These notes refer to the Criminal Justice Act 2003 (c.44)
which received Royal Assent on 20th November 2003

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

SCHEDULES

Schedule 1: Amendments related to Part 1

744. *Paragraphs 1 to 10* make various amendments which are consequential on the specific modifications and extensions to powers set out in Part 1.

745. *Paragraph 11* amends section 2 of the Criminal Justice Act 1987 to allow "appropriate persons" to exercise the powers of a constable executing a warrant under that section. "Appropriate persons" are either members of the Serious Fraud Office or authorised by the Director of that Office to accompany a constable executing a warrant under that section. This amendment is similar to that made by Section 2 of the Act. "Appropriate persons" may exercise those powers only in the company and under the supervision of a constable. *Paragraphs 12 and 13* make related amendments of section 2.

746. *Paragraph 14* extends the meaning of property seized by a constable, for the purposes of section 56(1) of the Criminal Justice and Police Act 2001, to include property seized by persons accompanying constables executing warrants (as allowed for by Section 2 of, and paragraph 11 of Schedule 1 to, the Act). This amendment is required for those cases in which a person accompanying a constable executing a warrant has (because of the changes made by the Act) a power of seizure to which section 50, 53, 54 or 55 of the Criminal Justice and Police Act 2001 applies. Section 50 confers extended powers of seizure and sections 53 to 55 impose obligations to return certain seized items. Section 56 is relevant in determining whether items must be returned under sections 53 to 55 or whether they may be retained. Its effect is to authorise the retention of certain items.

747. *Paragraph 15* extends stop and search powers under section 2 of the Armed Forces Act 2001 to articles made, adapted or intended for use in causing criminal damage. This amendment is similar to that made by Section 1 of the Act.

748. *Paragraphs 16 to 20* amend Schedule 4 to the Police Reform Act 2002 which allows certain police powers to be exercised by designated civilian members of staff. The amendments are necessary to ensure that those provisions are consistent with the amendments to PACE powers set out in the Act.

Schedule 8 – Breach, revocation and amendment of community order

749. This Schedule largely reproduces with some amendments the provisions of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000 (which will continue to apply to certain orders for young offenders). *Part 1* deals with interpretation and other matters. *Part 2* deals with breaches of requirements of a community order.

750. Under *paragraph 5*, if an offender's responsible officer is of the view that he has failed to comply with any of the requirements of a community order without reasonable excuse, he either must give the offender a written warning or start enforcement proceedings. Under *paragraph 6*, if the offender fails again to comply, within a 12 month period and without reasonable excuse, the responsible officer must start

enforcement proceedings. The responsible officer institutes proceedings by laying an information before a magistrates' court or the Crown Court, depending on the order.

751. Under *paragraph 7*, the magistrates' court may issue a summons requiring the attendance of the offender (or a warrant for his arrest) if it appears that he has failed to comply with any of the requirements of either of the following: a community order made by a magistrates' court; a community order made by the Crown Court which includes a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court. In the case of a community order which includes a drug rehabilitation requirement which is subject to review, the summons or warrant must direct the offender to appear or be brought before the magistrates' court responsible for the order.

752. *Paragraph 8* confers similar powers on the Crown Court where it has made a community order which does not include a direction that a failure to comply with the requirements be dealt with by the magistrates' court.

753. *Paragraph 9* provides that if a magistrates' court is satisfied that the offender has failed to comply with the community order it must deal with him in one of the ways specified. It can amend the order to make the requirements more onerous on the offender (for example by extending the duration of a particular requirement, but not beyond the limits that apply to that certain requirement nor beyond the three year limit of a community order). It can revoke the order and re-sentence the offender as if he had just been convicted. If the original offence was not punishable with imprisonment but the offender has wilfully and persistently failed to comply with the order the court can revoke the order and sentence him to a custodial sentence of not exceeding 51 weeks. When choosing any of these options the court must take into account the extent to which the offender has complied with the order. If the court takes the second or third option, it must revoke the community order if it is still in force. If the offender is re-sentenced, he can appeal against the new sentence. Where the order was made by the Crown Court (and that court directed that failures to comply should be dealt with by the magistrates' court) the magistrates' court dealing with the breach can remand the offender in custody or release him on bail to appear before the Crown Court. In this instance, it must send various details to the Crown Court regarding the breach.

754. *Paragraph 10* sets out how the Crown Court must deal with failure to comply with a community order whether dealt with directly under paragraph 8 or on committal from a magistrates' court under paragraph 9. The Crown Court's powers are similar to the magistrates' courts', except that the Crown Court will be able to exercise its own wider sentencing powers when re-sentencing. The court determines whether a breach has occurred, not a jury.

755. Under *paragraph 11,* if an offender has refused to comply with a mental health, drug or alcohol treatment requirement, and the refusal is believed by the court to be reasonable under the circumstances, it is not to count as a breach of the order.

756. *Paragraph 12* deals with the powers of a magistrates' court in a case where the offender was under 18 when the order was made, the offence would have been triable only on indictment had it been committed by an adult and the offender has attained 18 by the time the court deals with the enforcement proceedings.

757. *Part 3* of the Schedule deals with the revocation of community orders. Under *paragraph 13* either the offender or the responsible officer can apply to have the order revoked, due to circumstances that have arisen since the order was made. An example might be if the offender has become very ill and is unable to complete the requirements. The court can also revoke the order and re-sentence the offender as if he had just been convicted. This might occur if the offender or his responsible officer wanted to apply for a community order with different requirements, for example due to the good progress of the offender. If the court re-sentences, it must take into account the extent to which the offender complied with the original order. The offender can appeal against the second sentence.

If the offender has not made the application to revoke, the court must summon him to appear in order to revoke or revoke and re-sentence. An offender cannot apply to revoke the order if an appeal against it is pending.

758. *Paragraph 14* gives similar powers to the Crown Court in the case of orders it has made which do not contain a direction that failure to comply is to be dealt with by the magistrates' court.

759. Under *paragraph 15*, if the offender was under 18 when the community order was made, and the offence was triable only on indictment had it been committed by an adult, as part of revocation and re-sentencing after he attains 18 the court can impose a fine up to £5000 or re-sentence him as if he had just been convicted of an offence punishable with imprisonment for a term not exceeding 51 weeks.

760. *Part 4* of the Schedule deals with amendment of community orders. *Paragraph 16* deals with amendments by reason of the offender changing residence. A change of residence may necessitate amendment of the order to refer to an alternative petty sessions area. In this case, the change may be made on application by either the offender or his responsible officer. The appropriate court may (and if the application was made by the responsible officer, must) cancel or change any requirements of the order that are not available in the area to which the offender wishes to move. This is especially important in the case of a programme requirement. The appropriate court is the Crown Court where the order was made by the Crown Court and the order does not include a direction that any failure to comply should be dealt with by the magistrates' court or, in any other case, a magistrates' court in the petty sessions area concerned.

761. Under *paragraph 17* an offender or his responsible officer can also apply to have the requirements of an order amended, even if he is not planning to move. The court cannot add a wholly new requirement or substitute a different requirement for one that was originally specified in the order. The appropriate court can cancel a requirement or adjust it, for example to alter the hours of a curfew or substitute one activity for another. It can also impose electronic monitoring onto any requirement of the order. Any amendment is subject to the same restrictions as would be in place if the order were being made at that point. The court cannot amend a drug rehabilitation, alcohol treatment or mental health treatment requirement without the offender's consent. If the offender fails to consent, the court can revoke the order and re-sentence him. If it re-sentences him it must take into account the extent to which the offender has complied with the requirements of the community order. It can impose a custodial sentence if the original offence was punishable with imprisonment. If the offender was under 18 when the community order was made, and the offence would have been triable only on indictment had it been committed by an adult, as part of re-sentencing the court can impose a fine up to £5000 or re-sentence him as if he had just been convicted of an offence punishable with imprisonment for a term not exceeding 51 weeks.

762. *Paragraph 18* provides that, where a community order includes a drug rehabilitation, alcohol treatment or mental health treatment requirement, and the medical practitioner or other person responsible for the treatment is of the opinion that the treatment should be extended beyond the period specified in the order, that the offender should receive different treatment, that the offender is not susceptible to treatment or that the offender does not require further treatment he must make a report to the responsible officer. He can also report that he is unwilling to continue to treat (or direct the treatment) of the offender for any reason. The responsible officer must then apply to the court to have the requirement amended or cancelled.

763. Under *paragraph 19*, where a community order includes a drug rehabilitation requirement with provision for review, the responsible officer can apply to the court to amend the order to provide for future reviews to take place with or without hearings.

764. *Paragraph 20* provides that, on the application of the offender or the responsible officer, the court may extend an unpaid work requirement beyond the 12 months limit specified

in section 193, if it believes it to be in the interests of justice to do so having regard to circumstances which have arisen since the order was made.

765. *Part 5* deals with the powers of the court in relation to a community order where the offender is subsequently convicted for another offence. *Paragraph 21* sets out what the magistrates' court can do in this situation. It may, if it appears to the court to be in the interests of justice, revoke the order, or revoke the order and re-sentence the offender for the original offence as if he had just been convicted of it. If it re-sentences him, the court must take into account the extent to which the offender complied with the order. If it re-sentences, the offender has the right of appeal. If the magistrates' court is dealing with the new offence but the community order was made in the Crown Court it can commit the offender to custody or release him on bail to appear at the Crown Court.

766. *Paragraph 23* makes similar provision in relation to the powers of a Crown Court following conviction of a subsequent offence.

767. *Part 6* of the Schedule contains supplementary provisions. The court cannot amend an order while an appeal against the order is pending. Where a court is amending an order or dealing with a breach, and the application is not by the offender, the court must summon the offender to appear before the court and may issue a warrant if he does not appear. This does not apply if the court is cancelling a requirement, reducing the period of a requirement or substituting a new petty sessions area or place in the order. When amending a requirement any restrictions on the requirement still apply. The rest of this Part sets out arrangements for sending copies of the order to relevant parties.

Schedule 9 – *Transfer of community orders to Scotland or Northern Ireland*

768. This Schedule is based on Schedule 4 to the Powers of Criminal Courts (Sentencing) Act 2000, and provides for community orders made in England and Wales to transfer to Scotland or Northern Ireland. An order can transfer either at the point of sentence or once the sentence has begun.

769. *Paragraphs 1 and 2* concern arrangements to transfer community orders to Scotland, while p*aragraphs 3 to 4* do the same for Northern Ireland. *Paragraphs 5 to 15* are general provisions that apply to transfers to either place.

770. If the court is considering making or amending a community order so that the offender can move to Scotland or Northern Ireland, it must check whether provision can be made for the offender to comply with the requirements and that arrangements for his supervision can be made in the locality in Scotland or Northern Ireland where he proposes to live. If the court is amending an existing order to allow it to transfer, and any requirement cannot be complied with in the locality of Scotland or Northern Ireland (for whatever reason) it must be removed from the order. Otherwise, the court can decline to amend the order and require it to be carried out in England and Wales.

771. When an order transfers, it will be treated as a Scottish or Northern Ireland community order, so the court must specify which corresponding order the community order will transfer as. For example, if the community order requiring unpaid work, it will transfer as a Scottish or Northern Ireland community service order.

772. *Paragraph 5* defines various terms used in the Schedule. *Paragraph 6* provides for the sentencing court to send copies of the order and other information to the court that will have jurisdiction in Scotland or Northern Ireland. *Paragraph 7* describes how the 'responsible officer' provisions are to be interpreted in the case of a transferred community order.

773. *Paragraph 8* provides for the order to be treated as a corresponding order in Scotland and Northern Ireland. *Paragraph 9* requires the court to explain how the order will function once transferred. *Paragraph 10* describes what powers the Scottish or Northern Ireland court will have in relation to the order.

774. Under *paragraph 11* the Scottish and Northern Ireland courts may summons the offender to the court which made the order if he fails to comply with the requirements of the order (they can also deal with the breach themselves if they wish, as currently)). *Paragraph 12* provides that if the offender fails to appear, the court can issue a warrant, and can exercise any power in respect of the community order as if the court were in England and Wales. *Paragraph 13* prevents the court from amending a community order unless arrangements can be made for the offender to comply with the amended requirements.

775. *Paragraph 14* provides that if a Scottish or Northern Ireland court amends a community order in response to breach, this Schedule continues to apply to that order. *Paragraph 15* concerns sending documents to the court which made the order, if the offender is summonsed to appear before that court due to a failure to comply with the requirements.

Schedule 10: Revocation or amendment of custody plus orders and amendment of intermittent custody orders

776. This Schedule makes provision for revoking custody plus orders, and amending custody plus and intermittent custody orders. In both cases the prison sentence itself will not be revoked or amended. *Paragraph 3* provides for the court to revoke custody plus orders and remove requirements as to licence conditions from intermittent custody orders on application of the offender or responsible officer and where it deems it to be in the interests of justice to do so. *Paragraph 4* provides for the court to amend the order to refer to another petty sessions area if the offender proposes to change, or has changed, his residence, or if the responsible officers or Secretary of States requires him to. If a requirement is not available in the new area the court may cancel that requirement or substitute it for another which can be complied with in the new area. Specifically, a programme requirement cannot be imposed on amendment unless it is available in the new area.

777. Under *paragraph 5*, the court may, on application of the offender, the responsible officer or the Secretary of State, amend a custody plus or intermittent custody order by cancelling a requirement or replacing it with another of the same kind (that is, if it is in the same paragraph of section 177(1)). New requirements are subject to the same restrictions as they would have been if the order was being made. *Paragraph 6* provides that the court may, on application of the offender, the responsible officer or the Secretary of State, amend the licence periods of an intermittent custody order, if suitable prison accommodation is available. The court may also amend the order such that the intermittence of the licence periods is removed. This provision could be used if the offender, for example, loses his job, which had provided the reason for intermittence. He might want to serve his sentence in the normal manner in order to get the custodial days over with as soon as possible. Another example might be if the offender turned out to be unsuitable for intermittent custody. The responsible officer could apply to have the intermittence removed from the sentence, so that the custodial periods are served consecutively, followed by a single licence period.

778. *Paragraphs 7 to 9* contain supplementary provisions. No application under this Schedule can be made if an appeal against the order is pending. Where a court is amending an order, and the application is not by the offender, the court must summon the offender to appear before the court and may issue a warrant if he does not appear. This does not apply if the court is cancelling a requirement. Paragraph 9 sets out arrangements for sending copies of the order to relevant parties.

Schedule 11 – Transfer of custody plus orders or intermittent custody orders to Scotland or Northern Ireland

779. *Schedule 11* provides for the transfer of custody plus and intermittent custody orders to Scotland and Northern Ireland.

780. Part 1 is an interpretative provision. Parts 2 and 3 relate to Scotland and Northern Ireland, respectively, Part 4 contains general provisions applicable to both and Part 5 contains supplementary provisions.

Parts 2 and 3

781. *Paragraphs 2(1) and 9(1)* allow the court to set requirements that can be complied with in Scotland and Northern Ireland, respectively. Paragraphs 2(2) and 9(2) ensure that arrangements can be made for the offender to comply with the requirements in the locality in Scotland or Northern Ireland in which he will live, and that supervision can be arranged.

782. *Paragraphs 2(3) and 9(3)* do not set out a complete list of requirements available for transfer. They list those which have arrangements associated with them that the court has to confirm are available. These arrangements involve third parties, whose co-operation must be obtained before imposing them. For example, supervision does not need further arrangements because it only concerns the offender and the probation officer. A programme requirement, however, requires a place to be available on a suitable course.

783. *Paragraphs 2(4) and 9(4)* provide for the eventuality that the Secretary of State declines to transfer the prisoner after the court has set requirements that can be complied with in Scotland or Northern Ireland. It is the Secretary of State who takes the decision on all prisoner transfers. If he declines, an application has to be made to the court to change the requirements so that they can be complied with in England and Wales.

784. *Paragraphs 3 and 10* allow custody plus orders and intermittent custody orders to transfer once they have begun (the latter will only transfer once all of the custodial periods have been served). It gives the court the power to amend the order such that it requires the requirements to be complied with in Scotland and Northern Ireland, respectively. The court must be satisfied that the offender lives there, the Secretary of State must have made, or indicated his willingness, to transfer the offender, and arrangements must be made so that the offender can comply with the requirements in Scotland or Northern Ireland.

785. *Paragraph 4* prevents the court from including an attendance centre requirement in an order to be transferred to Scotland, as they do not have them there.

786. *Paragraphs 5 and 11* require the order to specify the local authority area in Scotland and the petty sessions district in Northern Ireland where the offender will be living. A supervising officer will also be assigned.

787. *Paragraphs 6 and 12* provide for a copy of the order to be sent to the local authority in Scotland or the Probation Board in Northern Ireland, along with any other relevant information. The provision regarding who would receive the order if it were not transferring are disapplied.

788. *Paragraphs 7 and 13* modify Chapter 4 of Part 12, which provides the requirements available under relevant orders, so that it can apply in Scotland or Northern Ireland, for the purpose of transferred orders. *Sub-paragraph (3)* of *paragraphs 7 and 13* omits all of the provisions which state that the provider of a certain requirement have to be specified by the Secretary of State. This needs to be omitted because it would not include providers in Scotland and Northern Ireland, and thus those requirements would not be able to form part of a transferred order.

Part 4

789. Part 4 contains general provisions applying to custody plus and intermittent custody orders transferred to either Scotland or Northern Ireland. Under *paragraph 17(1)* the home court (the local court in Scotland or Northern Ireland) can amend a transferred order as regards the residence of the offender, or as regards the requirements, exactly as

a court in England and Wales can for an ordinary custody plus or intermittent custody order. *Sub-paragraphs (2) and (3)* set out procedural requirements for ensuring that the offender is present for any amendment not applied for by the offender, except when the court cancels a requirement, as it is assumed an offender would not object to that. *Sub-paragraph (4)* ensures that where an amendment is being considered to a requirement which can only be made on recommendation of an officer of the local probation board, "officer of the local probation board" refers to the supervising officer in the case of transferred orders.

790. *Paragraph 18* gives the Scottish or Northern Ireland court the option to decline to amend the order and send it back to the original court to deal with.

791. *Paragraph 19* requires the court to ensure that any amendments to a transferred suspended sentence order can be complied with in the area of Scotland or Northern Ireland in which the offender lives.

792. *Paragraph 20* applies the Schedule to any amended order as it applies to an unamended order. *Paragraph 21* provides for the distribution of copies of the amended order.

793. *Paragraph 22* applies to cases where orders have been made or amended such that they can be complied with in Scotland and Northern Ireland, but the offender will in fact be serving his sentence in England and Wales, either because the Secretary of State has declined to transfer him or because he wants to transfer back to England and Wales. *Sub-paragraph (1)(a)* concerns the case indicated in paragraphs 2(4) and 9(4) where the Secretary of State declines to transfer a prisoner who has already had his order amended so as to be able to be complied with in Scotland or Northern Ireland. In this case the court must amend the order so that it can be complied with in England and Wales.

794. *Sub-paragraph (1)(b)* provides for the home court to amend the requirements of a custody provides for custody plus and intermittent custody orders transferred to Scotland or Northern Ireland to be transferred back to England and Wales. Before the court amends the requirements so that they can be complied with in England and Wales the Secretary of State must have agreed to the transfer, or indicated his willingness to agree to it.

795. *Sub-paragraph (3)* indicates that the court must amend the order in the case where the Secretary of State has declined to transfer the prisoner. *Sub-paragraph (4)* requires the court to substitute or cancel any requirement which cannot be complied with in England and Wales. *Sub-paragraph (5)* requires the court to ensure that an appropriate programme is available in the new area. *Sub-paragraph (6)* ensures that the petty sessions area is specified on the order when it is transferred back. *Sub-paragraph (7)* concerns distributing copies of the amended order and *sub-paragraph (8)* disapplies this Schedule to orders transferred back to England and Wales.

796. *Part 5* of this Schedule ensures that the Scottish legislation in relation to electronic monitoring reports being submitted in court will apply to transferred suspended sentence orders, and that summonses, citations and warrants can be executed on offenders in different parts of the United Kingdom.

Schedule 12: Breach, revocation and amendment of suspended sentence order, and effect of further conviction

797. Part 1 of this Schedule and *paragraphs 3 and 4*, on statutory warnings, make similar provision to that dealing with community orders in Schedule 8. *Paragraph 6* provides that a magistrates' court can issue a summons for an offender to appear before a court (or a warrant for his arrest) if the offender has failed to comply with any community requirements of the order in cases where the suspended sentence order was made by a magistrates' court or which was made by the Crown Court and includes a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates court. The summons will specify the court reviewing the order

if the order contains provision for review. If the offender does not appear in response to a summons the court can issue a warrant for his arrest. *Paragraph 7* provides for the Crown Court to issue a summons or warrant for the offender to appear before it where the order was made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court. If the offender does not appear in response to a summons, a warrant for his arrest can be issued.

798. *Paragraph 8* sets out the magistrates' court's powers where an offender breaches a suspended sentence by failing to comply with a community requirement or by committing a further offence anywhere in the United Kingdom. The presumption is that the suspended sentence will be activated, unless the court finds that it would be unjust to do so. If it activates the suspended sentence the court can set a shorter term or custodial period for the offender to serve if it wishes. If the court finds that it would be unjust to activate the suspended sentence it can keep the sentence suspended but amend the order to make the community requirements more onerous or to extend either the supervision or operational periods. The court must state the reasons for choosing this option. It must also take into account the extent to which the offender complied with the requirements of the order and the facts of the subsequent offence. A magistrates' court can commit the offender to the Crown Court, including orders which were made by the Crown Court and include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court. If the proceedings occur in the Crown Court the determination of breach is to be made by the court and not a jury.

799. Under *paragraph 9* when the suspended sentence is activated, the court must make a custody plus order. That is, it has to set the licence conditions that will apply on the offender's release from custody at the end of custodial period of his sentence. The court may decide whether the new sentence is to take effect immediately or after any other sentence that the offender is serving (subject to the rules affecting consecutive sentences). *Sub-paragraph (3)* provides that an activated suspended sentence counts as having been imposed by the court which originally imposed the suspended sentence.

800. Under *paragraph 10,* if an offender has refused to comply with a mental health, drug or alcohol treatment requirement, and the refusal is believed by the court to be reasonable under the circumstances, it is not to count as breach. Also, the offender's consent must be obtained before amending a mental health, drug or alcohol treatment requirement in response to breach. *Paragraph 11* sets out which court deals with the suspended sentence if the offender is convicted of a further offence. Where the original sentence was passed by the Crown Court and the subsequent offence by a magistrates' court, the latter can remand the offender in custody or on bail to the Crown Court or give written notice to the Crown Court of the subsequent conviction.

801. Under *paragraph 12*, if it becomes apparent that the court has not dealt with the suspended sentence in cases where the offender has committed a new offence, a court with jurisdiction may issue a summons or warrant to the offender to appear before a court. A court with jurisdiction refers to the Crown Court if the suspended sentence was passed by the Crown Court, or a justice acting for the area if the suspended sentence was passed by the magistrates' court. A magistrates' court may not issue a summons except on information and may not issue a warrant except on information in writing and on oath. If the subsequent offence is committed in Scotland or Northern Ireland, and the original suspended sentence was passed in England or Wales, the Scottish or Northern Ireland court must give written notice of the conviction to the court that passed the suspended sentence. Summonses and warrants must direct the offender to appear before the court that imposed the suspended sentence.

802. *Part 3* deals with amending suspended sentence orders. *Paragraph 13* provides that the appropriate court can cancel the community requirements of a suspended sentence order on application of the offender or responsible officer. This may occur if the offender becomes very ill and cannot undertake the requirements. The appropriate court

is explained in *sub-paragraph (4)*. *Paragraph 14* provides that the appropriate court can amend the suspended sentence order by substituting a new petty sessions area if the offender proposes to or has changed residence. The court may, and on the application of the responsible officer must, cancel or change any requirements of the order that are not available in the area to which the offender wishes to move. In particular, a programme requirement cannot be amended if it is not available in the new area. The appropriate court is the same as in *paragraph 12*.

803. Under *paragraph 15* an offender or his responsible officer can apply to have the community requirements of an order amended. The appropriate court can cancel a requirement or replace it with another requirement of the same kind, for example to alter the hours of a curfew or substitute one activity for another. The court cannot amend a mental health, drug or alcohol treatment requirement unless the offender consents. If the offender fails to consent, the court can revoke the order and re-sentence the offender. If it re-sentences him the court must take into account the extent to which the offender complied with the requirements of the order. The appropriate court has the same meaning as in paragraph 12. *Paragraph 16* provides that, where a community order includes a drug rehabilitation, alcohol treatment or mental health treatment requirement and the medical practitioner or other person responsible for the treatment is of the opinion that the treatment should be extended beyond the period specified in the order, that the offender should receive different treatment, that the offender is not susceptible to treatment or that the offender does not require further treatment, he must make a report to the responsible officer. He can also report that he is unwilling to continue to treat (or direct the treatment) of the offender for any reason. The responsible officer must then apply to the court to have the requirement amended or cancelled.

804. *Paragraph 17* provides for the responsible officer to apply to the court to change a review without a hearing to a review with a hearing, and vice versa, in the case where a suspended sentence order contains a drug rehabilitation requirement.

805. The offender or the responsible officer can apply to the appropriate court (as defined in paragraph 13) under *paragraph 18* to extend the 12 months limit on unpaid work if it is in the interests of justice to do so. This might occur if the offender fell ill during the 12 months and was unable to finish all of his hours of unpaid work in time.

806. *Paragraphs 19 to 22* contain supplementary provisions. No application to cancel or amend the requirements a suspended sentence order, can be made if an appeal against the order is pending, except in the case of treatment requirements which the responsible officer has applied to the court to amend. Where a court is amending an order, and the application is not by the offender, the court must summon the offender to appear before the court and may issue a warrant if he does not appear. This does not apply if the court is cancelling a requirement. In amending any requirement the court must keep to the restrictions on the requirements that apply if the court was then making the order. *Paragraph 22* sets out arrangements for sending copies of the order to relevant parties.

Schedule 13 – Transfer of suspended sentence orders to Scotland or Northern Ireland

807. Schedule 13 enables suspended sentence orders to be complied with in Scotland and Northern Ireland. It contains four Parts. The first two relate to Scotland and Northern Ireland, respectively, and the third contains general provisions applicable to both. Part 4 is a small supplementary Part.

Parts 1 and 2

808. Parts 1 and 2 are very similar. *Paragraphs 1 and 6* enable the court to make the transfer. *Sub-paragraph (1)* of each paragraph requires the court to ensure that the requirements of the order can be complied with and supervision arranged in the area of Scotland or NI that the offender is transferring to. In practice this is done by the probation officer attached to the court in England and Wales which is making the transfer telephoning

their equivalents in Scotland or Northern Ireland. The Scottish or Northern Ireland counterparts can turn down the transfer for any reason.

809. *Sub-paragraph (2)* is not a complete list of requirements available for transfer, it only contains those which have arrangements associated with them that the court has to confirm are available. These arrangements involve third parties, whose co-operation must be obtained before imposing them. For example, supervision does not need further arrangements because it only concerns the offender and the probation officer. A programme requirement, however, requires a place to be available on a suitable course.

810. *Sub-paragraph (3)* enables the court to require the order to be complied with in Scotland or Northern Ireland. *Sub-paragraph (4)* is a technical provision, such that any arrangements referred to above only have to be in place from when the order is transferred, not when it was first made. *Paragraph 1(5)* prevents the court from imposing an attendance centre requirement as part of transferred orders because they do not exist in Scotland.

811. *Paragraphs 1(6) and 6(5)* prevent transferred orders from containing a provision for court review, either as part of a drug rehabilitation requirement or of the suspended sentence order as a whole. As Scottish or Northern Ireland courts will not have the power to impose a suspended sentence, they will not have any training as to what the purpose of review is, and thus it is inappropriate to ask them to review it. Neither jurisdiction currently has any form of suspended sentence.

812. *Paragraphs 2 and 7* provide for the equivalent of the local probation board in Scotland or Northern Ireland to be specified in the order, and the equivalent of a responsible officer assigned. Accordingly, the requirement for the order to specify a petty sessions area (in England and Wales) is disapplied.

813. *Paragraphs 3 and 8* ensure the equivalent of the local probation board in Scotland or Northern Ireland and the local court in that area receive a copy of the order.

814. *Paragraphs 4 and 9* modify Chapter 4 of paragraph 23, the chapter which provides all of the requirements available as part of a suspended sentence order, such that it can apply to Scotland or Northern Ireland, respectively. *Sub-paragraph (3)* omits all of the provisions which state that the provider of a certain requirement have to be specified by the Secretary of State. This needs to be omitted because it would not include providers in Scotland and Northern Ireland, and thus those requirements would not be able to form part of a transferred order.

815. *Paragraph 5* is an interpretive provision.

Part 3

816. Part 3 contains provisions for breach and amendment of transferred suspended sentence orders. In general terms, if an offender breaches a requirement of a transferred suspended sentence, the local Scottish or Northern Ireland court will determine whether or not the order has been breached. If it has, that court will require the offender to appear before the original court in England and Wales to deal with the consequences, as Scottish and Northern Ireland courts will not have any training or experience in suspended sentences. In most cases the response to breach will consist of activating the suspended prison sentence, which is a sentence of custody plus, of which Scottish and Northern Ireland courts will also have no experience. The home court can also send the case to the England and Wales court to determine breach as well as deal with the consequences if, for example, the case is for some reason complicated.

817. *Paragraph 10* applies Part 3 of the Schedule to such orders. *Paragraph 11* is an interpretive provision. *Paragraph 12* adapts Schedule 12, which covers breach, revocation and amendment of suspended sentence orders, so that it applies to suspended sentence orders that have been transferred to Scotland or Northern Ireland. Except for *sub-paragraph (3)* which concerns orders transferred to Scotland or Northern Ireland

which are then transferred back to England and Wales. *Sub-paragraph (8)* prevents courts in England and Wales from dealing with the offender until it has been required to do so by the Scottish or Northern Ireland court. It is the "home" court, i.e. the Scottish or Northern Ireland court that will initially deal with the breach or amendment of a transferred suspended sentence order.

818. *Paragraph 13* provides for instigating court procedures in case of breach. This is equivalent to an information being laid at a magistrates' court in England and Wales. *Paragraph 14* provides court procedures which follow an information being laid. *Sub-paragraph (1)(b)* allows that court to require the original court to hear the breach as well as deal with the consequences. *Sub-paragraph (2)* deals with what happens after the Scotland or Northern Ireland court has certified a breach. It must require the offender to appear before the original court in England and Wales in order to have the breach dealt with. *Subsection (2)(b)* makes it clear that at the original court the breach certified in the Scottish or Northern Ireland court cannot be challenged again.

819. *Sub-paragraph (3)* is a provision that replicates a similar provision in Schedule 12. If the offender "breaches" by not complying with a treatment requirement, the court can determine that the non-compliance was reasonable, and thus the "breach" is not really a breach.

820. *Paragraph 15* provides for Scottish or Northern Ireland courts to amend transferred suspended sentence orders. These courts have all the powers that a court in England and Wales has over non-transferred suspended sentences, except that it cannot revoke the order and re-sentence the offender if he refused to comply with an amendment to a treatment requirement. In that case the Scottish or Northern Ireland court has to send the case back to the original court to deal with. *Sub-paragraphs (3) and (4)* require the offender to appear before the Scottish or Northern Ireland court if the responsible officer has applied to substitute one requirement for another. This is to give the offender the opportunity to object. It does not include occasions where the offender has himself made the application or where the application is just to cancel a requirement. It is assumed the offender has no objections in these cases.

821. *Paragraph 16* gives the Scotland or Northern Ireland court the option to decline to amend the order and send it back to the original court to deal with. *Paragraph 17* requires the court to ensure that any amendments to a transferred suspended sentence order can be complied with in the area of Scotland or Northern Ireland in which the offender lives. *Paragraph 18* applies the Schedule to any amended order as it applies to an unamended order. *Paragraph 19* set out the provides arrangements distributing copies of the amended order.

822. *Paragraph 20* provides for suspended sentence orders transferred to Scotland or Northern Ireland to be transferred back to England and Wales. This functions similarly to the original transfer, in that the court has to ensure that the requirements can be complied with and supervision arranged in the area of England and Wales that the offender is moving to.

Part 4

823. *Paragraph 21* ensures the Scottish legal provisions which concern electronic monitoring apply to offenders on suspended sentence orders. *Paragraph 22* ensures that summonses issued in Northern Ireland and citations and warrants issued in Scotland can be executed anywhere in the UK.

Schedule 14 – *Persons to whom copies of requirements to be provided in particular cases*

824. This Schedule sets out who is to receive copies of each different requirement, in addition to the persons mentioned in section 219.

Schedule 18: Release of prisoners serving sentences of imprisonment or detention for public protection

825. This Schedule amends the provisions of the Crime (Sentences) Act 1997 relating to the release of prisoners serving life sentences so that they also apply to prisoners serving the new sentence of imprisonment or detention for public protection. *Paragraph 2* inserts a new section 31A, which provides that after 10 years has elapsed following the release of an offender serving a sentence of imprisonment or detention for public protection (see sections 225 and 226), the offender may apply to the Parole Board for his licence to be terminated. If the Parole Board is satisfied that no further risk is posed then it must recommend to the Secretary of State that the licence be terminated. If the Parole Board concludes that the offender continues to pose a risk then it must reject the application and the offender may not submit another application until at least 12 months has elapsed.

Schedule 19: The Parole Board: supplementary provisions

826. The Schedule re-enacts Schedule 5 to the Criminal Justice Act 1991, which contains supplementary provisions about the Parole Board. The members of the Board must include representatives from certain professional fields. The Schedule also contains provisions about the payment of members, the funding of the Board and the keeping of proper records and accounts amongst other things.

Schedule 20: Prisoners liable to removal from the United Kingdom: modifications of the Criminal Justice Act 1991

827. Schedule 20 provides for an early removal scheme similar to that in sections 260 and 261 of this Act to be applied to those sentenced under the Criminal Justice Act 1991. The scheme is the same in substance as that set out in amendments sections 260 and 261 and any differences simply reflect the differences between the provisions of this Act and the Criminal Justice Act 1991. For example, in this Act the definition of the requisite period to be served before a prisoner may become eligible for early removal from prison is set out in terms of custodial periods only. For prisoners sentenced under the provisions of the 1991 Act the requisite period is defined as a proportion of the term of imprisonment - which includes the custodial and licence period.

Schedule 21: Determination of minimum term in relation to mandatory life sentences

828. This Schedule sets out the principles which a sentencing court must have regard to when assessing the seriousness of all cases of murder in order to determine the appropriate minimum term to be imposed.

829. *Paragraph 1* is definitional and is largely self-explanatory. Paragraphs 2 and 3 explain what is meant by racial or religious aggravation or aggravation by sexual orientation.

830. *Paragraphs 4, 5, 6 and 7* set out the starting points that a court should adopt when determining a minimum term. The starting point may be adjusted in accordance with the presence of aggravating or mitigating factors in order to arrive at the finally determined minimum term.

Paragraph 4

831. This paragraph deals with the small numbers of exceptionally serious cases in which the court should normally start by considering a whole life term, and provides a number of examples of cases that should normally require consideration of a whole life order. The list is not intended to be exhaustive, but indicates that murders that fall within the given categories will normally require a whole life minimum term. However, in an individual case it could be appropriate for a court to commence the determination of the appropriate minimum term with the whole life starting point but, upon further consideration of the relevant circumstances of the case, ultimately decide that a whole

life term is not required. In keeping with sentencing practice generally, it is entirely a matter for the sentencing court to determine the facts upon which it is to sentence.

Paragraph 5

832. *Paragraph 5* deals with the murders which are not as serious as those that fall within paragraph 4 but are nevertheless particularly grave and require a starting point for determining the minimum term of 30 years. Like paragraph 4 this paragraph provides a non-exhaustive list of examples of cases that should normally require consideration of a 30 year starting point. This starting point may be adjusted up, or down, in accordance with the presence of aggravating or mitigating factors. A murder falling within the paragraph 5(2), may nevertheless be one that the court decides is exceptionally serious and more appropriately dealt with under paragraph 4(1) rather than 5(1).

833. Paragraph 5(2)(h) allows a court to adopt a 30 year starting point for an offender who is 18, 19 or 20 years old and, under current provision, subject to a sentence of mandatory custody for life.

Paragraphs 6 and 7

834. The numbers of murders falling within paragraphs 4 and 5 will form a relatively small although significant proportion of all the murders that come before the courts. The majority of murders will therefore attract a starting point of 15 years under *paragraph 6*. *Paragraph 7* provides a separate starting point of 12 years for offenders aged under 18 at the time the offence was committed.

Paragraphs 8 to 12

835. Once a starting point has been chosen, the court will then go on to consider factors that either increase or reduce the seriousness of the murder and make the necessary adjustments to arrive at the final minimum term. There is no restriction on the degree of adjustment that a court can make in consideration of aggravating or mitigating factors, as paragraph 8 explains. Although, therefore, there may be a few very exceptional cases in which starting points will be increased or decreased very substantially, it is expected that the vast majority of cases will tend to attract minimum terms that reflect the categorisation of cases set out in paragraphs 4 to 7.

836. *Paragraph 8* makes it clear that aggravating or mitigating factors cannot be double counted. If a murder, for example, fell within paragraph 5(2) because it was the murder of a police officer, the minimum term could not be increased beyond the starting point of 30 years on the basis that the case was aggravated by facts falling within paragraph 10 (f).

837. The list of factors that are to be regarded as aggravating set out at paragraph 10 is non-exhaustive and is provided by way of example. These examples are additional to those set out at paragraphs 4(2) and 5(2) so that any factor that does not determine the relevant starting point can be taken account under paragraph 8. Planning and premeditation requires inclusion at 10(a) because a court will want to take into account premeditation and planning of any degree and reliance on the reference at paragraph 4(2)(a)(i) would only include facts that amounted to a substantial degree of premeditation or planning. Other matters are included in paragraph 10, for example paragraphs (c) and (f), because they embrace but have a greater scope than facts that would fall within paragraphs 4(2) and 5(2). Paragraph 10 (g) covers circumstances in which the court is satisfied that, in those rare cases of convictions for murder in the absence of a body, the offender is adding to the grief of a victim's family by deliberately preventing the recovery of the body.

838. *Paragraph 11* sets out a number of factors that may be taken account of by the sentencing court as mitigating factors. Once again this list is not exhaustive and provides examples only. The list covers most of the mitigating factors that are likely to arise in

cases of murder and is largely self-explanatory. As regards paragraph 11(a), it may not be commonly appreciated that the offence of murder does not require an intention to kill. In the case of offenders who are considerably younger than 18, paragraph 11(g) may have a very significant effect on the final determination of the minimum term.

839. *Paragraph 12* makes it clear that nothing in these principles affects the general provisions in the Act on the effect of previous convictions, offending while on bail and pleas of guilty.

Schedule 22 : Mandatory Life Sentences: Transitional Cases

840. This Schedule deals with transitional matters. In particular it sets out arrangements to deal with:

a) convicted murderers serving minimum terms determined by the Secretary of State;

b) those already sentenced for murder but awaiting the determination of a minimum term;

c) minimum terms determined on or after commencement of section 269 in respect of offences committed before that date.

Paragraph 1

841. *Paragraph 1* contains various definitions. These are self-explanatory save that it should be noted that the definition of "mandatory life sentence" excludes juveniles sentenced to mandatory detention during Her Majesty's Pleasure. This is because minimum terms for juveniles convicted of murder that were fixed by the Secretary of State are already subject to a review by the Lord Chief Justice established following the ruling of the European Court of Human Rights in the case of *V v UK* (Judgement of ECHR of 16th December 1999).

Existing prisoners notified by Secretary of State: Paragraphs 2, 3 and 4

842. These paragraphs deal with prisoners who are already serving a life sentence subject to a minimum term, or whole life term, which has been fixed by the Secretary of State. In accordance with the ruling in the case of *Anderson,* and in seeking to afford the prisoners their rights under Article 6 of the Convention, this provision offers these prisoners an opportunity to apply to have their minimum term re-set by the High Court. Having reviewed a case, the High Court must reconsider the existing minimum term or whole life term. In so doing the court can order a period that is equal to that which was set by the Secretary of State or it may reduce the minimum term. It cannot however, increase the minimum term fixed by the Secretary of State.

843. Some prisoners serving life sentences will remain in prison although the minimum term fixed by the Secretary of State has expired. This group is excluded from the right to apply to the High Court, but paragraph 3(3) enables them to have their cases considered by the Parole Board.

844. Not all prisoners will necessarily wish to apply for a new minimum term. In this case the minimum term fixed by the Secretary of State in their case will remain effective.

845. *Paragraph 4* sets out in general terms the matters the court should have regard to when determining the appropriate minimum term in any individual case. In addition to the consideration of seriousness and time spent on remand required in every case under section 269, in these transitional cases the existing notified minimum term or whole life term will also be relevant. Paragraph 4(2) requires the reviewing court, when considering the seriousness of the offence, to have regard to both the principles set out in Schedule 21 and any judicial recommendations, made shortly after the original conviction, as to the appropriate minimum term to be served by the prisoner.

Existing prisoners not notified by Secretary of State: Paragraphs 5 to 8

846. Since the judgement in *Anderson* ([2002] UKHL 46) the Home Secretary has not determined any minimum terms. Accordingly, there are a number of cases in which the prisoner has been found guilty of murder and sentenced to the mandatory life sentence but still awaits the determination of a minimum term. Paragraph 6 creates a duty on the part of the Home Secretary to refer these cases to the High Court for the determination of a minimum term under the provision at section 269.

847. In keeping with the provision for future cases, the reviewing court must take into guidelines account the new statutory principles and any relevant guidelines when considering the seriousness of the case for the purpose of determining the minimum term. Any recommendations made by either the Lord Chief Justice or the trial judge also need to be taken into account by the High Court when determining the minimum term.

848. To ensure compatibility with Article 7 of the Convention, paragraph 8(a) prevents the High Court from determining the minimum term at a level greater than that which would have been imposed under the practice of the Secretary of State before the *Anderson* judgement. *Paragraph 8(b)* also makes it clear that no whole life term can be imposed unless such a term would, in the court's opinion, have been imposed by the Secretary of State.

Sentences passed on or after commencement date in respect of offences committed before that date: Paragraphs 9 and 10

849. Some trials for murder after the commencement of these provisions will concern murders that were committed before commencement. Paragraphs 9 and 10 deal with such cases. The need to avoid imposing a sentence that is greater than that which would have been available at the time of the commission of the offence applies here as much as it does to the cases covered in the preceding paragraphs. Accordingly, paragraph 10 imposes a restriction equivalent to that in paragraph 8.

Paragraph 11

850. *Paragraph 11* provides for any review or determination of a minimum term under either paragraphs 3 or 6 by the High Court to be undertaken by a single judge on the papers.

Paragraphs 12 to 18

851. *Paragraph 12* requires a court reviewing an existing minimum term to give reasons for the order it makes and if the order specifies a minimum term that is shorter than that imposed by the Secretary of State to explain its reasons for doing so. Where a court determines the minimum term in the case of a convicted prisoner who has not been given a minimum term by the Home Secretary, paragraph 13 brings the duty to give reasons into line with that under paragraph 12.

852. *Paragraph 14* extends rights of appeal to the Court of Appeal and the House of Lords, if appropriate, to prisoners who have either had their minimum term reviewed or determined by the High Court under these transitional provisions. *Paragraph 15* extends section 36 of the Criminal Justice Act 1988 to these transitional arrangements and provides for a means by which the Attorney General can challenge a minimum term which he considers unduly lenient.

853. *Paragraph 16* ensures that the early release provisions apply consistently to both a minimum term in arising from a review of an existing minimum term by the High Court and those minimum terms fixed by the Home Secretary that remain effective if no application is made. *Paragraph 17* ensures that transferred prisoners may be dealt with under these transitional arrangements if necessary.

Schedule 23: Deferment of sentence

854. This Schedule inserts new provisions about deferment of sentence into the Powers of Criminal Courts (Sentencing) Act 2000. In most cases, a court will pass sentence on an offender immediately after his conviction for the offence or offences for which he is before the court. However, the court also has the power to defer sentencing. As at present, the new provisions allow the court to defer sentencing for the purpose of enabling the court to have regard to the conduct of the offender and any change in his circumstances. However, it strengthens the deferred sentence by providing for reparative and other activity to be undertaken during the period of deferment, and extends "conduct" to include reference to how well the offender complies with such requirements. Progress will continue to act as a mitigating factor in the final sentence passed, including imposing a community sentence in lieu of a custodial one when clear progress against undertakings has been made. Sentencing can be deferred only if the offender consents and undertakes to comply with any requirements set out by the court, and only where the court considers that deferment is in the interests of justice. The court cannot remand an offender if it also defers his sentence. As currently, sentence cannot be deferred for more than six months. The court has the power to issue a summons or a warrant to arrest the offender if he does not appear on the date for sentencing specified by the court. *Subsection (5)* of the new section prescribes who should receive a copy of the order deferring the passing of sentence.

855. Under new *section 1A* the court can include requirements regarding the offender's residence. If an offender is to undertake requirements the court may appoint a supervisor to monitor the offender's compliance with the requirements. The supervisor can be an officer of the local probation board or anyone else the court thinks appropriate. The person must consent to being a supervisor. The supervisor must provide the court with information as to the offender's compliance with the requirements, as it wishes.

856. Under new *section 1B*the court may deal with the offender before the end of the period of deferment if it is satisfied that the offender has failed to comply with one or more requirements. Currently, as there are no requirements attached to deferred sentences, the offender can only be returned to court early for sentencing if he commits another offence. *Subsection (2)* sets out the circumstances in which he can be returned to court early. *Subsection (3)* gives the court the power to issue a summons or warrant for the offender to appear before it.

857. Under new *section 1C* the court may deal with an offender before the end of the period of deferment if he commits another offence. *Subsections (2) and (3)* set out the powers of the Crown Court and magistrates' courts in these cases. If the offender is convicted of another offence during the period of deferment, the court may deal with the original deferred sentence at the same time as sentencing the offender for the new offence. If the original sentence was deferred by a Crown Court, it must be a Crown Court that passes sentence for both the offences. If the original sentence was deferred by a magistrates court, and the offender is brought before a Crown Court to be sentenced for the two offences, the Crown Court cannot pass a sentence greater than a magistrates court could have passed. That is, it cannot pass a sentence of greater than 12 months. The court has power to issue a summons or a warrant for the offender to appear before it.

858. New *section 1D* clarifies some of the legal detail surrounding the deferment of sentences. Deferment of sentence is to be regarded as an adjournment, and if the offender does not appear before the court when required to he is to be dealt with accordingly. When the court deals with an offender at the end of the period of deferment (or earlier if he does not comply with the requirements or commits another offence) it has the same powers as if the offence had just been committed. This includes committing him for sentence to the Crown Court. The court may issue a summons to someone appointed as a supervisor if that person refuses to appear before the court when the court wants to consider an offender's failure to comply with the requirements of the deferment or anything to do with the original offence.

Schedule 24: Drug treatment and testing requirement in action plan order or supervision order

859. This Schedule amends section 70 of the Powers of Criminal Courts (Sentencing) Act 2000. It introduces drug treatment, which may include testing, as a requirement available for inclusion in an action plan order. The Schedule also amends Schedule 6 to the Powers of Criminal Courts (Sentencing) Act 2000 to allow drug treatment, which may include testing, as a requirement available for inclusion in a supervision order.

860. The new requirement is available where the court is satisfied that the young offender is dependent on, or has a propensity to misuse, drugs and that this dependency or propensity is such as requires and may be susceptible to treatment. The Schedule strengthens the existing interventions available to the court to assist young offenders with a drug misuse problem to address both their drug misuse and offending behaviour. The testing element of the requirement can only apply to those aged 14 years and over and can be included in an action plan order or supervision order only if the offender consents and the court has been notified by the Secretary of State that arrangements are in place for implementation.

Schedule 25: Summary offences no longer punishable with imprisonment

861. *Schedule 25* provides a list of summary offences which, following commencement of section 267, will cease to be punishable with imprisonment. In effect, this will mean that the maximum penalties for these offences will be the new generic community sentence and/or a fine. In connection to this, Part 2 of Schedule 32 makes the necessary consequential amendments to the relevant enactments. Part 7 of Schedule 37 contains associated repeals.

Schedule 26: Increase in maximum term for certain summary offences

862. *Schedule 26* makes the necessary consequential amendments so as to increase the maximum penalty for certain summary offences from a term of imprisonment of five months or less to a term of 51 weeks (equating to a full sentence of custody plus – see section 181).

Schedule 27: Enabling powers: alteration of maximum penalties etc.

863. *Schedule 27* makes the necessary changes to specific enabling powers contained within existing legislation so as to ensure that the offences that these powers may create have maximum penalties that are compatible with the new sentencing framework.

Schedule 28: Increase in penalties for drug-related offences

864. *Schedule 28* amends Schedule 4 to the Misuse of Drugs Act 1971 and related legislation to increase the penalties for offences committed in relation to Class C drugs. The provisions include an increase to the maximum penalties for trafficking Class C drugs from 5 to 14 years' imprisonment.

Schedule 30: Disqualification from working with children

865. Part 2 of the Criminal Justice and Court Services Act 2000 already requires the court to make an order disqualifying the offender from working with children on conviction for an “offence against a child”, as defined in section 26 by reference to the list in Schedule 4 of the Act, where a sentence of imprisonment or detention for 12 months or more is imposed. In relation to adult offenders, a disqualification order must be made unless the court is satisfied that it is unlikely the individual will commit any further offence. In the case of offenders aged under 18, the court must make the order if it is satisfied that it is likely a further offence against a child will be committed.

866. *Paragraph 2* of this Schedule inserts new sections 29A and 29B into the Criminal Justice and Court Services Act 2000.

867. *New section 29A* extends the court's powers by adding a discretion to make an order if it is satisfied that it is likely a further offence against a child will be committed, even though the sentence threshold specified in the Act is not met. The test of whether the order should be made is whether the court is satisfied, having regard to all the circumstances, that it is likely that the individual will commit a further offence against a child. If the court makes a disqualification order, it must both state and record its reasons for doing so. These provisions add to but do not otherwise change the existing provisions in the Act relating to cases in which the sentencing threshold is met.

868. *New section 29B* has the effect that where a court was under a duty to consider the issue of a disqualification order, by virtue of convicting the offender of a relevant offence and passing a sentence which met the threshold specified, but appeared not to have done so nor to have recorded its reasons for this, the prosecution has discretion at any time in the future to apply to a senior court for a disqualification order to be made. The court will then have to consider, on the basis of further evidence and argument if necessary, whether the test that the offender is likely to commit an offence is met and whether an order should be made. Where it considers the test is met in respect of an adult, it must make an order or, if it does not do so, must record the reasons for this decision. Where the offender is aged under 18 years, the court must make an order if it is satisfied that the offender is likely to commit a further offence against a child and must record its reasons for this decision. New section 29B applies to cases in which a court was under a duty to consider a disqualification order, i.e. to senior courts passing qualifying sentences on offenders convicted of an offence under Schedule 4 of in the Criminal Justice and Court Services Act 2000, after the implementation on January 11th 2001 of the relevant provisions in that Act.

Schedule 31: Default orders: modification of provisions relating to community orders

869. This Schedule must be read in conjunction with section 300 which gives the court to impose an unpaid work requirement or a curfew requirement, in lieu of imprisonment, where an offender has defaulted on the payment of a fine, and has a default order imposed on him.

870. *Paragraph 2* modifies the unpaid work provisions in section 199 so that the minimum number of hours which a person may be required to work as part of a default order is 20 hours and the maximum is laid out in the Table in paragraph 2 corresponding to the amount of the sum in default.

871. *Paragraph 3* makes similar modifications to the provisions of the curfew requirement under section 204 and lays out in a table the maximum number of days to which the offender subject to a default order can be subject, which correspond to the amount of the sum in default.

872. *Paragraph 4* modifies the enforcement, revocation and amendment provisions in Schedule 7 to make them apply to the default order. If an offender breaches his default order, the court can deal with him in any way in which the court which made the default order could deal with him for the original default. In other words, it can commit him to custody. *Paragraph 6* modifies Schedule 9 (transfer of community orders to Scotland or Northern Ireland) to allow default orders to be transferred to Scotland and Northern Ireland.

873. *Paragraph 5* provides the Secretary of State with an order-making power to amend the number of amounts of money specified in the tables under paragraphs 2 and 3 and the number of hours or days specified.

Schedule 32: Amendments relating to sentencing

874. This Schedule contains amendments related to the sentencing provisions in Part 12. Most do not seem to require detailed explanation.

875. *Paragraphs 40 to 43* amend the Repatriation of Prisoners Act 1984 which provides for UK nationals sentenced abroad to serve their sentences in the UK, and for foreign nationals sentenced in the UK to serve their sentences in their home country. The Act calculates the release date of repatriated prisoners based on the Criminal Justice Act 1991 and for life sentenced prisoners, the Crime (Sentences) Act 1997. The provisions in Chapter 7 of Part 12 of the Act replace these, and thus amendments to the 1984 Act are necessary. If life sentence prisoners repatriated to the UK have had no tariff or minimum period set, the Lord Chief Justice will be asked prior to repatriation to set a provisional tariff. The tariff will be formally set by the High Court once the prisoner has been repatriated to England and Wales. Release will work as currently. For all other prisoners repatriated to the UK, the amount of time the prisoner has left to serve will be calculated in the same way as currently. The total length of sentence imposed is reduced by amount of time already served, plus remand or remission. The release date is then calculated on the remainder. The release date of all prisoners repatriated to the UK (except life prisoners) will be calculated in the same way as the release date for prisoners serving over 12 months in England and Wales who are not serving a sentence under sections 225 to 228. For example, a prisoner sentenced to 10 years abroad, who has already served two years before being repatriated, will have 8 years left to serve. Under Chapter 5 of Part 12 of the Act, release is after 4 years, followed by 4 more years on licence.

876. *Paragraph 125* substitutes a new Schedule 3 in the Powers of Criminal Courts (Sentencing) Act 2000. Schedule 3 to the PCC(S)A deals with breach, revocation and amendment of a number of community orders. Most of them are replaced by the generic community sentence in this Act. Curfew and exclusion orders are being retained as stand-alone orders for offenders aged 10-15. Curfew orders are governed by sections 37 to 40 of the PCC(S)A and exclusion orders are governed by sections 40A to 40C of that Act. The provisions on exclusion orders are inserted by section 46 of the Criminal Justice and Court Services Act 2000, which is not yet in force. Paragraphs 78 to 82 of Schedule 25 to the Act make the changes which limit the availability of those orders to offenders under 16.

877. The new Schedule 3 therefore deals with breach, revocation and amendment of curfew orders and exclusion orders for young people up to the age of 16. The new Schedule 3 does not make any substantive changes to the way in which the existing Schedule 3 operates for those aged under 16.

Schedule 33: Jury service

878. *Schedule 33* amends the principal statute governing jury service, the Juries Act 1974, to abolish (except in the case of mentally disordered persons) the categories of ineligibility for, and excusal "as of right" from, jury service, currently set out in Parts 1 and 3 of Schedule 1 to that Act. This means that certain groups of people who currently must not, or need not, do jury service will, when these provisions are brought into force, be required to do so unless they can show good reason not to. *Schedule 33* also makes amendments to the category of those disqualified from jury service, as set out in Part 2 of Schedule 1 to the Juries Act 1974, to reflect developments in sentencing legislation, including those made by the Act itself.

Paragraphs 2, 3, 14 and 15

879. These provisions have the effect of removing the status of "ineligibility" for jury service, and entitlement to "excusal as of right" from jury service, from a number of people; they will, as a result, in future be regarded in all cases as potential jurors. Under the Juries Act 1974, as it currently stands, the judiciary, others concerned with the

administration of justice, and the clergy, are "ineligible" for jury service and therefore barred from serving as jurors. That bar will be lifted. Others, including people over 65, members of parliament, medical professionals and members of certain religious bodies, are currently entitled to refuse to serve as jurors. That entitlement will be removed. If any person affected by these changes does not wish to serve as a juror, he or she will now be required to apply for excusal or deferral under section 9 or 9A of the 1974 Act, showing "good reason" why he or she should not serve as summoned.

880. *Paragraph 2 of Schedule 33* replaces section 1 of the Juries Act 1974 with a new version, removing the status of ineligibility for jury service currently in section 1 of the 1974 Act, with a saving for mentally disordered persons only. *Paragraph 15* substitutes a new version of Schedule 1 to the 1974 Act, and correspondingly removes the first three groups of persons ineligible (the judiciary, others concerned with the administration of justice, and the clergy), leaving only mentally disordered persons with that status. *Paragraph 14 of Schedule 33* makes consequential provision to remove references to these groups of ineligible people in the context of the jury summoning offences in section 20 of the Juries Act 1974.

881. *Paragraph 15* also replaces the categories of those who are disqualified from jury service with a new list for Part 2 of Schedule 1 to the Juries Act 1974. These are people who have served, or are serving, prison sentences or community orders of varying degrees of seriousness. The period of time during which they are to be disqualified varies accordingly. A number of amendments have been made to Part 2 to reflect recent and forthcoming developments in sentencing legislation. Juveniles sentenced under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 to detention for life, or for a term of five years or more, will be disqualified for life from jury service. People sentenced to imprisonment or detention for public protection, or to an extended sentence under *section 227 or 228* of the Act are to be disqualified for life from jury service. Anyone who has received a community order (as defined in *section 177* of the Act) will be disqualified from jury service for ten years.

882. *Paragraph 3 of Schedule 32* repeals section 9(1) of the Juries Act 1974. This subsection provided that certain groups of people listed in Part 3 of Schedule 1 to the 1974 Act should be "excused as of right" from jury service: that is, they were entitled to refuse to do jury service if they so wish. These groups include people over 65 years of age, members of parliament, members of medical and similar professions, people with religious objections to doing jury service, and (in specified circumstances) members of the armed forces. No one will in future be entitled to excusal as of right from jury service, as is currently provided. Part 3 has been omitted from the substituted Schedule 1 in *paragraph 15*.

Paragraphs 4 to 11

883. These paragraphs make provision consequential on the repeal of Part 3 of Schedule 1 to the Juries Act 1974. Full-time serving members of the armed forces are at present entitled to excusal as of right from jury service if, but only if, their commanding officer certifies that their absence would be prejudicial to the efficiency of the service in question. With the abolition of excusal as of right, service personnel who do not wish to do jury service will, like everyone else, have to apply under section 9 or 9A of the 1974 Act and show "good reason" why they should not serve as summoned. A commanding officer's certificate is, however, to be regarded in future as conclusive evidence of good reason for the purposes of these provisions, so that on its production a jury service summons will be deferred; if there has already been a deferral or if the commanding officer certifies that absence would be prejudicial for a specified period of time, then service personnel will be excused altogether from the obligation imposed by the summons. But that is without prejudice to the position should a further summons be issued on a future occasion.

884. *Paragraph 12*: Sections 9A and 9 of the Juries Act 1974 deal, respectively, with discretionary deferral and excusal. If a person who has been summoned to do jury service can show that there is a "good reason" that his summons should be deferred or excused, then discretion exists to defer or excuse. The discretion currently rests with the Jury Central Summoning Bureau, a part of the Lord Chancellor's Department, which administers the jury summoning system on behalf of the Crown Court in England and Wales. With the abolition of most of the categories of persons ineligible for jury service, and of the availability of excusal as of right, many of these cases will now fall to be dealt with as applications for excusal or deferral under sections 9 and 9A. New section 9AA, introduced by this paragraph, places a statutory duty on the Lord Chancellor (in whom responsibility for jury summoning is vested by section 2 of the 1974 Act) to publish and lay before Parliament guidelines relating to the exercise by the Jury Central Summoning Bureau of its functions in relation to discretionary deferral and excusal.

885. *Paragraph 13:* Section 19 of the Juries Act 1974 gives an entitlement to jurors to be paid, amongst other things, a subsistence allowance during the period they are serving on a court case. This paragraph will enable the Court Service of the Lord Chancellor's Department (which administers the Crown Court, and the payment of jurors' subsistence allowances) to pay this allowance otherwise than by means of cash. Some court facilities enable staff to obtain refreshments by non-monetary means, such as a voucher or an electronic 'swipe card'; this paragraph will enable them to extend the same means to jurors.

Schedule 34: Parenting Order attached to Referral Order

886. Schedule 34 makes provision about the interaction of parenting orders, made under sections 8 to 10 Crime and Disorder Act 1998 and referral orders made under Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000.

887. *Removal of restriction in Crime and Disorder Act 1998*. This removes from section 8 of the Crime and Disorder Act 1998 the restriction currently on a court for the making of a Parenting Order alongside a Referral Order.

888. *Supplemental provisions relating to Parenting Orders*. This amends section 9 of the Crime and Disorder Act 1998 (which makes supplemental provision relating to Parenting Orders) so that it is possible to make a parenting order and a referral order in respect of the same offence.

889. *Sub-paragraph (2)* substitutes a new subsection (1) into section 9. The old subsection provided that a parenting order could not be made in respect of the same offence. The new subsection provides that the normal duty on the court to make a parenting order (or explain why it would not help to prevent the offender from committing another offence) where a person under the age of 16 is convicted of an offence does not apply where the court makes a referral order in respect of the offence.

890. *Sub-paragraph (3)* inserts a new subsection (2A) into section 9. This provides that where the court does decide to make a Parenting Order with a Referral Order, the court must obtain and consider a report by a probation officer, a local authority social worker, or a member of a youth offending team. The report should indicate what the requirements of the Parenting Order might include, the reasons why it would be desirable, and also, if the offender is under age 16 years, information about the family's circumstances and the likely effect of the Order on those circumstances.

891. *Sub-paragraph (4)* inserts a new subsection (7A) which defines a Referral Order an order imposed under section 16(2) or (3) Powers of Criminal Courts (Sentencing) Act 2000.

892. *Removal of Restriction in Powers of Criminal Courts (Sentencing) Act 2000.* This removes the restriction in section 19(5) of the Powers of Criminal Courts (Sentencing)

Act 2000 preventing the court from imposing a parenting order and a referral order in respect of the same offence.

893. *Panel to refer case back to Youth Court where parent or guardian fails to comply.* This inserts a new subsection (2A) into section 22 of the Powers of Criminal Courts (Sentencing) Act 2000. A court making a referral order may require a parent or guardian to attending the meetings of the youth offender panel under Section 20 of the Powers of Criminal Courts (Sentencing) Act 2000. Where the parent or guardian fails to comply with such an order, the new subsection provides the power to the panel to refer the case back to the offender's youth court. This would then allow the court the opportunity to decide whether it should impose a Parenting Order.

894. *Arrangements when a panel refers a parent or guardian to the youth court.* These insert new provisions into section 28 and Schedule 1 Powers of Criminal Courts (Sentencing) Act 2000. These provisions set out the arrangements when a youth offender panel refers a parent or guardian to the appropriate youth court using the power set out in the new section 22(2A). The panel must make a report to the court explaining why the parent is being referred to it and the court can require the parent to appear before it by means of the issue of a summons, or a warrant for arrest. Where the parent then appears before the youth court, the court may make a Parenting Order if both of two conditions are satisfied. The first is that the court is satisfied that the parent has failed to comply with an order made by the court under section 20 to attend the youth referral panel, without reasonable excuse. The second is that the court believes that it is desirable in the interests of preventing further offences being committed by the offender. The provisions also set out that a Parenting Order means an order requiring the parent to comply for up to twelve months with requirements the court considers to be desirable in the interests of preventing further offences by the offender and to attend a counselling or guidance programme for up to three months. The counselling or guidance programme can include or consist of a residential course provided the court is satisfied that this is likely to be more effective than a non-residential course and that any interference with family life is proportionate. The provisions also state which of the provisions of the Crime and Disorder Act relating to parenting orders apply to a parenting order made in these circumstances and provide for a right of appeal to the Crown Court against the making of a parenting order in these circumstances.

Schedule 38: Transitory, transitional and savings provisions

895. *Paragraph 1* relates to section 61 of the Criminal Justice and Court Services Act 2000, which (among other things) abolishes the sentences of detention in a young offender institution and custody for life and which is not yet in force. If provisions of Part 12 of the Act come into force before section 61 comes into force, this paragraph enables an order under section 333(1) to modify the provision of the Act in relation to things done before section 61 comes into force. For example, it might be necessary to provide for a reference to a sentence of imprisonment to include a reference to a sentence of detention in a young offender institution, or for a reference to an offender aged 18 or over to have effect as a reference to an offender aged 21 or over.

896. *Paragraph 2* provides a transitional provision preserving the authority of any sentencing guidelines issued by the Court of Appeal prior to the repeal of section 80 to 81 of the Crime and Disorder Act 1998 and the establishment of the Sentencing Guidelines Council.

897. *Paragraph 4* contains a transitory provision providing that any drug treatment and testing order made under section 52 of the Powers of Criminal Courts (Sentencing) Act (before that section is repealed by this Act) need not include a review provision if the order is for less than 12 months. A community order under the Act including a drug rehabilitation requirement must include a review provision if it is over 12 months, and may include one if the period is less than 12 months.

898. *Paragraph 5* makes temporary modifications of the provisions as to drug testing in section 65 of the Criminal Justice Act 1991, pending repeal of that section under this Act.

899. *Paragraph 6* would enable a shorter version of intermittent custody to be introduced before the sentencing limit on magistrates' courts is increased from 6 months to 12 or 18 months.