not made in the circumstances mentioned in section 13(9) of this Act (order made by magistrates’ court in the case of an offender under 18 in respect of offence triable only on indictment in the case of an adult), but
 - (b) the relevant order was made in those circumstances,
- section 13(9) shall have effect as if the order for conditional discharge had been made in those circumstances.

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