

*Status: Point in time view as at 25/08/2000.*

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## SCHEDULES

### SCHEDULE 11

Section 165.

#### TRANSITIONAL PROVISIONS

#### PART I

#### GENERAL

##### *Continuity of the law: general*

- 1 (1) The substitution of this Act for the provisions repealed by it shall not affect the continuity of the law.
- (2) Any thing done (including subordinate legislation made), or having effect as if done, under or for the purposes of any provision repealed by this Act shall, if it could have been done under or for the purposes of the corresponding provision of this Act and if in force or effective immediately before the commencement of that corresponding provision, have effect thereafter as if done under or for the purposes of that corresponding provision.
- (3) Any reference (express or implied) in this Act or any other enactment, instrument or document to a provision of this Act shall (so far as the context permits) be construed as including, as respects times, circumstances or purposes in relation to which the corresponding provision repealed by this Act had effect, a reference to that corresponding provision.
- (4) Any reference (express or implied) in any enactment, instrument or document to a provision repealed by this Act shall (so far as the context permits) be construed, as respects times, circumstances and purposes in relation to which the corresponding provision of this Act has effect, as being or (according to the context) including a reference to the corresponding provision of this Act.
- (5) Sub-paragraphs (1) to (4) above have effect instead of section 17(2) of the <sup>M1</sup>Interpretation Act 1978 (but are without prejudice to any other provision of that Act).

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

- C1** Sch. 11 para. 1(3) excluded (1.4.2001) by 2000 c. 43, s. 43(3)(b); S.I. 2001/919, art. 2(b)  
Sch. 11 para. 1(3) excluded (1.4.2001) by 2000 c. 43, s. 44(3)(b); S.I. 2001/919, art. 2(b)  
Sch. 11 para. 1(3) excluded (1.4.2001) by 2000 c. 43, s. 45(3)(b); S.I. 2001/919, art. 2(b)

#### **Marginal Citations**

- M1** 1978 c. 30.

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*General saving for old transitional provisions and savings*

- 2
- (1) The repeal by this Act of a transitional provision or saving relating to the coming into force of a provision reproduced in this Act does not affect the operation of the transitional provision or saving, in so far as it is not specifically reproduced in this Act but remains capable of having effect in relation to the corresponding provision of this Act.
  - (2) The repeal by this Act of an enactment previously repealed subject to savings does not affect the continued operation of those savings.
  - (3) The repeal by this Act of a saving on the previous repeal of an enactment does not affect the operation of the saving in so far as it is not specifically reproduced in this Act but remains capable of having effect.
  - (4) Where the purpose of an enactment repealed by this Act was to secure that the substitution of the provisions of the Act containing that enactment for provisions repealed by that Act did not affect the continuity of the law, the enactment repealed by this Act continues to have effect in so far as it is capable of doing so.

*Use of existing forms etc.*

- 3
- Any reference to an enactment repealed by this Act which is contained in a document made, served or issued after the commencement of that repeal shall be construed, except so far as a contrary intention appears, as a reference or (as the context may require) as including a reference to the corresponding provision of this Act.

## PART II

### SPECIFIC PROVISIONS: REPLICATION OF OLD TRANSITIONAL PROVISIONS

*Sections 37, 41, 46 and 79 and Schedules 2, 3 and 6: consent requirements*

- 4
- (1) In relation to an offence committed before 1st October 1997—
    - (a) section 37 of this Act shall have effect as if at the end of subsection (10) (but not as part of paragraph (c)) there were added the words “ and the court shall not make the order unless he expresses his willingness to comply with its requirements ”;
    - (b) section 41 of this Act shall have effect as if at the end of subsection (7) (but not as part of paragraph (c)) there were added the words “ and the court shall not make the order unless he expresses his willingness to comply with its requirements ”;
    - (c) section 46(4) of this Act shall have effect as if after the word “unless” there were inserted “ the offender consents and ”;
    - (d) section 79(3) of this Act shall have effect as if for the words from “he fails to” onwards there were substituted “ he refuses to give his consent to a community sentence which is proposed by the court and requires that consent ”; and
    - (e) Schedule 2 to this Act shall have effect as if there were omitted from each of paragraphs 5(4) and 6(5) paragraph (b) and the word “and” immediately preceding it.

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- (2) In relation to an offence committed before 1st October 1997, Schedule 3 to this Act shall have effect as if—
- (a) for paragraph (b) of each of paragraphs 4(2) and 5(2) there were substituted the following paragraph—
    - “(b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.”;
  - (b) paragraph 19(2)(b)(i) were omitted; and
  - (c) at the end of paragraph 20(2)(b) there were inserted “, being treatment of a kind to which he could be required to submit in pursuance of a probation or combination order ”.
- (3) In relation to an offence committed before 1st October 1997, paragraph 3(4) of Schedule 6 to this Act shall have effect as if for paragraph (c) there were substituted the following paragraph—
- “(c) the offender or, if he is a child, his parent or guardian, consents to their inclusion.”

*Section 37: minimum age for curfew order*

- 5 In relation to an offence committed before 1st January 1998, section 37 of this Act shall have effect as if—
- (a) in subsection (1), after the word “person” there were inserted “ aged 16 or over ”; and
  - (b) subsections (4) and (9) were omitted.

*Custodial sentences for young offenders: section 98 and re-sentencing powers*

- 6 In relation to an offender sentenced to detention in a young offender institution before 1st April 2000, section 98(2) of this Act shall have effect as if at the end there were inserted “, but if he is under 18 at the time of the direction, only for a temporary purpose ”.
- 7 A court to which it falls after the commencement of this Act to determine for the purposes of any enactment how a previous court could or might have dealt with an offender shall in the case of an offender aged under 18 make that determination—
- (a) as if sections 100 to 107 of this Act (detention and training orders) and section 96 of this Act (detention in a young offender institution available only if offender is at least 18) had been in force; and
  - (b) as if sections 1 to 4 of the <sup>M2</sup>Criminal Justice and Public Order Act 1994 (secure training orders, repealed by the <sup>M3</sup>Crime and Disorder Act 1998) had not been in force.

**Marginal Citations**

**M2** 1994 c. 33.

**M3** 1998 c. 37.

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*Sections 143, 147, 148 and 150: miscellaneous transitional provisions*

- 8 The following provisions of this Act, namely—
- (a) subsections (6) and (7) of section 143, and
  - (b) subsections (2) and (4) of section 147,
- do not apply in relation to an offence committed before 1st July 1992.
- 9 In relation to an offence into which a criminal investigation began before 1st April 1997, section 148 of this Act shall have effect as if for paragraph (b) of subsection (6) there were substituted the following paragraph—
- “(b) the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.”
- 10 In relation to an offence committed before 3rd February 1995, section 150 of this Act shall have effect as if there were omitted from subsection (2) the words from “and where the court” onwards.

**PART III**

SPECIFIC PROVISIONS: MISCELLANEOUS TRANSITIONAL PROVISIONS

*Referral orders*

- 11 (1) Any provision of Part III of this Act which re-enacts an enactment contained in the <sup>M4</sup>Youth Justice and Criminal Evidence Act 1999 which has not been brought into force before the commencement of this Act shall be of no effect until that enactment is brought into force.
- (2) The repeal by this Act of any enactment contained in the <sup>M5</sup>Youth Justice and Criminal Evidence Act 1999 which has not been brought into force before the commencement of this Act shall not have effect until that enactment is brought into force.
- (3) Sub-paragraph (2) above does not apply to the repeal by this Act of paragraph 5, 20, 29 or 30 of Schedule 4 to the <sup>M6</sup>Youth Justice and Criminal Evidence Act 1999.
- (4) Any provision of Schedule 9 to this Act which amends an enactment as amended by Schedule 4 to the <sup>M7</sup>Youth Justice and Criminal Evidence Act 1999 shall, if the amendment in question made by Schedule 4 to that Act has not been brought into force before the commencement of this Act, be of no effect until that amendment is brought into force.

**Marginal Citations**

**M4** 1999 c. 23.

**M5** 1999 c. 23.

**M6** 1999 c. 23.

**M7** 1999 c. 23.

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### *Modifications for Isles of Scilly*

- 12 If immediately before the commencement of this Act an order made under section 71 of the <sup>M8</sup>Children and Young Persons Act 1969 (application to Isles of Scilly) is in force which modifies any provisions of that Act reproduced in this Act—
- (a) the order shall have effect as if also made under section 68 of this Act; and
  - (b) the provisions modified by the order shall be deemed to include any provision of the sections and Schedules mentioned in section 68(1) which corresponds to a provision of the <sup>M9</sup>Children and Young Persons Act 1969 which, immediately before the commencement of this Act, was modified by the order.

#### **Marginal Citations**

**M8** 1969 c. 54.

**M9** 1969 c. 54.

### *Consequential amendments*

- 13 The amendments made by Schedule 9 to this Act of subsections (5)(e) and (10) of section 5 of the <sup>M10</sup>Rehabilitation of Offenders Act 1974 shall not be taken to affect the operation of paragraph 36(7) of Schedule 14 to the <sup>M11</sup>Children Act 1989 (which saves the effect of section 5 in relation to certain care orders made under the Children and Young Persons Act 1969).

#### **Marginal Citations**

**M10** 1974 c. 53.

**M11** 1989 c. 41.

## **PART IV**

### **INTERPRETATION**

- 14 In this Schedule, where the context permits, “repeal” includes revoke.

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