

*Status: This version of this schedule contains provisions that are prospective.*

**Changes to legislation:** Criminal Justice Act 2003, SCHEDULE 38 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### SCHEDULE 38

Section 333(6)

#### TRANSITORY, TRANSITIONAL AND SAVING PROVISIONS

##### *Sentencing of offenders aged 18 but under 21*

- 1 If any provision of Part 12 (“the relevant provision”) is to come into force before the day on which section 61 of the Criminal Justice and Court Services Act 2000 (abolition of sentences of detention in a young offender institution, custody for life, etc.) comes into force (or fully into force) the provision that may be made by order under section 333(1) includes provision modifying the relevant provision with respect to sentences passed, or other things done, at any time before section 61 of that Act comes into force (or fully into force).

*F1* . . .

#### Textual Amendments

- F1** Cross-heading repealed (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 178, 182, [Sch. 23 Pt. 4](#) (with [s. 180](#), [Sch. 22](#)); S.I. 2010/816, [art. 2](#), Sch. paras. 15, 22(b)(iv)

- 2 **F2** . . . . .

#### Textual Amendments

- F2** Sch. 38 para. 2 repealed (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 178, 182, [Sch. 23 Pt. 4](#) (with [s. 180](#), [Sch. 22](#)); S.I. 2010/816, [art. 2](#), Sch. paras. 15, 22(b)(iv)

- 3 **F3** . . . . .

#### Textual Amendments

- F3** Sch. 38 para. 3 repealed (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), ss. 177, 178, 182, [Sch. 21 para. 88](#), [Sch. 23 Pt. 4](#) (with [s. 180](#), [Sch. 22](#)); S.I. 2010/816, [art. 2](#), Sch. paras. 15, 22(b)(iv)

PROSPECTIVE

##### *Drug treatment and testing orders*

- 4 A drug treatment and testing order made under section 52 of the Powers of Criminal Courts (Sentencing) Act 2000 before the repeal of that section by this Act is in force (or fully in force) need not include the provision referred to in

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subsection (6) of section 54 of that Act (periodic review by court) if the treatment and testing period (as defined by section 52(1) of that Act) is less than 12 months.

PROSPECTIVE

*Drug testing as part of supervision of young offenders after release*

5 (1) Until the coming into force of the repeal by this Act of section 65 of the Criminal Justice Act 1991 (c. 53) (supervision of young offenders after release), that section has effect subject to the following modifications.

(2) In subsection (5B)—

- (a) in paragraph (a), for “18 years” there is substituted “ 14 years ”,
- (b) for paragraph (b) there is substituted—

“(b) a responsible officer is of the opinion—

- (i) that the offender has a propensity to misuse specified Class A drugs, and
- (ii) that the misuse by the offender of any specified Class A drug caused or contributed to any offence of which he has been convicted, or is likely to cause or contribute to the commission by him of further offences; and”.

(3) After subsection (5D) there is inserted—

“(5E) A person under the age of 17 years may not be required by virtue of subsection (5A) to provide a sample otherwise than in the presence of an appropriate adult.”

(4) For subsection (10) there is substituted—

“(10) In this section—

“appropriate adult”, in relation to a person aged under 17, means—

- (a) his parent or guardian or, if he is in the care of a local authority or voluntary organisation, a person representing that authority or organisation,
- (b) a social worker of a local authority<sup>F4</sup> . . . , or
- (c) if no person falling within paragraph (a) or (b) is available, any responsible person aged 18 or over who is not a police officer or a person employed by the police;

“responsible officer” means—

- (a) in relation to an offender aged under 18, an officer of a local probation board or a member of a youth offending team;
- (b) in relation to an offender aged 18 or over, an officer of a local probation board;

“specified Class A drug” has the same meaning as in Part 3 of the Criminal Justice and Court Services Act 2000 (c. 43).”

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### Textual Amendments

- F4** Words in Sch. 38 para. 5(4) repealed (1.4.2005 for E. and 1.4.2006 for W.) by [Children Act 2004 \(c. 31\)](#), ss. 64, 67, [Sch. 5 Pt. 4](#); [S.I. 2005/394](#), [art. 2\(2\)\(g\)](#); [S.I. 2006/885](#), [art. 2\(2\)\(h\)](#)

### *Intermittent custody*

- 6 If section 183 (intermittent custody) is to come into force for any purpose before the commencement of the repeal by this Act of section 78 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (which imposes a general limit on the power of a magistrates' court to impose imprisonment), the provision that may be made by order under section 333(1) includes provision modifying any period or number of days specified in section 183 with respect to sentences passed by magistrates' courts before the commencement of that repeal.

### *Transfer to Scotland of community orders and suspended sentence orders*

- 7 (1) Until the coming into force of the repeal by the Mental Health (Care and Treatment) (Scotland) Act 2003 of the Mental Health (Scotland) Act 1984 (c. 36), in the provisions mentioned in sub-paragraph (2) the reference to the Mental Health (Care and Treatment) (Scotland) Act 2003 has effect as a reference to the Mental Health (Scotland) Act 1984.
- (2) Those provisions are—
- (a) paragraph 2(4) of Schedule 9 (transfer of community orders to Scotland or Northern Ireland), and
  - (b) paragraph 4 of Schedule 13 (transfer of suspended sentence orders to Scotland or Northern Ireland).

### Commencement Information

- II** Sch. 38 para. 7 wholly in force at 4.4.2005, see s. 336(3) and [S.I. 2005/950](#), [art. 2\(1\)](#), [Sch. 1 para. 45](#) (subject to [art. 2\(2\)](#), [Sch. 2](#))

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2574, Sch. by [S.I. 2012/2761 art. 2](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 150(aa) inserted by [2012 c. 10 Sch. 26 para. 19\(2\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 26 para. 19 omitted (11.12.2013) by virtue of [2013 c. 22, Sch. 16 para. 23\(2\)](#); [S.I. 2013/2981, art. 2\(d\)](#))
- s. 150(ba) inserted by [2012 c. 10 Sch. 26 para. 19\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 26 para. 19 omitted (11.12.2013) by virtue of [2013 c. 22, Sch. 16 para. 23\(2\)](#); [S.I. 2013/2981, art. 2\(d\)](#))
- s. 151(A1) inserted by [2008 c. 4 s. 11\(3\)](#)
- s. 151(1A) inserted by [2008 c. 4 s. 11\(5\)](#)
- s. 151(1A)(b) word substituted by [2008 c. 4 Sch. 4 para. 76\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 151(1A) is still only prospectively inserted by [2008 c. 4, s. 11\(5\)](#))
- s. 151(1A)(c) substituted by [2009 c. 25 Sch. 17 para. 8\(3\)](#) (This amendment not applied to [legislation.gov.uk](#). S. 151(1A) is still only prospectively inserted by [2008 c. 4, s. 11\(5\)](#))
- s. 151(2A)(b) substituted by [2009 c. 25 Sch. 17 para. 8\(4\)](#)
- s. 151(4A) inserted by [2009 c. 25 Sch. 17 para. 8\(5\)](#)
- s. 151(8)(a) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(a\)](#)
- s. 151(8)(b) words inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(i\)](#)
- s. 151(8)(b) words substituted by [2009 c. 25 Sch. 17 para. 8\(6\)\(b\)\(ii\)](#)
- s. 151(8)(c)-(f) inserted by [2009 c. 25 Sch. 17 para. 8\(6\)\(c\)](#)
- s. 165(5) inserted by [2014 c. 12 s. 179\(3\)](#)
- s. 237(1A) inserted by [2006 c. 48 s. 34\(3\)](#)
- s. 237(1B)(f)(g) inserted by [2021 c. 11 Sch. 13 para. 40\(b\)](#)
- s. 239A inserted by [2015 c. 2 s. 8\(1\)](#)
- s. 239A cross-heading inserted by [2015 c. 2 Sch. 3 para. 5](#)
- s. 250(5C) inserted by [2015 c. 2 Sch. 3 para. 7\(4\)](#)
- s. 255A(4A) inserted by [2015 c. 2 s. 9\(2\)](#)
- s. 255B(3A) inserted by [2015 c. 2 s. 9\(3\)\(b\)](#)
- s. 255B(4A)-(4C) inserted by [2015 c. 2 s. 9\(3\)\(d\)](#)
- s. 255C(3A) inserted by [2015 c. 2 s. 9\(4\)\(b\)](#)
- s. 255C(4A)-(4C) inserted by [2015 c. 2 s. 9\(4\)\(d\)](#)
- s. 256A(1)-(1B) substituted for s. 256A(1) by [2015 c. 2 s. 9\(6\)\(a\)](#)
- s. 256A(4A)(4B) inserted by [2015 c. 2 s. 9\(6\)\(f\)](#)
- s. 256A(5)(6) substituted for s. 256A(5) by [2015 c. 2 s. 9\(6\)\(g\)](#)
- s. 256AZA inserted by [2015 c. 2 s. 10\(1\)](#)
- s. 257(3) inserted by [2006 c. 48 s. 34\(4\)](#)
- s. 258(1A) inserted by [2006 c. 48 s. 34\(5\)](#)

- s. 260(4)(aa) substituted for word by [2008 c. 4 s. 34\(7\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S. 34(2)(4)(b)(7)(10) omitted (3.12.2012) by virtue of 2012 c. 10, s. 118(4)(b); S.I. 2012/2906, art. 2(d))
- Sch. 15B para. 49A omitted by [S.I. 2019/780 reg. 26\(4\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 15B para. 49B omitted by [S.I. 2019/780 reg. 26\(4\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Regs. 21, 25, 26, 27, 30 revoked (1.12.2020) by 2020 c. 17, Sch. 28; S.I. 2020/1236, reg. 2)
- Sch. 20B para. 34(6)(7) substituted for Sch. 20B para. 34(6) by [2015 c. 2 Sch. 3 para. 10](#)