

SCHEDULES

SCHEDULE 9

Section 47.

MATTERS ANCILLARY TO SECTION 47

Probation orders

- 1 Where a court makes an order under section 47 (1) above with respect to a sentence of imprisonment, it shall not make a probation order in the offender's case in respect of another offence of which he is convicted by or before that court, or for which he is dealt with by that court.

Courts competent to restore sentence held in suspense

- 2 (1) In relation to a sentence of imprisonment part of which is held in suspense, the courts competent under section 47(3) above are—
- (a) the Crown Court; and
 - (b) where the sentence was passed by a magistrates' court, any magistrates' court before which the offender appears or is brought.
- (2) Where an offender is convicted by a magistrates' court of an offence punishable with imprisonment and the court is satisfied that the offence was committed during the whole period of a sentence passed by the Crown Court with an order under section 47(1) above—
- (a) it may, if it thinks fit, commit him in custody or on bail to the Crown Court; and
 - (b) if it does not, it shall give written notice of the conviction to the appropriate officer of that court.
- (3) For the purposes of this and the next following paragraph, a sentence of imprisonment passed on an offender with an order under section 47(1) above shall be treated as having been passed (with such an order) by the court which originally sentenced him.

Recall of offender on re-conviction

- 3 (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with sub-paragraph (2) below, or to a justice of the peace having jurisdiction in accordance with that sub-paragraph that an offender has been convicted in Great Britain of an offence punishable with imprisonment committed during the whole period of a sentence passed with an order under section 47(1) above and that he has not been dealt with in respect of the part of the sentence held in suspense, that court or justice may, subject to the following provisions of this paragraph, issue a summons requiring the offender to appear at the place and time specified therein, or a warrant for his arrest.
- (2) Jurisdiction for the purposes of sub-paragraph (1) above may be exercised—
- (a) if the sentence was passed by the Crown Court, by that court;

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- (b) if it was passed by a magistrates' court, by a justice acting for the area for which that court acted.
- (3) Where an offender is convicted by a court in Scotland of an offence punishable with imprisonment and the court is informed that the offence was committed during the whole period of a sentence passed in England and Wales with an order under section 47(1) above, the court shall give written notice of the conviction to the appropriate officer of the court by which the original sentence was passed.
- (4) Unless he is acting in consequence of a notice under sub-paragraph (3) above, a justice of the peace shall not issue a summons under this paragraph except on information and shall not issue a warrant under this paragraph except on information in writing and on oath.
- (5) A summons or warrant issued under this paragraph shall direct the offender to appear or to be brought before the court by which the original sentence of imprisonment was passed.

Miscellaneous (procedural)

- 4 Where the offender is before the Crown Court with a view to the exercise by that court of its powers under section 47(3) above, any question whether and, if so, when he has been convicted of an offence shall be determined by the court and not by the verdict of a jury.
- 5 Where the offender has been before a court with a view to its exercising those powers, the appropriate officer shall—
 - (a) if the court decided not to exercise the powers, record that fact; and
 - (b) whether or not it exercised them, notify the appropriate officer of the court which passed the original sentence as to the manner in which the offender was dealt with.
- 6 For the purposes of any enactment conferring rights of appeal in criminal cases, the restoration by a court under section 47(3) above of a part of a sentence held in suspense shall be treated as a sentence passed on the offender by that court for the original offence, that is to say the offence for which the original sentence was passed with an order under section 47(1) above.

Miscellaneous (consequential)

- 7 Where a sentence of imprisonment is passed with an order under section 47(1) above, it is still to be regarded for all purposes as a sentence of imprisonment for the term stated by the court, notwithstanding that part of it is held in suspense by virtue of the order; and, for the avoidance of doubt, a sentence of which part is held in suspense by virtue of such an order is not to be regarded as falling within the expression "suspended sentence" for the purposes of any legislation, instrument or document.
- 8 Where an offender is sentenced to imprisonment with an order under section 47 above and, having served part of the sentence in prison, is discharged under section 25(1) of the Prison Act 1952 (remission for industry and good conduct), the remainder of the sentence being held in suspense, the sentence is not to be regarded as expiring under that section.

- 9 In section 21 of the Firearms Act 1968 (prohibition on possession of firearms by persons previously convicted of crime), after subsection (2) there shall be inserted—
- “(2A) For the purposes of subsection (2) above, 'the date of his release', in the case of a person sentenced to imprisonment with an order under section 47(1) of the Criminal Law Act 1977, is the date on which he completes service of so much of the sentence as was by that order required to be served in prison”.
- 10 In section 67 of the Criminal Justice Act 1967 (computation of sentence where offender has been previously in custody), in subsection (1), after " arose, but" there shall be inserted " (a) " , and at the end of that subsection there shall be inserted—
- “(b) in the case of a person sentenced to imprisonment with an order under section 47 of the Criminal Law Act 1977, this subsection operates to reduce the part of the sentence ordered to be served in prison, but not any part held in suspense and restored under subsection (3) of that section”.
- 11 In section 1 of the Rehabilitation of Offenders Act 1974 (general principle as to rehabilitation when conviction is spent), after 'subsection (2) there shall be inserted—
- “(2A) Where in respect of a conviction a person has been sentenced to imprisonment with an order under section 47(1) of the Criminal Law Act 1977, he is to be treated for the purposes of subsection (2) above as having served the sentence as soon as he completes service of so much of the sentence as was by that order required to be served in prison”.