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

COMMENTARY ON SECTIONS

Part 12 - Sentencing

Chapter 1: General provisions about sentencing

Section 142: Purposes of sentencing

445. For the first time, the purposes of adult sentencing will be set out in statute. *Subsection (1)* sets out what these are: punishment, crime reduction, the reform and rehabilitation of offenders, public protection, and reparation. There are exceptions where these purposes will not be applicable, specified in *subsection (2)*. These exceptions are where an offender is under 18 (there are separate purposes for the aims of the youth justice system which can be found in the Crime and Disorder Act 1998), where the sentence is fixed by law (i.e. a mandatory life sentence imposed for murder), where offences require certain custodial sentences (Sections 225 to 228 of this Act and sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act 2000, and section 51A of the Firearms Act 1968), and where various provisions under the Mental Health Act 1983 apply.

Section 143: Determining the seriousness of an offence

446. This section sets out certain principles the court must follow when determining the seriousness of an offence. The court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused. Any previous convictions, where they are recent and relevant, should be regarded as an aggravating factor which should increase the severity of the sentence. A previous conviction is defined by subsection (4) to mean a previous conviction by a court in the United Kingdom or a finding of guilt in service disciplinary proceedings. The term "service disciplinary proceedings" is defined in section 305(1). This is a strengthening of the existing principle in section 151(1) of the Powers of Criminal Courts (Sentencing) Act 2000. *Subsection (3)* re-enacts section 151(2) of that Act and provides that the fact that an offence was committed while the offender was on bail should also be regarded as an aggravating factor.

Section 144: Reduction in sentence for guilty pleas

447. This section re-enacts section 152(1) and (3) of the Powers of Criminal Courts (Sentencing) Act and makes provision for the reduction of sentences for early guilty pleas, in order to encourage those defendants who are guilty not to take up valuable court time and trouble victims and witnesses unnecessarily. *Subsection (1)* requires the court to take into account exactly when in the course of proceedings the guilty plea was made and the circumstances in which it was given. For those sentences falling to be imposed under sections 110(2) or 111(2) of Powers of Criminal Courts (Sentencing) Act the court can reduce the sentence by up to 20 per cent.

Section 145: Increase in sentence for racial or religious aggravation

448. This section re-enacts section 153 of the Powers of Criminal Courts (Sentencing) Act 2000 and provides that, except in the case of offences under sections 29 to 32 of the Crime and Disorder Act 1998, the court must treat the fact that the offence was religiously or racially aggravated as increasing the seriousness of the offence, and must state in open court it was so aggravated. The definition of "racially or religiously aggravated" can be found in section 28 of the 1998 Act.

Section 146: Increase in sentences for aggravation related to disability or sexual orientation

449. This is a new provision, which is based upon the preceding section, and provides that the seriousness of an offence (and thus the severity of the resulting sentence) should be increased if the offender demonstrates hostility based on the victim's sexual orientation or disability or if the offence was motivated by hostility by reason of a person's sexual orientation or disability. The court must state in open court if the offence is aggravated for these reasons.

Section 147: Meaning of "community sentence" etc.

450. This section defines "community sentence" for the purposes of Part 12 of the Act and also defines "youth community order" for the purposes of Chapter 1 of that Part.

Section 148: Restrictions on imposing a community sentence

451. *Subsection (1)* re-enacts section 35(1) of the Powers of Criminal Courts (Sentencing) Act. *Subsection (2)* re-enacts with a few minor changes section 35(3) of that Act. *Subsection (3)* sets out the same principles for youth community orders which remain in the Powers of Criminal Courts (Sentencing) Act. The section makes provision as to when it is appropriate to impose a community sentence. If an offence is not serious enough for a community sentence, a fine, conditional discharge or absolute discharge would be appropriate. For a community sentence to be passed, an offence should be serious enough to warrant one. Further, the requirements which will form part of the (new) community sentence should be the most suitable ones for the offender and the restrictions on the liberty of the offender (such as a curfew requirement) must be in line with the seriousness of the offence. There is an exception, where an offence itself does not warrant a community sentence but where the offender has committed several similar offences in the past. This case is dealt with in section 151.

Section 149: Passing of community sentence on offender remanded in custody

452. If an offender has been remanded in custody, and then receives a custodial sentence, his time on remand counts towards his sentence. This is covered in section 240. Section 149 enables the court to have regard to any time spent on remand when putting together the requirements of a community sentence, and deciding upon what restrictions on liberty ought to be imposed.

Section 150: Community sentence not available where sentence fixed by law, etc.

453. This section re-enacts section 34 of the Powers of Criminal Courts (Sentencing) Act, but now refers to the new sentences for dangerous offenders. A community sentence is not available in respect of offences for which the sentence is fixed by law, or where sentences for dangerous offenders (in *Sections 225 to 228*) or under sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act, or under section 51A of the Firearms Act 1968 apply.

Section 151: Community order for persistent offender previously fined

454. This section replaces existing provisions in section 59 of the Powers of Criminal Courts (Sentencing) Act. In addition to the general principle set out in section 143 for dealing with persistent offenders, this section provides the court with an additional discretionary power for dealing with persistent petty offenders. Where an offender aged 16 or over has been sentenced to a fine on at least three previous occasions, the court may impose a community sentence even if the current offence is one which would on its own warrant a fine. *Subsection (3)* directs the court to consider the nature of the previous offences, and how recent and relevant they are to the current offence. *Subsection (6)* provides that, for the purposes of determining whether the criteria are met, it does not matter whether the offender has on previous sentencing occasions received community or custodial sentences. *Subsection (7)* makes it clear that this Section does not interfere with the court's wider power to treat previous convictions as increasing the seriousness of the offence (see section 143).

Section 152: General restrictions on imposing discretionary custodial sentences

455. As with community sentences, a court cannot impose a custodial sentence except where the offence, taken in combination with any past offences, merits it. This section, which largely re-enacts section 79 of the Powers of Criminal Courts (Sentencing) Act, sets out this principle. *Subsection (1)* excludes from this consideration those offences which fall to be punished under the scheme for sentencing dangerous offenders (sections 225 to 228) and those which fall to be sentenced under sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act and section 51A of the Firearms Act 1968. *Subsection (2)*, which is based on section 79(2)(a) of the Powers of Criminal Courts (Sentencing) Act, states that a custodial sentence must only be imposed if the offence(s) is so serious that neither a fine nor a community sentence would be adequate punishment for it. *Subsection (3)* re-enacts section 79(3) of the Powers of Criminal Courts (Sentencing) Act. It provides that *subsection (2)* does not prevent a court from passing a custodial sentence on an offender who fails to consent to requirements imposed as part of a community sentence, where such consent is required) or if he refuses to comply with an order under section 161(2) to provide samples for the purposes of drug testing.

Section 153: Length of discretionary custodial sentences: general provision

456. This section re-enacts section 80 of the Powers of Criminal Courts (Sentencing) Act but modifies that provision to direct the court to impose the shortest term that is commensurate with the seriousness of the offence(s), subject to mandatory minimum sentences (in sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act and 51A of the Firearms Act 1968) and the provisions of the extended sentence in Sections 227 and 228. *Subsection (1)* provides an exception to the rule for the case where the sentence is fixed by law (i.e. as a mandatory life sentence), and in the case of a discretionary life sentence or a new sentence of imprisonment or detention for public protection (sections 225 and 226).

Section 154: General limits on magistrates' court's power to impose imprisonment

457. This section re-enacts section 78 Powers of Criminal Courts (Sentencing) Act but with a significant amendment. This is an increase in magistrates' sentencing powers so as to enable them to impose custodial sentences of up to and including 12 months in respect of any one offence. These powers are, by virtue of *subsection (4)* without prejudice to any term of imprisonment which may be imposed for non-payment of a fine.

Section 155: Consecutive terms of imprisonment

458. This section amends the Magistrates Courts Act 1980, adding to the powers in section 154, by giving magistrates the power to impose a custodial term of 65 weeks in respect of two or more offences to be served consecutively.

Section 156: Pre-sentence reports and other requirements

459. This section re-enacts with amendments the existing provisions in sections 36 and 81 of the Powers of Criminal Courts (Sentencing) Act which cover pre-sentence reports for community and custodial sentences. When a court is considering whether to impose a discretionary custodial sentence and how long it should be, or whether to impose a community sentence and what restrictions to put on the offender's liberty as part of that sentence (*Sections 148, 152 and 153*) the court must take into account all the information available to it, including information about the offence and about the offender.

460. Before imposing such a sentence, the Court must obtain a pre-sentence report. Pre-sentence reports are written in the case of adults by the probation service based on an interview and analysis of the offender and his offending history and needs. The pre-sentence report contains advice about what punishment might be appropriate and what rehabilitative work would be likely to prove effective with the offender in order to reduce the risk that he will re-offend.

461. However, *subsection (4)* provides that the court need not obtain a pre-sentence report if it considers it unnecessary to do so in any individual case. *Subsection (5)* provides further protection for juvenile offenders and exempts them from subsection (4). As a result, for offenders under the age of 18, the court must not dispense with the requirement to obtain a pre-sentence report, unless there already is one that relates to the offender and the court has access to it. Under *subsection (6)*, no sentence is invalidated by the failure of a court to obtain and consider a pre-sentence report, even if a pre-sentence report is required under *subsection (3)*.

462. If the offender appeals against sentence, and the lower court did not obtain a pre-sentence report, a pre-sentence report must be obtained and considered unless the appellate court believes the original court was justified in not obtaining a pre-sentence report or the current circumstances are such that a pre-sentence report is not necessary. The situation in relation to appeals for offenders under the age of 18 is slightly different. Unless there is a previous pre-sentence report about the offender and the court has access to it (*subsection (8)*) the court may not decide the original court was justified in not requiring a pre-sentence report or deciding that current circumstances are such that a pre-sentence report is not necessary.

Section 157: Additional requirements in case of mentally disordered offender

463. This section re-enacts section 82 of the Powers of Criminal Courts (Sentencing) Act. Special provision is made for mentally disordered offenders: qualified medical practitioners must be consulted before a custodial sentence is imposed (unless the sentence is one that is fixed by law). The court can also decide not to request a medical report if it considers it unnecessary in a particular case. The court must consider any information before it relating to the offender's mental condition and the likely effect of a custodial sentence on the offender and on any treatment which might be available to him. If the court does not obtain a medical report this does not invalidate any sentence passed, but on appeal the court must obtain and consider a medical report. *Subsection (6)* defines a medical report, which is different from a pre-sentence report, and *subsection (7)* says that provisions under this Section do not limit the provisions for pre-sentence reports in section 156.

Section 158: Meaning of "pre-sentence reports"

464. This section re-enacts section 162 of the Powers of Criminal Courts (Sentencing) Act and provides a definition for a pre-sentence report described in the preceding Sections. Such a report must be prepared by an "appropriate officer", defined in *subsection (2)* as an officer of the local probation board where the offender is over 18, or where the offender is under 18 a probation officer, social worker or member of a youth offending team.

Section 159: Disclosure of pre-sentence reports

465. This section re-enacts section 156 of the Powers of Criminal Courts (Sentencing) Act with changes in respect of the disclosure of pre-sentence reports to juveniles. Where the court does obtain a written pre-sentence report, copies of it must be provided to the persons specified in this section. Normally this should be the offender or his legal representative, the parent or guardian of an offender who is under 18, and the prosecutor. If however, the prosecutor is not of a description prescribed by the Secretary of State, the requirement to give the prosecutor a copy may be dispensed with if the court considers it inappropriate that he should receive one (*subsection (4)). Subsection (5)* provides that the prosecutor is only able to use the information in the pre-sentence report either for determining whether to make representations to the court or for making representations to the court about the content of the report. Where the offender is under 18 and it appears to the Court that the disclosure of a report to the offender or his parent or guardian would cause harm to the offender, the court is not obliged to give a copy to the offender or his parent or guardian if present in court (*subsection (3)*).

Section 160: Other reports of local probation boards and members of youth offending teams

466. This section re-enacts section 157 of the Powers of Criminal Courts (Sentencing) Act. It applies where a report (other than a pre-sentence report) is made by a probation officer or a member of a youth offending team with a view to assisting the court in deciding how best to deal with a person in respect of an offence (*subsection (1)).* Where the court does obtain a written report other than a pre-sentence report, copies of it must be provided to the persons specified in this section. Normally this should be the offender or his legal representative and the parent or guardian of an offender who is under 18. Where the offender is under 18 and it appears to the court that the disclosure of a report to the offender or his parent or guardian would cause harm to the offender, the court is not obliged to give a copy to the offender or his parent or guardian if present in court (*subsection (3)*).

Section 161: Pre-sentence drug testing

467. Pre-sentence drug testing is available to assist the court when it is considering imposing a community sentence. This section re-enacts, with some modifications, section 36A of the Powers of Criminal Courts (Sentencing) Act 2000(which provides for the pre-sentence drug testing of persons aged 18 and over). It enables the court to make an order, in the case of convicted offenders who are at least 14 years old, to be tested for any specified Class A drug. Where the offender is under the age of 17 years, provision must be made for an appropriate adult (as defined in subsection (8)) to be present when the sample is taken. Failure to provide a sample without a reasonable excuse is punishable by a fine. This power is only exercisable in the areas where the court has been notified by the Secretary of State that the power to make such orders is exercisable by the court. The power is extended under this section additionally to apply where the court is considering imposing a suspended sentence.

Section 162: Powers to order statement as to offender's financial circumstances

468. This section re-enacts section 126 of the Powers of Criminal Courts (Sentencing) Act. In some cases the court might wish to know the financial circumstances of the offender. The court can make a "financial circumstances order" in respect of an offender on conviction before sentencing him or if he pleads guilty without appearing before the court. The offender must report his financial circumstances to the court. If the offender fails to comply he commits an offence and is liable to a fine. If the offender falsifies or omits relevant information from a statement of his financial circumstances he also commits an offence and is liable to a fine. *Subsection (6)* enables proceedings for an offence under subsection (5) to be begun within two years from the date of the offence or within 6 months from its discovery.

Section 163: General power of the Crown Court to fine offender convicted on indictment

469. This section re-enacts section 127 of the Powers of Criminal Courts (Sentencing) Act. In general, the Crown Court can impose a fine on the offender either instead of, or in addition to, dealing with the offender in any other way. This section does not apply in relation to an offence for which the sentence is fixed by law or which falls to be imposed under sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act or the provisions for dangerous offenders in sections 225 to 228 of the Act.

Section 164: Fixing of fines

470. This section re-enacts section 128 of the Powers of Criminal Courts (Sentencing) Act with some modifications. The court must inquire into the financial circumstances of an offender before fixing the amount of a fine on an offender (*subsection (1)*). When determining the amount of a fine, the court must take the financial circumstances of the offender, the seriousness of the offence and the circumstances of the case into account. In certain cases where the information is not available, such as where the offender has not furnished a statement of his financial circumstances, and the court has been unable to assess the offender's financial circumstances, the court may go ahead and fix the amount it thinks appropriate (*subsection (5)).*

Section 165: Remission of fines

471. This section re-enacts section 129 of the Powers of Criminal Courts (Sentencing) Act. If an offender's financial circumstances are made clear to the court after it has fixed a fine, it can reduce the fine or withdraw it completely. If the offender is in prison for failing to pay the fine when such a decision is made, his term is to be reduced accordingly.

Section 166: Savings for powers to mitigate sentences and deal appropriately with mentally disordered offenders.

472. This section re-enacts and modifies section 158 of the Powers of Criminal Courts (Sentencing) Act and allows the court to take into account any relevant matters in mitigation of the sentence, irrespective of the obligations imposed by section 148 of this Act in respect of community sentences, by sections 152, 153 and 157 of this Act in respect of custodial sentences, by section 156 of this Act in respect of pre–sentence reports and other requirements and by section 163 or this Act in respect of fines. None of the sections mentioned in *subsection (1)* are to prevent the court from passing any sentence it considers appropriate. *Subsection (2)* additionally makes clear that the Court can impose a community sentence, providing there are relevant mitigating factors, even where the offence(s) would normally have justified a custodial sentence. The court can reduce the sentence by considering other penalties given to the offender at the same time and where an offender is convicted of two or more offences by applying the totality principle, which is that the total punitive weight of the sentence must be commensurate with the offences committed (*subsection (3)*).

Section 167: The Sentencing Guidelines Council

473. *Subsection (1)* provides for the membership of the Sentencing Guidelines Council, which exists to promulgate guidelines to enable all courts dealing with criminal cases to approach the sentencing of offenders from a common starting point. It stipulates that there will be 7 judicial members and 4 non-judicial members, and provides that the Lord Chief Justice is to be the Chairman of the Council.

474. *Subsection (2)* sets out those persons eligible to be judicial members. *Subsection (3)* is designed to ensure that membership reflects those courts regularly dealing with criminal cases. The Lord Chief Justice is required to appoint a Deputy Chairman from amongst the Council members under *subsection (7)*.

475. Under *subsection (4)* the non-judicial members must have experience in one or more of the following fields: policing, criminal prosecution, criminal defence, and the promotion of the welfare of victims of crime. Under *subsection (9)*, the Secretary of State may appoint as an observer a person with experience of sentencing policy and the administration of sentences. This person may attend and speak at meetings of the Council. *Subsection (6*) ensures that each area of experience is represented on the Council.

476. *Subsection (8)* enables the Lord Chief Justice to nominate another judge to attend in his stead if he is unable to attend a Council meeting.

Section 168: Sentencing Guidelines Council supplementary provisions

477. This section enables the Lord Chancellor to deal with matters of appointment and removal of members, and Council proceedings by order. It also enables payment of remuneration and expenses to Council members. Lay justices can be remunerated for the time given to membership of the Council. All other judicial members will be salaried, full time members of the judiciary and no further remuneration is necessary. However, provision is made for appropriate expenses to be reimbursed, as determined by the Lord Chancellor under *subsection (4)(b)*. Similarly, by virtue of *subsection (5)* the Home Secretary may determine what payment by way of either remuneration or expenses is appropriate, for the non-judicial members.

Section 169: The Sentencing Advisory Panel

478. This section provides for the continuation of the Sentencing Advisory Panel, constituted, as at present, by the Lord Chancellor after consultation with the Secretary of State and the Lord Chief Justice. Subsection (2) contains the requirement that the Lord Chancellor must appoint a Chairman of the Panel after consultation with the Home Secretary and the Lord Chief Justice. Subsection (3) re-enacts provision authorising the Lord Chancellor to remunerate members of the Panel or provide expenses.

Section 170: Guidelines relating to sentencing and allocation

479. This section sets out the responsibility for issuing guidelines and sets out the matters to be taken into account in the process of creating them.

480. *Subsection (1)* defines “sentencing guidelines” and “allocation guidelines” as meaning guidelines relating to the sentencing of offenders and guidelines as to the allocation of cases between courts.

481. *Subsection (2)* allows the Secretary of State to ask the Council to frame or revise guidelines relating to allocation, a general matter affecting sentencing (for example, relating to the credit to be given for a guilty plea), to a particular category of offender (such as those with previous convictions), or relating to a particular offence. The Council itself can decide to frame guidelines, under *subsection (3)*, and must consider whether to do so where it receives a proposal from the Sentencing Advisory Panel or the Secretary of State (as described above). *Subsection (4)* obliges the Council to keep its guidelines under review (where they have been formally issued) and revise them if appropriate.

482. *Subsection (5)* sets out the factors to be taken into account by the Sentencing Guidelines Council when creating or revising sentencing guidelines. The list (which reproduces the existing list in section 80(3) of the Crime and Disorder Act 1998) is not intended to be exhaustive.

483. *Subsection (6)* sets out certain factors to be taken into account by the Sentencing Guidelines Council when creating or revising allocation guidelines. These are the importance of promoting consistency in decisions under section 19 of the Magistrates’

Courts Act 1980 (which relates to determining mode of trial) and the views of the Sentencing Advisory Panel.

484. *Subsection (7)* requires the Council to include in its guidelines criteria to determine the seriousness of the offence being dealt with. Where appropriate those criteria need to include criteria for determining the significance of any previous convictions of the offender.

485. *Subsection (8)* requires the Council to publish proposed guidelines in draft for consultation with the Secretary of State, any other person the Lord Chancellor after consultation with the Secretary of State directs and any other person the Council considers to be appropriate. It is anticipated that the second of these categories will include the House of Commons Home Affairs Committee. This consultation will follow that undertaken by the Sentencing Advisory Panel (see *Section 171(3)*) and will reflect the need to avoid duplication of effort.

486. *Subsection (9)* provides for the Council, after making such amendments as it considers appropriate, to issue the guidelines as definitive guidelines.

Section 171: Functions of Sentencing Advisory Panel in relation to guidelines

487. This Section makes provision for the functions of the Sentencing Advisory Panel. The Council is obliged to notify the Sentencing Advisory Panel when it decides to frame new guidelines or to revise existing guidelines. This will enable the Panel to prepare advice to assist the Council. However, under subsection (2) the Panel is also able to propose to the Council that guidelines are framed or revised by the Council.

488. *Subsection (3)* provides that where guidelines are under consideration (either as a result of the Panel's own initiative or that of the Council), the Panel must consult with those that the Council stipulates. The Council will make that decision after consultation with the Secretary of State and Lord Chancellor. The Panel must prepare advice where guidelines are proposed and submit it to the Council. *Subsection (4)* allows the Council to authorise the Panel to dispense with the consultation required under *subsection (3)* if the urgency of a case makes this impractical.

Section 172: Duty of court to have regard to sentencing guidelines

489. This Section places a duty on courts to have regard to any sentencing guidelines issued by the Council.

Section 173: Annual report by Council

490. The Council must prepare an annual report on the exercise of its functions, which it must present to Ministers, who in turn must lay a copy of the report before each House of Parliament. The Council must then publish the report. Some leeway is allowed for the publication of the first report which can be published at the end of the financial year following the one in which section 167 *c*omes into force *(subsection* (2)).

Section 174: Duty to give reasons for, and explain effect of, sentence

491. This section imposes a general statutory duty on courts to give reasons for, and explain the effect of, the sentence passed. In doing so, it seeks to bring together in a single provision many of the obligations on a Court to give reasons when passing sentence which are currently scattered across sentencing legislation.

492. *Subsection (1)* requires a Court to explain its reasons for deciding on the sentence to be passed but to do so in non-technical terms. The aim is to enable the offender and other interested parties to understand why this particular sentence was chosen. The Court will also be under an obligation to explain to the offender how the sentence is structured, what the sentence requires him to do, what will happen if it is not done and any power that exists to vary or review the sentence.

493. *Subsection (2)* extends the obligation to give reasons stated in subsection (1) by setting out certain matters that have to be dealt with. Where the Sentencing Guidelines Council has issued definitive guidelines relevant to the sentence, and the Court departs from them it must give reasons for doing so. In the case of a custodial sentence or a community sentence, the court must explain why it regards the offence as being sufficiently serious to warrant such a sentence. Where the Court reduces a sentence on account of a guilty plea, that fact must be included in the reasons, as must any other aggravating or mitigating factors relevant to the sentencing decision which the Court regarded as being of particular importance.

494. *Subsection (3)* excludes from the obligation to give reasons those cases where the sentence is fixed by law (a separate duty to give reasons in relation to such sentences being made by section 270) or falls to be imposed under the provisions of sections 110 and 111 of the Powers of Criminal Courts (Sentencing) Act, and section 51A of the Firearms Act.

495. *Subsection (4)*provides the Secretary of State with an order-making power to confer exemptions from the duty to give reasons for and explain the effect of the sentence passed. He may also prescribe cases in which the reasons or explanation may be given in the absence of the offender. *Subsection (5)* requires a magistrates' court which passes a custodial sentence to ensure that the reason required under *subsection (1)* should be recorded on the warrant authorising the commitment of the offender and also entered in the court register.

Section 175: Duty to publish information about sentencing

496. This section amends section 95 of the Criminal Justice Act 1991, so as to require the Secretary of State publish information each year on the effectiveness of sentencing in preventing re-offending and in promoting confidence in the criminal justice system. He is already required to publish information on race, gender and costs in the criminal justice system.

Section 176: Interpretation of Chapter 1

497. This section defines various terms used in the Chapter.

Chapter 2 : Community Sentences for offenders aged 16 or over

Section 177: Community orders

498. *Subsection (1)* provides that a community order may impose on the offender one or more of the following requirements:

- an unpaid work requirement;
- an activity requirement;
- a programme requirement;
- a prohibited activity requirement;
- a curfew requirement;
- an exclusion requirement;
- a residence requirement;
- a mental health treatment requirement;
- a drug rehabilitation requirement;
- an alcohol treatment requirement;

- a supervision requirement;
- if an offender is under 25, an attendance centre requirement.

499. Certain of the requirements are subject to restrictions, identified in *subsection (2)*. *Subsection (3)* provides that if the court makes a community order that includes a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined in *Section 215)* unless electronic monitoring is not available in the local area or if someone else whose consent is required (e.g. a landlord) withholds that consent. The court may also decide electronic monitoring is inappropriate in the particular case. Subject to the same provisos, under *subsection (4)*, the court may impose electronic monitoring in conjunction with any of the other requirements listed above. *Subsection (5)* states that community orders cannot exceed three years in length, and the court can specify the duration of requirements within a community order. *Subsection (6)* requires the court to consider the compatibility of the various requirements it proposes to include.

Section 178: Power to provide for court review of community orders

500. This section enables the Secretary of State to make an order allowing or requiring a court to review the progress of an offender under a community order. The Secretary of State can also allow a court to attach or remove a review provision from a community order, and regulate the timing of reviews. Such an order may in particular contain provisions similar to those applying to reviews of suspended sentences, as provided in sections 191 and 192. It is intended that the decision to extend reviews to community orders would be based on consultation with the courts.

Section 179: Breach, revocation or amendment of community order

501. This section introduces Schedule 8 which sets out procedures relating to the enforcement, revocation or amendment of community orders.

Section 180: Transfer of community orders to Scotland or Northern Ireland

502. This section introduces Schedule 9 which sets out the procedures for community sentences transferred to Scotland and Northern Ireland.

Chapter 3 : Prison sentences of less than 12 months

Section 181: Prison sentences of less than 12 months

503. This section ensures that in general all prison sentences of less than 12 months will consist of a short period of custody followed by a longer period on licence, during which the offender has to comply with requirements fixed by the courts as part of his sentence. *Subsection (2)* sets out the minimum and maximum lengths of the sentence. *Subsection (3)* requires the court to specify both the 'custodial period' and the 'licence period'. During the licence period the offender is to be subject to conditions specified in the "custody plus order". *Subsection (5)* makes provision for the length of the custodial period, which must be between 2 and 13 weeks. *Subsection (6)* requires the licence period to be at least 26 weeks. *Subsection (7)* makes provision for consecutive sentences and limits the total term of imprisonment for two or more offences to 15 months, with a maximum of 6 months in custody. *Subsection (9)* provides that, in the case of a suspended sentence, the court need not when passing sentence specify the licence conditions that would apply should the sentence take effect.

Section 182: Licence conditions

504. This section lists the requirements which the court may attach to the licence period under the custody plus order provided for in section 181. *Subsection (2)* sets out restrictions which apply when attaching certain requirements

505. *Subsections (3 and (4)* make provision for the imposition of an electronic monitoring requirement. Depending upon the other requirements which are imposed the court is either under a duty or has a discretion whether to impose this requirement. *Subsection (5)* requires the court to consider whether the requirements attached to the licence period are compatible.

Section 183: Intermittent custody

506. *Subsection (1)* enables a court passing a sentence of imprisonment of under 12 months to specify the number of days the offender must serve in prison, and at the same time provide for his release on licence, subject to specified conditions, at set intervals throughout his sentence. *Subsections (2) and (3)* are interpretative provisions. *Subsection (4)* makes provision for the minimum and maximum length of the sentence, which like a custody plus sentence under section 165 must always be at least 28 weeks but no more than 51 in respect of any one offence. *Subsection (5)* provides for the minimum and maximum amount of time the offender must spend in prison. *Subsection (6)* prohibits a court from imposing a sentence of this nature unless the offender consents. *Subsection (7)* makes provision for consecutive sentences and limits the total term to 65 weeks, with a maximum of 180 days in custody. *Subsection (8)* enables the Secretary of State by order to make provision about licence periods that the court may specify. He may make provision about the length of licence periods (such as 86 or 120 hours) which enables the custodial days to be served during the week or at the weekend); particular days of the week on which licence periods may begin or end (to restrict custodial periods to weekends, for example); and periods including or not including specified parts of the week (for example 'not Fridays'). *Subsection (9)* enables the court to require different requirements to be fulfilled within different time limits.

Section 184: Restrictions on power to make intermittent custody order

507. Intermittent custody may not be available in all parts of the country. *Subsection (1)* provides that a court must not make an intermittent custody order unless it has been notified by the Secretary of State that suitable arrangements are available in the relevant area. *Subsection (2)* requires the court to ensure that suitable prison accommodation is available for the custodial periods and that the offender has somewhere suitable to live during the licence periods. The court must consult an officer of the local probation board before making an intermittent custody order in respect of an offender. This is intended to assist the court in assessing whether the offender is suitable for intermittent custody.

Section 185 Intermittent custody: licence conditions

508. *Subsection (1)* sets out the restrictions on licence conditions available for intermittent custody. *Subsection (2)* provides that subsections (3) to (5) of section 182 (which relate to electronic monitoring of licence conditions and compatibility of licence conditions in the context of custody plus orders) apply to intermittent custody orders.

Section 186: Further provisions relating to intermittent custody

509. *Subsection (1)* provides that payments under section 21 of the Prison Act 1952 (expenses of conveyance to prison) are not available in relation to intermittent release. *Subsection (2)* gives the Prison Service discretion to pay expenses for transport. *Subsection (3)* stipulates that a person who has been temporarily released under an intermittent custody order shall be deemed to be unlawfully at large if he fails to return at the end of his temporary licence period. *Subsection (5)* creates an offence of remaining at large after temporary release in pursuance of an intermittent custody order.

Section 187: Revocation or amendment of order

510. This section introduces Schedule 10, which deals with the revocation or amendment of custody plus orders and the amendment of intermittent custody orders. The Schedule is explained below.

Section 188: Transfer of custody plus order or intermittent custody order to Scotland or Northern Ireland

511. This section introduces Schedule 11 which sets out the procedure for transferring custody plus orders and intermittent custody orders to Scotland or Northern Ireland.

Section 189: Suspended sentences of imprisonment

512. This section deals with suspended sentences of imprisonment. *Subsection (1)* enables a court which passes a prison sentence of less than 12 months to suspend that sentence for a period of between six months and two years while ordering the offender to undertake certain requirements in the community. The custodial part of the sentence will not take effect unless the offender fails to comply with those requirements or commits another offence within the period of suspension. The period during which the offender undertakes requirements is called "the supervision period" and the entire length of suspension is called "the operational period". *Subsection (2)* makes provision for consecutive sentences and limits the total term to 65 weeks. Under *subsection (3)* the length of time the offender undertakes requirements may be less (but not more) than the entire period of suspension, but each of the two periods must last between six months and two years. *Subsection (4)* provides that the supervision period must not exceed the operational period. *Subsection (5)* prohibits the court from imposing a community sentence alongside a suspended sentence (though a fine or compensation order could be imposed). *Subsection (6)* provides that a suspended sentence is to be treated as a sentence of imprisonment.

Section 190: Imposition of requirements by suspended sentence order

513. This section specifies the requirements that can be attached to a suspended sentence order. Subsection (1) lists those requirements. Subsection (2) sets out certain restrictions on imposing particular requirements. Subsection (3) states that where the court imposes a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined in Section 215) unless electronic monitoring is not available in the local area or someone else whose consent is required (e.g. a landlord) withholds that consent. Subsection (4) provides for the court to add an electronic monitoring requirement to ensure compliance with certain other requirements. Subsection (5) requires the court to consider the compatibility of the requirements before imposing them.

Section 191: Power to provide for review of suspended sentence order

514. *Subsection (1)* confers a discretion on courts to provide that a suspended sentence order passed under section 189(1) be subject to periodic review at a review hearing. *Subsection (2)* excludes cases where the offender is subject to an order that imposes a drug rehabilitation requirement that is subject to court review, as those orders will already be subject to review. A review hearing is conducted by the court responsible for the order. *Subsections (3) to (5)* specify which court is responsible for the order in particular situations.

Section 192: Periodic reviews of suspended sentence order

515. This section makes provision for what is to happen at a review hearing. *Subsection (1)* confers on the court a power to amend any community requirement of the suspended sentence order, following consideration of the responsible officer's report. *Subsection (2)* limits the power of amendment. In particular, the court cannot impose a new

requirement unless the offender consents, but it can impose a requirement of the same kind (this is explained in subsection (3)). An offender's consent is also required before amending a drug, alcohol or mental health treatment requirement. The court may extend the supervision period, but not so that it lasts longer than two years or ends later than the operational period. The court may not amend the operational period. Unless the offender consents, the court may not amend the order if an appeal against it is pending. *Subsection (3)* provides that a requirement of the same kind as another paragraph if it falls within section 190(1). It also has the effect of allowing the court to add an electronic monitoring requirement to an existing requirement.

516. Under *subsection (4)*, where on the basis of the responsible officer's report, the court is of the opinion that the offender is making satisfactory progress, it can dispense with a review hearing. It may also amend the order to provide that subsequent reviews can be held on the papers, and without a hearing. *Subsection (5)* provides the court with the power to require the offender to attend a review hearing where the court is of the opinion his progress is no longer satisfactory. Under *subsection (6)* the court may adjourn a review hearing where it wishes to deal with the offender in respect of a breach of a requirement under formal breach proceedings. *Subsection (7)* enables the court to adjust the intervals between review hearings. *Subsection (8)* is an interpretation provision.

Section 193: Breach, revocation or amendment of suspended sentence order, and effect of further conviction

517. This section introduces Schedule 12.

Section 194: Transfer of suspended sentence orders to Scotland or Northern Ireland

518. This section introduces Schedule 13 which sets out the procedure for transferring suspended sentence orders to Scotland or Northern Ireland.

Section 195: Interpretation of Chapter 3

519. This section defines various terms used in the Chapter.

Chapter 4 : Further provisions about orders under Chapters 2 and 3

Section 196: Meaning of "relevant order"

520. This section defines "relevant order" for the purposes of this Chapter as meaning a community order, a suspended sentence order, a custody plus order or an intermittent custody order.

Section 197: Meaning of "the responsible officer"

521. This Section defines who the responsible officer is. Under *subsection (1)(a)*, if an order imposes a curfew or exclusion requirement but no other requirement, and if that curfew or exclusion order is electronically monitored, the responsible officer is the person responsible for the electronic monitoring (currently the private sector providers under contract to the Home Office). If an offender is 18 or over and under 25, he may be given an attendance centre requirement. If this is as the only requirement of the order, *subsection (1)(b)* provides that the responsible officer is the officer in charge of the attendance centre. In all other cases, under *subsections (1)(c) and (2)*, the responsible officer is either an officer of the local probation board, or for offenders under 18 at the time of the order, the responsible officer can be either an officer of the local probation board or a member of a youth offending team. *Subsection (3)* confers a power on the Secretary of State to amend subsections (1) and (2) by order subject to affirmative procedure, and *subsection (4)* provides that such an order may provide for the court to decide in individual cases which description of 'relevant officer' is to apply.

Section 198: Duties of responsible officer

522. The statutory duties of the responsible officer are set out in *subsection (1)*. Where the responsible officer is an officer of a local probation board or a youth offending team member, he or she must make any necessary arrangements for the offender to fulfil the requirements of the order, promote the offender's compliance with the requirements, and take enforcement action in the case of non-compliance. *Subsection (2)* makes an exception for responsible officers who are electronic monitoring providers.

Section 199: Unpaid work requirement

523. This section re-enacts, with some modification, section 46 of the Powers of Criminal Courts (Sentencing) Act (which deals with "community punishment", previously called "community service"). Unpaid work is done on projects set up by the probation service in consultation with sentencers and the local community. These can include environmental projects such as clearing canals, removing graffiti, painting and decorating community facilities, and working in homes for the elderly. Under *subsection (2)* no offender can be required to do more than 300 hours of unpaid work or less than 40. The Act increases the current upper limit from 240 hours. By *subsection (3)*, the court must not impose an unpaid work requirement unless it is satisfied that the offender is a suitable person to perform work under such a requirement. If the court thinks that it is necessary to do so, it will first hear from an appropriate officer (as defined in *subsection (4)*). *Subsection (5)* provides that where the court is sentencing an offender for two or more offences, and imposes unpaid work requirements in respect of each of them, it can decide whether the hours of unpaid work should be served concurrently or consecutively. However, the total number of hours must not exceed 300.

Section 200: Obligations of person subject to unpaid work requirement

524. Under *subsection (1)* the offender must perform work as and when required by his responsible officer. *Subsection (2)* applies where an unpaid work requirement is imposed as part of a community order or a suspended sentence order. In these cases, the work must generally be completed within twelve months. *Subsections (3) and (4)* deal with the situation where an offender fails to complete the unpaid work within that period of time.

Section 201: Activity requirement

525. These provisions are based on the requirements as to activities at paragraph 2 of Schedule 2 of the Powers of Criminal Courts (Sentencing) Act 2000. *Subsection (1)* defines an activity requirement as a requirement that the offender must either present himself to a specified person, at a specified place, for a certain number of days, and/or take part in specified activities for a certain number of days. An activity requirement may include such tasks as receiving help with employment, or group work on social problems. Reparative activities are a particular aim of this requirement. *Subsection (3)* also requires the court to consult before making such an order. If the offender is aged 18 or over, the court must consult an officer of a local probation board. If the offender is under 18, the court must consult either an officer of a local probation board or a member of a youth offending team. By virtue of *subsection (4)*, the court must not impose an activity requirement on an offender before obtaining the consent of any other person whose co-operation is needed. *Subsection (5)* sets the maximum number of days of activity at 60. *Subsection (6)* sets out the duties of a person subject to an activity requirement. The offender is required to present himself at a place or places specified by his responsible officer on the number of days specified in the order, and to comply with instructions given by or under the authority of the person in charge of that place. The responsible officer will tell the offender where he needs to go and for how many hours, and that he must comply with the instructions of the person in charge of the place. *Subsection (7)* describes where activities must take place. If the place is a community rehabilitation centre, *subsection (8)* requires an offender to present himself elsewhere if

the person in charge of the community rehabilitation centre instructs him to. *Subsection (9)* makes further provision as to the obligations of the offender when he is required to participate in activities. *Subsection (10)* defines the terms used in the section.

Section 202: Programme requirement

526. *Subsection (1)* defines a "programme requirement" as a requirement that the offender must participate in an accredited programme on a certain number of days. Programmes are courses which address offending behaviour, covering such topics as anger management, sex offending, substance misuse, etc. *Subsections (2) and (3)* define "accredited programme", "programme" and "the accreditation body". The Secretary of State may by order designate what the accreditation body is. This is left to delegated legislation as changes in the list of accredited bodies will be required from time to time. Under *subsection (4)* an officer of a local probation board (an officer of a local probation board or youth offending team member if the offender is under 18) must recommend that the specified programme is suitable for the offender before the court imposes a programme requirement. The court must also be satisfied that a place on the programme is available for the offender. *Subsection (5)* provides that the court must not impose a programme requirement on an offender before obtaining the consent of any person (other than the offender or responsible officer) whose co-operation is needed. *Subsection (6)* sets out the obligations of an offender who is subject to a programme requirement. The offender is required to participate in the programme as specified in the order in accordance with instructions given by his responsible officer. The offender must also comply with any instructions given by, or under the authority of, the person in charge of the programme. By virtue of *subsection (7)*, a place must not be specified in an order unless it has been approved by the local probation board.

Section 203: Prohibited activity requirement

527. *Subsection (1)* defines a prohibited activity requirement. The court can require an offender to refrain from participating in certain activities. For example, it might forbid him to contact a certain person. The offender may be prohibited from participating in specified activities on a certain day or on a number of days or during a period of time. Under *subsection (2)*, before setting such a requirement the court must consult an officer of the local probation board, or, in the case of an offender who is under 18, an officer of the local probation board or a member of a youth offending team. *Subsection (3)* makes it clear that the court can make a prohibited activity requirement which prohibits a defendant from possessing, using or carrying a firearm.

Section 204: Curfew requirement

528. This section re-enacts, with some modification, section 37 of the Powers of Criminal Courts (Sentencing) Act *Subsection (1)* defines a curfew requirement as a requirement that the offender must remain at a place specified by the court for certain periods of time. By *subsection (2)*, the periods of time must not be less than two hours or more than twelve hours in any given day. The order might, for example, require the offender to stay at home during the evening and night hours. *Subsections (3) to (5)* limit the curfew period(s) for community orders, custody plus orders and intermittent custody orders respectively. Under *subsection (6)* the court must obtain and consider information about the place specified in the order and the attitude of persons likely to be affected by the presence of the offender.

Section 205: Exclusion requirement

529. This section re-enacts, with some modification, section 40A of the Powers of Criminal Courts (Sentencing) Act (inserted by section 46 of the Criminal Justice and Court Services Act 2000). That provision has not yet been brought into force. *Subsection (1)*defines an exclusion requirement as a requirement prohibiting the offender from entering a place during a period specified in the order. *Subsection (3)* makes it clear

that the order may stipulate that the prohibition operates only for certain periods of time and may specify different places for different periods. By *subsection (2)* an exclusion requirement cannot last longer than two years. Under *subsection (4)* the order can specify an area rather than a specific place. For example, an offender might be required to stay away from a specified town centre at night.

Section 206: Residence requirement

530. The residence requirement is based on the existing requirements as to residence that can be included in a community rehabilitation order (see paragraph 1 of Schedule 2 to the Powers of Criminal Courts (Sentencing) Act 2000). *Subsection (1)* defines residence requirement as a requirement that the offender must reside at a place specified in the order for a specified period. Under *subsection (2)* the court can allow the offender to live at an alternative address, with the approval of his responsible officer. Under *subsection (3)*, before making a residence requirement the court must consider the situation at the offender's accommodation. *Subsection (4)* provides that the court must only place the offender in a hostel or similar accommodation with the recommendation of an officer of the local probation board.

Section 207: Mental health treatment requirement

531. The mental health treatment requirement is based on the requirements as to treatment as part of a community rehabilitation order (paragraph 5 of Schedule 2 of the Powers of Criminal Courts (Sentencing) Act 2000). *Subsection (1)* provides for the court to direct an offender to undergo mental health treatment for certain period(s) as part of a community sentence or suspended sentence order, under the treatment of registered medical practitioner or chartered psychologist. *Subsection (2)* provides that treatment may be provided in an independent hospital or care home (within the meaning of the Care Standards Act 2000) or a hospital (within the meaning of the Mental Health Act 1983), or as a non-resident patient at a place specified in the order, or as treatment under the direction of such registered medical practitioner or chartered psychologist as specified in the order. Under *subsection (3)*, before including a mental health treatment requirement, the court must be satisfied that the mental condition of the offender requires treatment and may be helped by treatment, but is not such that it warrants making a hospital or guardianship order (within the meaning of the Mental Health Act 1983). The court must also be satisfied that arrangements can be made for the offender to receive treatment as specified in the order, and the offender's consent must be obtained before imposing the requirement.

532. Under *subsection (4)*, the offender's responsible officer will supervise him only to the extent necessary for revoking or amending the order. *Subsection (5)* applies section 54(2) and (3) of the Mental Health Act 1983 for the purposes of the section. *Subsection (6)* defines "chartered psychologist".

Section 208: Mental health treatment at place other than that specified in order

533. *Subsection (1)* allows the medical practitioner or chartered psychologist to decide that treatment would be better or more convenient in a different place from that specified in the order and make arrangements to change the place of treatment. The change cannot be made without the consent of the offender. Under *subsection (2)* the offender can be placed in residential treatment, even if the institution was not one that could have been specified for that purpose in the original order. Arrangements for informing appropriate people are set out in *subsection (3)*.

Section 209: Drug rehabilitation requirement

534. As part of a community sentence or suspended sentence the court may impose a drug rehabilitation requirement, which includes drug treatment and testing. In order to impose such a requirement, the court must be satisfied that the offender is dependent on

or has a propensity to misuse any controlled drug and as such requires and would benefit from treatment. In addition, the court must be satisfied that the necessary arrangements are or can be made for the treatment and that the offender has expressed a willingness to comply with the drug rehabilitation requirement. The treatment provided may not be for a period of less than six months. A suitably qualified or experienced individual supervises the treatment. It is for the court to decide whether treatment should be residential or non-residential. The Secretary of State may provide guidance as to the arrangements for testing.

Section 210: Drug rehabilitation requirement: provision for review by court

535. *Subsection (1)* provides that the court may provide for the review of any drug treatment and testing requirement, and it must provide for the review of any drug treatment and testing requirement lasting more than 12 months. The reviews cannot take place more frequently than once a month. The review occurs at a review hearing, at which the offender is present. The responsible officer is to provide a written report on the offender's progress before each hearing, which is to include the results of the offender's drug tests. A review hearing takes place before the court responsible for the order. *Subsections (2)* to *(3)* provide that the court responsible for a drug treatment and testing requirement is the court which made the order, unless it specifies a different court in the case where an offender does not live in the area of the court which convicts him. Where the drug treatment and testing requirement was made on appeal from the Crown Court, under *subsection (4)* the Crown Court will be the responsible court.

Section 211: Periodic review of drug rehabilitation requirement

536. This section sets out what happens at a review of a drug rehabilitation requirement. *Subsection (1)* provides for the court to amend the order as respects that requirement after considering the responsible officer's report. *Subsection (2)* prevents the court from amending the requirement unless the offender consents. It cannot reduce the term of treatment and testing below the minimum specified in section 209(3) (i.e. six months). Unless the offender's consent is obtained the court cannot amend a requirement while an appeal against the order is pending. Under *subsection (3)*, if the offender does not consent to amending the order, the court may revoke the order and re-sentence the offender as if he had just been convicted. If it does so, under *subsection (4)* it must take into account the extent to which the offender has complied with the requirements of the order. If the court wishes, it may sentence the offender to a custodial sentence, providing the offence was punishable with imprisonment. *Subsection (5)* relates to 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 the age of 18 by the time of the review hearing. In these circumstances, subsection (5) extends the court's powers where a person has failed to consent to an amendment proposed by the court.

537. If the offender's progress is satisfactory, under *subsection (6)* the court can state that for future reviews the offender need not be present. *Subsection (7)* provides that, if an offender's progress is unsatisfactory and he is not present, the court can require the offender to attend a future hearing. Under *subsection (8)* at that hearing the court may exercise the powers that it has in the case of a review hearing. It may also amend the order to provide for future review hearings. *Subsection (9)* explains what is meant by "court" in this section.

Section 212: Alcohol treatment requirement

538. Alcohol treatment is currently available as part of a community rehabilitation order, under paragraph 6 of Schedule 2 of the Powers of Criminal Courts (Sentencing) Act. Under *subsection (1)* the court can require the offender to undergo alcohol treatment. The treatment must be by or under the direction of a person who is qualified or experienced to reduce or eliminate the offender's dependency on alcohol. This person

is to be identified in the order. *Subsection (2)* requires that the court be satisfied that the offender is dependent on alcohol, that his dependency requires and is susceptible to treatment, and that arrangements can be made for treatment. *Subsection (3)* requires the court to obtain the offender's consent before imposing an alcohol treatment requirement. *Subsection (4)* states that an alcohol treatment requirement must last at least six months. Under *subsection (5)* the treatment itself must consist of either residential or non-residential treatment in a place the court decides, or by or under a qualified or experienced person whom the court identifies in the order.

Section 213: Supervision requirement

539. Supervision is a central part of community rehabilitation orders imposed under section 41 of the Powers of Criminal Courts (Sentencing) Act. The responsible officer might review with the offender his supervision plan, challenge his offending behaviour, hold him to account on the requirements, monitor his progress, and assist him with various problems, such as accommodation, employment, or finance. *Subsection (1)* provides that the court can oblige the offender to meet with his responsible officer, or someone else specified by the responsible officer, or attend a community rehabilitation centre as required. *Subsection (2)* states that a supervision requirement is for the purpose of rehabilitation. *Subsection (3)* sets the length of the supervision requirement for the different orders.

Section 214: Attendance centre requirement

540. Attendance centre orders are currently free-standing orders for certain young offenders, under Chapter 4 of Part 4 of the Powers of Criminal Courts (Sentencing) Act. At an attendance centre, practical activities, including sport, can be run to occupy offenders for a certain number of hours to keep them out of trouble. This is often on Saturdays as attendance centres were originally set up for football-related offenders.*Subsection (1)*enables the court to require an offender to attend an attendance centre for a specified number of hours. *Subsection (2)* requires the total number of hours an order may specify to be between 12 and 36. Under *subsection (3)* the court must be satisfied that the offender can get to the centre and must consider the circumstances of the offender when making the appointments. *Subsection (4)* provides that the first appointment is to be set by the responsible officer, and under *subsection (5)* any subsequent appointments are to be made by the person in charge of the centre. *Subsection (6)* provides that the offender cannot be required to attend more than once a day or for more than three hours on any one day.

Section 215: Electronic monitoring requirement

541. The court can order the electronic monitoring of the compliance of an offender with any of the other requirements set out in the order. Electronic monitoring has been available throughout England and Wales since 1999, following a series of pilot projects which operated in selected areas during the previous ten years.

542. In almost all cases of electronic monitoring, the technical equipment uses radio frequency transmissions. It consists of a transmitter (the "tag"), which is usually worn round the ankle, and a receiver unit which is either connected to a landline telephone or incorporates mobile phone technology. The receiver unit communicates with a central computer system at a monitoring centre. The transmitter sends signals to the receiver at regular intervals and these are sent on to the central computer. The signal strength of the transmitter is calibrated to the receiver so that if the subject goes out of range (generally this means outside the building where the receiver is located), there is a break in signal and this is also registered by the central computer which generates follow-up action. The transmitter can be removed only by breaking its strap. This interferes with the fibre-optic circuitry inside the strap and is immediately registered as a tamper, also generating follow-up action.

543. Under the existing law electronic monitoring can be used as part of home detention curfew (see *Section 246*), curfew orders (which will be replaced for adults by community orders with curfew requirements), bail (12-16 year olds throughout England and Wales, and 17 year olds in specified areas), and detention and training orders (under 18s).

544. *Subsection (1)* enables the court to set an electronic monitoring requirement to ensure an offender's compliance with other requirements in the order. The period(s) of electronic monitoring can be set by the court or the responsible officer. Under *subsection (2)*, if another person's compliance is needed to effect the electronic monitoring, that person's consent must be obtained before the order is made. This person might include a landlord. *Subsections (3) and (4)* set out administrative arrangements surrounding electronic monitoring, and in particular deal with the notification of the requirement by the responsible officer to the relevant parties. *Subsection (3)* gives the Secretary of State an order making power to specify a description of a person responsible for electronic monitoring. This is left to delegated legislation as changes in the description of electronic monitoring providers will be required from time to time. For example new types of electronic monitoring technologies are being developed which may necessitate changes in the description of providers.

Section 216: Petty sessions area to be specified in relevant order

545. This section provides that a petty sessions area in which the offender will live must be specified in the case of community orders and suspended sentence orders, and for the supervision periods of short custodial sentences and intermittent custody. This means that where an offender is sentenced in an area in which he does not reside, his home area will have to be specified in the order.

Section 217: Requirement to avoid conflict with religious beliefs, etc.

546. *Subsection (1)* requires the court to try to avoid, as far as practicable, making any order which clashes with an offender's religious beliefs, or with the times of his education or employment. *Subsection (2)* applies the same requirement to any instructions the responsible officer is to give during the course of the order. Under *subsection (3)* the Secretary of State has the power to add further restrictions by order. Additional restrictions may be required in the light of the experience of operating the new sentencing framework. For example, it might become necessary to introduce additional restrictions on the making of orders for offenders with particular domestic responsibilities if it were found that the new sentences were interfering with their caring responsibilities.

Section 218: Availability of arrangements in local area

547. This section obliges the court to ensure that certain requirements are available in the local area before imposing them. Under *subsection (1)* unpaid work is one such requirement. *Subsection (2)* applies the obligation to an activity requirement, and *subsection (3)* to an attendance centre requirement. *Subsections (4) to (8)* prevent a court from imposing an electronic monitoring requirement unless the Secretary of State has notified the court that electronic monitoring is available and can be provided in the relevant areas.

Section 219: Provision of copies of relevant orders

548. The court has to provide copies of the order it makes to certain people who are relevant to the carrying out of the order. *Subsection (1)* requires the court to provide copies to the offender, an officer of a local probation board assigned to the court (if an offender is over 18) or an officer of a local probation board assigned to the court or a youth offending team member if the offender is 16 or 17. Where the order specifies another petty sessions area the court must send a copy to the local probation board in that area.

Subsection (2) introduces Schedule 14, which contains a list of persons to whom copies of the order must be given depending on what requirements are included in the order. Under *subsection (3)* if an offender will be carrying out the order in a different area, the court will have to send a copy of the order to the magistrates' court in that area as well as to the local probation board in that area. Any other documents and information relating to the case that the court thinks the second court would find necessary it must send to that court.

Section 220: Duty of offender to keep in touch with responsible officer

549. An offender must keep in touch with his responsible officer, in accordance with any instructions in that regard from the responsible officer. The offender must also notify the responsible officer of any change of residence. Under *subsection (2)*, if the offender does not keep in touch as required, or if he changes his residence without notifying the responsible officer, he is liable to breach proceedings.

Section 221: Provision of attendance centres

550. This section re-enacts section 62 of the Powers of Criminal Courts (Sentencing) Act 2000, which enables the Secretary of State to provide attendance centres and make arrangements with local authorities and police authorities regarding premises to be used. *Subsection (2)* defines "attendance centres".

Section 222: Rules

551. This section gives the Secretary of State the power to regulate a number of aspects of the different requirements. These are: the supervision of offenders subject to relevant orders; the functions of responsible officers; arrangements for unpaid work; providing and managing attendance centres and community rehabilitation centres; the attendance of offenders (including attendance records) at activity requirements; attendance centre requirements or supervision requirements; electronic monitoring; the duties of the people responsible for delivering electronic monitoring. *Subsection (2)* specifies that in particular, these rules might limit the number of hours of unpaid work to be done on any one day, the reckoning of hours worked and the payment of expenses involved in unpaid work.

552. This is left to delegated legislation given the need for flexibility and the level of detail that is likely to be required. It is intended that any rules under this section will be made after consultation with practitioners.

Section 223: Power to amend limits

553. Various of the requirements described in the previous paragraphs have limits attached to them. A person cannot be required to do more than 300 hours of unpaid work, for example. This section gives the Secretary of State the power to amend certain limits by order. This is left to delegated legislation as amendments may be desirable in the light of experience. The Secretary of State currently has this power relating to community sentences.

Chapter 5: Dangerous offenders

Section 224: Meaning of "specified offence" etc

554. This Section defines 'specified offence' and 'serious offence' for the purposes of this Chapter. Specified offences are those sexual or violent offences listed in Schedule 15 (all of which carry a maximum penalty of 2 years or more). A serious offence is defined as a specified sexual or violent offence which carries a maximum penalty of ten years or more (including life). This section also defines various other terms for the purposes of this Chapter.

Section 225: Life sentence or imprisonment for public protection for serious offences

555. *Section 225* provides for a new sentence of imprisonment for public protection, which is an indeterminate sentence. This sentence may only be passed by a court if the offender is convicted of a specified sexual or violent offence (listed in Schedule 15) carrying a maximum sentence of ten years or more and the court considers that the offender poses a significant risk of serious harm as defined in *subsection (1)(b). Subsection (2)* sets out that where the offence carries a maximum sentence of life imprisonment, the court must pass a discretionary life sentence if the seriousness of the offence justifies it. In all other cases to which the section applies, *subsection (3)* requires the court to impose a sentence of imprisonment for public protection. When passing sentence the court must set the relevant part of the sentence that will be served in custody for the purposes of punishment and deterrence. After the offender has served this relevant part then their release will be dependent upon the recommendation of the Parole Board. This sentence therefore provides for the indeterminate detention of those dangerous offenders who continue to pose a significant risk of harm to the public. Release provisions for this sentence are set out in more detail in section 230 and Schedule 18.

Section 226: Detention for life or detention for public protection for serious offences committed by those under 18

556. *Section 226* applies the sentence of public protection to those aged under 18 although for juveniles it is a sentence of detention rather than imprisonment. As in the case of adults, the sentence may be passed by a court if the offender is convicted of a specified sexual or violent offence carrying a maximum sentence of ten years or more and the court considers that the offender poses a significant risk of serious harm as defined in *subsection (1)(b). Subsection (2)* sets out that, where the offence carries a maximum sentence of detention for life under section 91 of the Sentencing Act, the court must pass such a sentence, if the seriousness of the offence justifies it. In other cases, *subsection (3)* requires the court to choose between a sentence of detention for public protection or an extended sentence under section 228. It will impose a sentence of detention for public protection if it thinks that an extended sentence is not adequate to protect the public.

Section 227: Extended sentence for certain violent and sexual offences: persons 18 or over

557. This section replaces and extends the current provisions for extended supervision for sexual and violent offenders contained in section 85 of the Powers of Criminal Courts (Sentencing) Act 2000. The Section makes provision for the extended sentence for certain violent and sexual offences and sets out the conditions which must be met in order for this sentence to be passed. These conditions require that the offender is over 18, has committed a specified sexual or violent offence (listed in Schedule 15) carrying a maximum penalty of between two and ten years and is judged by the court to pose a significant risk of serious harm to the public as defined in *subsection (1)(b).* If these conditions are met then *subsection (2)* requires the court to pass an extended sentence. *Subsection (2)* also provides that the extended sentence is made up of the "appropriate custodial term" and an "extension period". The appropriate custodial term is defined in *subsection (3)* as the period that the court considers to reflect the seriousness of the offence committed (subject to a minimum of 12 months). During the second half of the appropriate custodial term the offender may be released on the recommendation of the Parole Board (see section 247). The court must also specify an extended period of supervision on licence to be added to the sentence for the purpose of public protection. The court may add an extension period of up to five years for violent offenders and eight years for sexual offenders (see *subsection (4)).* The total term of the extended sentence must not be more than the maximum penalty available for the offence in question (*subsection (5)).*

Section 228: Extended sentence for certain violent or sexual offenders: persons under 18

558. *Section 228* applies the extended sentence to those aged under 18 whom the court considers to pose a significant risk of serious harm as defined in *subsection (1)(b).* Where the offender has been convicted of a specified offence the court must impose an extended sentence, unless the offence is a serious offence and the case is one in which a sentence under section 226 is appropriate. The sentence operates in the same way as it does for adults, but is a sentence of detention rather than imprisonment.

Section 229: The assessment of dangerousness

559. This section deals with the assessment of dangerousness required for the court to establish whether the offender poses a 'significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences' and therefore whether they are eligible for one of the new sentences for dangerous offenders. The risk criteria are based on the existing provisions at section 161(4) of the Powers of Criminal Courts (Sentencing) Act 2000. When making this assessment the court must take into account all the information available to it about the nature and circumstances of the offence and it may also take into account any information about the pattern of behaviour of which the offence forms a part and any information about the offender. *Subsection (3)*sets out that in cases where an offender is aged 18 or over and has a previous conviction for a relevant offences (as defined by *subsection (4)* the offender will be assumed to be dangerous, unless the court considers on the basis of the evidence before it this assumption to be unreasonable. For the purposes of the provision in *subsection* (3), *subsection (4)*provides the definition of a relevant offence. This includes any specified offence in Schedule 15 and equivalent sexual or violent offences committed in Scotland or Northern Ireland, listed in Schedules 16 and 17, which are introduced by this section.

Section 230: Imprisonment or detention for public protection: release on licence

560. This section introduces Schedule 18 which sets out the release provisions for the sentences for public protection.

Section 231: Appeals where previous convictions set aside

561. This section applies to cases where an offender has been sentenced under the provisions relating to the commission of a second relevant offence (contained within *Section 229(3)*). If subsequently, the first conviction is overturned on appeal, Section 231 enables notice of appeal against the new sentence to be given at any time within 28 days from the date which the previous conviction was set aside.

Section 232: Certificates of convictions for the purposes of section 229

562. This section provides for a court in England and Wales to certify that it has convicted a person of a relevant offence.

Section 233: Offences under service law

563. This section provides for equivalent convictions under service law to be taken into account for the purpose of Section 229, which relates to the assumption of dangerousness.

Section 234: Determination of day when offence committed

564. Where an offence has been committed over several days, this section treats it as having been committed on the last of those days.

Section 235: Detention under Sections 226 and 228

565. This section provides that a juvenile sentenced to a sentence of detention for public protection or an extended sentence may be detained in such place as may be determined by the Secretary of State or by such other person as may be authorised by him.

Section 236: Conversion of sentences of detention into sentences of imprisonment

566. This section amends section 99 of the Powers of Criminal Courts (Sentencing) Act 2000. This enables the Secretary of State to direct that an offender sentenced to a sentence of detention may be treated as if he had been sentenced to a term of imprisonment if he has reached the age of 21 or, if he has reached the age of 18, if he has been reported by the board of visitors as exercising a detrimental influence on the other inmates. This section extends this power to the new sentence of detention for public protection and the new extended sentence.

Chapter 6: Release of Prisoners on Licence

Section 237: Meaning of "fixed-term prisoner"

567. This section is an interpretation provision. In particular it defines "fixed-term prisoner" for the purposes of this Chapter.

Section 238: Power of the court to recommend licence conditions for certain prisoner

568. This section gives the court the power to recommend, when passing a custodial sentence of 12 months or more, particular conditions that in its view should be included in the licence to which the offender is subject on release. It also places a duty upon the Secretary of State, when setting the conditions of the licence, to have regard to any recommendations which the court may have made.

Section 239: The Parole Board

569. This section re-enacts section 32 of the Criminal Justice Act 1991. Its effect is to continue in being, and make provision for the constitution of, the Parole Board. The statutory duty of the Parole Board as set out in *subsection (2)* is to advise the Secretary of State on the release and recall of prisoners. In undertaking this function the Board must consider any evidence which the Secretary of State puts before it and any other evidence which it obtains (see *subsection (3)). Subsections (5) and (6)*give the Secretary of State the power to make rules concerning the proceedings of the Board and to give directions to the Board with regard to protecting the public and preventing further offences being committed. *Subsection (7)* introduces Schedule 19.

Section 240: Crediting of periods of remand in custody: terms of imprisonment and detention

570. This Section re-enacts with amendments section 87 of the Powers of Criminal Courts (Sentencing) Act 2000, which makes provision for the crediting of time spent on remand (and which is not yet in force). It allows for time spent in custody on remand to count as time served by the offender as part of his sentence (see *subsection (3)*). These provisions are only relevant where a custodial sentence is passed and the remand was in connection with the same offence, or a related offence. When crediting periods of remand in custody the Court is required by *subsection (5)* to state in open court the number of days spent on remand in connection with the offence and the number of days which count towards time served under the sentence as a result of this. *Subsection (4)*allows the court not to give a direction should this be in the interests of justice in a particular case. Where the court does not exercise its full powers in relation to the crediting of time spent on remand, *subsection (6)* requires that it must state a reason for this decision.

Section 241: Effect of direction under section 240 on release on licence

571. *Section 241* ensures that time spent on remand counts towards time served under the sentence for the purpose of calculating whether or not an offender has served a particular proportion or period of his sentence. The application of these provisions to a sentence of intermittent custody is dealt with in *subsection (2)*.

Section 242: Interpretation of sections 240 and 241

572. This section defines the sentences to which the crediting of remand time applies, and provides definitions of the term 'remanded in custody' used within sections 240 and 241. Time spent in police detention will not count as time spent on remand for the purposes of section 240. This is because there is a qualitative difference between time spent on remand and time spent in police custody, the former being preventative and imposed by the courts whereas the latter is an unavoidable feature of the investigation of crime.

Section 243: Persons extradited to the United Kingdom

573. This section re-enacts (with some modification) section 47 of the Criminal Justice Act 1991. S*ubsection (2)* ensures that in the case of an extradited prisoner (as defined by *subsections (1)*), days spent in custody awaiting extradition may subsequently be subtracted from any custodial sentence passed by the court.

Section 244: Duty to release prisoners

574. The release provisions for all prisoners (excluding those subject to a life sentence or one of the new sentences for dangerous offenders under Chapter 5) are dealt with in this section. All prisoners must spend a "requisite custodial period" in custody before the Secretary of State is required to release them on licence. This requisite period is calculated according to the particular sentence as described in *subsection (3)*. For all prisoners serving a sentence of twelve months or more (excluding dangerous offenders and life sentence prisoners) the Secretary of State is required to release them on licence at the halfway point of their sentence. For prisoners serving a sentence of less than twelve months, release will be at the end of the specified 'custodial period'. For those serving a sentence of intermittent custody release will take place at the end of each custodial period as defined by *section 183*. These provisions are subject to the arrangements for prisoners who have been returned to custody following a period of being unlawfully at large, as provided in section 245.

Section 245: Restrictions on operation of section 244(1) in relation to intermittent custody Prisoners

575. *Subsections (1) and (2)* provide that an offender who has been returned to custody following a period unlawfully at large does not have to be released under section 244(1). He can be held while an application is made to the court to alter the pattern of intermittence under paragraph 6(1)(b) of Schedule 10. The Secretary of State has to make such an application within 72 hours, or release the offender to continue serving his sentence on an intermittent basis. If while being held, the offender's custodial days expire, he is to be released under *subsection (1)(b). Subsection (3)* provides that an intermittent custody prisoner who has been recalled to prison does not fall to be released for his next licence period under section 244.

Section 246: Power to release prisoners on licence before required to do so

576. This section relates to home detention curfew (HDC). The Crime and Disorder Act 1998 amended the Criminal Justice Act 1991 so that certain categories of prisoner, after being risk assessed, could spend the last part of their custodial sentence on HDC. HDC operates as a transitional phase immediately after leaving prison. Under the existing law in section 34A of the Criminal Justice Act 1991, an offender can be released up to

135 days early if he is assessed as suitable for HDC by the Prison Service. A curfew is imposed and the offender is monitored electronically to ensure he keeps to the terms of the curfew. If he violates the curfew or any standard condition of his licence (such as being of good behaviour) he is recalled to prison. HDC came into operation in 1999. Since that time there have been over 80,000 participants (around 3500 at any one time). The successful completion rate of HDC is 90%. The curfew condition is dealt with in section 253.

577. *Subsection (1)* maintains the maximum period available for HDC at 135 days. *Subsection (6)*also gives the Secretary of State the power to amend by order the period available for HDC. Not all prisoners are eligible for release under the HDC scheme. Those ineligible include prisoners serving one of the sentences applicable to dangerous offenders, and prisoners who are liable to deportation. Also, prisoners who have less than 14 days to serve of their required custodial period following sentence (e.g. due to remand time being deducted from the required custodial period) are not eligible for HDC. Ineligible categories are specified in *subsection (4). Subsections (1), (2) and (3)* have the effect of providing for the period spent on HDC to be tapered according to the length of sentence. Subsection (1)(b) provides for prisoners serving a sentence of intermittent custody. As with normal prison sentences, on intermittent custody the offender will spend a number of days on HDC equal to the days he would have spent in custody had he not received HDC.

Section 247: Release on licence of prisoner serving extended sentence under section 227 or 228

578. This section sets out the release provisions for the extended sentences covered in sections 227 and 228. *Subsection (2)* provides that once an offender has served one half of the "appropriate custodial term", then subject to the recommendation of the Parole Board the prisoner may be released on licence. Once the prisoner has served the full 'appropriate custodial term' he must be released and will then remain on licence until he has served his full extended supervision period.

Section 248: Power to release prisoners on compassionate grounds

579. This section re-enacts section 36 of the Criminal Justice Act 1991, and sets out the procedure for releasing fixed-term prisoners on compassionate grounds. The Secretary of State may only release prisoners on these grounds if exceptional circumstances exist (for example where the prisoner is suffering from a terminal illness). In such cases *subsection (2)* requires the Parole Board is to be consulted prior to release wherever possible.

Section 249: Duration of licence

580. *Subsection (1)* provides that, after release, all prisoners serving determinate sentences remain on licence following release for the remainder of the sentence. Particular provision is made in *subsection (2)* for intermittent custody, reflecting the fact that the offender must return to prison at the end of each intermittent licence period before being subject to final release. In either case, the provisions as to the duration of licence are subject to the fact that the offender may be recalled into custody in the event of breach of a licence condition.

Section 250: Licence conditions

581. This section makes provision in relation to the conditions which may be attached to a licence following a prisoner's release. All licences must include "the standard conditions" as defined insofar as they are compatible with the other licence conditions. An example of a "standard condition" that could be prescribed is a requirement that the offender be of good behaviour. Other than the standard conditions, the content of the licence will vary according to the sentence being served. For prisoners serving one or

more sentences of less than twelve months the conditions of the licence are set by the court at the point of sentence (see *section 189*). These conditions apply in conjunction with the standard conditions and with any condition prescribed for this purpose by the Secretary of State for the purpose of public protection (see *subsection (2)(b)(ii)*). *Subsection (3)* provides that court-ordered licence conditions apply where a prisoner is released on licence for compassionate reasons or on Home Detention Curfew. For prisoners serving one or more sentence of more than 12 months the conditions of the licence are set by Prison and Probation Service prior to the prisoners' release. In this case, *subsection (4)* provides that the standard conditions will apply, together with any other condition prescribed for this purpose by the Secretary of State and specified in the licence. Conditions as to electronic monitoring and drug testing may also be applied under section 62 or 64 of the Criminal Justice and Court Services Act 2000. *Subsection (5)* ensures every Home Detention Curfew licence has a curfew condition. *Subsection (6)* provides that if a court-ordered licence in a sentence of less than 12 months has a curfew condition, it is not to operate at the same time as an HDC curfew. *Subsection (7)* applies the arrangements on consecutive and concurrent terms to the section. *Subsection (8)* requires the Secretary of State to have regard to several factors including the protection of the public and the prevention of re-offending when creating standard conditions.

Section 251: Licence conditions on re-release of prisoner serving sentence of less than 12 months

582. If an offender serving a sentence of less than 12 months is recalled to prison, it is likely that his court-ordered licence conditions will be disrupted. This section provides that after recall, the Secretary of State has the power to re-set licence conditions upon the re-release of the offender. These must include standard conditions and may include drug testing or electronic monitoring, or conditions prescribed by the Secretary of State in an order. In other words, following recall, licence conditions in a sentence of less than 12 months will be imposed as they are for sentences of 12 months or more.

Section 252: Duty to comply with licence conditions

583. This section requires the offender to comply with any conditions attached to their licence.

Section 253: Curfew condition to be included in licence under section 246

584. *Subsection (1)* defines the curfew condition to be attached to early release on Home Detention Curfew (HDC), as provided in s*ection 246*. The curfew condition specifies periods during which the offender must remain in a specified place, and includes a requirement that the curfew is electronically monitored. Under *subsection (2)*the curfew condition can specify more than one place and/or more than one period. There are time limits; except for the first and last days, a curfew cannot last for less than 9 hours in any one day. Under *subsection (3)* the curfew condition is to last until the date the offender would have been released from prison if he had not received early release. *Subsection (4)* provides for the curfew condition in sentences of intermittent custody. *Subsections (5) and (6)* set out administrative arrangements for the provision of electronic monitoring.

Section 254: Recall of prisoners while on licence

585. *Subsection (1)* enables the Secretary of State to revoke the licence of an offender and recall him to prison. Under *subsection (2)* a person recalled has to be informed of the reasons for his recall and can make written representations about it. *Subsection (3)* provides for the Parole Board to consider all recalls. Under *subsection (4),* if the Board decides that the person should be released, the Secretary of State must release him. *Subsection (5)* provides that if the Parole Board immediately re-releases an intermittent custody prisoner who has been recalled he is to continue his sentence on an intermittent

basis. *Subsection (6)* provides that if a person on licence is recalled he can be detained and if at large he will be treated as unlawfully at large. *Subsection (7)* provides that this section does not apply to offenders recalled from Home Detention Curfew, who are dealt with in *Section 255*.

Section 255: Recall of prisoners released under s.246

586. *Subsection (1)* enables the Secretary of State to revoke the licence of an offender on Home Detention Curfew and recall him to prison if he has failed to comply with a licence condition or if his whereabouts can no longer be electronically monitored. Under *subsection (2)* if a person on HDC has his licence revoked, he must be informed of the reason when he returns to prison, and he is able to make written representations about the revocation. *Subsection (3)* enables the Secretary of State to cancel a revocation of an HDC licence after considering such representations. Under *subsection (4)* such a cancellation has the effect that the licence is taken not to have been revoked. *Subsection (5)* provides that an offender whose HDC licence is revoked may be detained, is to be considered unlawfully at large, and is subject to arrest.

Section 256: Further release after recall

587. When an offender has been recalled to prison, arrangements are made with a view to his further release. Under *subsection (1)* the Parole Board must either set a date for future release or set a date for it to review the offender's case. Under *subsection (2)*, the date fixed must be within one calendar year. *Subsection (3)* provides that a future date need not be fixed if the offender was due for release within 12 months. Under *subsection (4)* if the Board decides upon a future release date the offender must be released on that date.*Subsection (5)* provides that at a review the Board can either recommend immediate release or fix a date for future release or for future review.

Section 257: Additional days for disciplinary offences

588. This Section re-enacts section 42 of the Criminal Justice Act 1991, which enables rules under the Prison Act 1952 to provide for additional days to be added to prisoners' sentences if they are found to be guilty of disciplinary offences whilst in custody.

Section 258: Early release of fine defaulters and contemnors

589. This Section re-enacts, with appropriate modifications, section 45 of the Criminal Justice Act 1991 (as amended), which sets out the release provisions for persons committed to custody in default of payment of a fine or for contempt of court, which are not sentences of imprisonment and therefore are not covered by the normal release provisions.

590. *Subsection (2)* provides for unconditional release at the half-way point of the term. This would cover those serving terms of both under and over 12 months. *Subsection (3)* makes provision for offenders who are also serving a sentence of imprisonment. *Subsection (4)* provides a power to release these persons unconditionally on compassionate grounds.

Section 259: Persons liable to removal from the United Kingdom

591. Section 259 is an interpretative provision, defining what 'persons liable to removal from the United Kingdom' for the purposes of Chapter 6 of Part 12 of the Act.

Section 260: Early removal of prisoners liable to removal from United Kingdom

592. Under the Criminal Justice Act 1991 any short-term foreign national prisoners (those serving a sentence of less than 4 years) who are liable to removal from the UK are automatically released from prison and liable to be removed from the UK at the half-way point in their sentence. They are statutorily excluded from early release under the

Home Detention Curfew scheme (section 34A(e) of the 1991 Act as amended by the Crime and Disorder Act 1998).

593. Long-term foreign national prisoners (those serving a determinate sentence of 4 years or more) are considered for early release at the halfway point of their sentence (their Parole Eligibility Date). The decision whether to release is based upon a careful risk assessment. Those who are not considered an acceptable risk for release on parole remain in custody until their automatic release date at the two-thirds point of sentence.

594. Both short and long term foreign national prisoners released from prison are liable to be detained under immigration law until they are finally removed from the UK.

595. *Section 260* introduces a new scheme for early removal from prison for foreign national prisoners liable to removal as defined in section 259. Eligible prisoners may be removed from prison up to 135 days earlier than their normal release date.

596. *Subsections (1) and (2)* set out the minimum requisite custodial period to which the scheme will apply and the period of time to be served before removal from prison will be possible.

597. Certain prisoners will be excluded from the scheme. These statutory exclusions are set out in *subsection (3).*

598. *Subsections (4) and (5)* will ensure that prisoners remain liable to be detained in pursuance of their sentences whilst remaining in the UK so that if, for example, the prisoner makes an application for asylum, after being removed under the scheme, the prisoner will be returned to prison to continue to serve the sentence until the normal release date, at which point the prisoner will become subject to immigration law.

599. *Subsection (6)* gives the Secretary of State the power to amend by order the eligibility requirements of the minimum sentence and custodial period to be served for early removal under the scheme

Section 261: Re-entry into United Kingdom of offender removed from prison early

600. *Section 261* sets out the provisions for dealing with a prisoner who returns to the UK following early removal under section 261. Prisoners who return before their sentences expire will be liable to be detained in pursuance of their sentence for a period equal to the outstanding custodial period to be served or until the sentence expiry date, whichever is the earlier.

Section 262: Prisoners liable to removal from United Kingdom: modifications of Criminal Justice Act 1991

601. *Section 262* introduces Schedule 20, which makes provision for a similar scheme to apply under the 1991 Act prior to the commencement of the Act.

Section 263: Concurrent terms

602. This section deals with release in the case of an offender serving two or more terms of imprisonment at the same time (concurrently). In such cases the offender must serve the longest custodial period of the sentences which have been passed before being released on licence. He will then remain on licence until the expiry of the longest sentence. *Subsection (3)* states that in cases where a sentence of more than and a sentence of less than 12 months are ordered to be served concurrently, the Secretary of State (in practice the Prison and Probation Services) may set the licence conditions without having regard to any conditions which the court set when passing the shorter sentence.

Section 264: Consecutive terms

603. This section deals with release in the case of offenders serving two or more terms of imprisonment to be served one after the other (consecutively). In such cases the offender must serve a period equal to the aggregate of the custodial periods of the sentences which have been passed before being released on licence. Where sentences of less than 12 months and more than 12 months (including the extended sentence) are passed at the same time, or where more than one sentence of more than 12 months is passed, following release the offender will remain on licence for a period equal in length to the aggregate of the lengths of the individual licence periods for each sentence. *Subsection (4)* provides that where sentences of less than 12 months are to be served consecutively the offender will remain on licence until he has served a term equal in length to the longest licence period for any one of his sentences. Therefore the term to be served will be the aggregate of the custodial periods plus the longest licence period.

Section 265: Restriction on consecutive sentences for released prisoners

604. This section re-enacts with changes provisions in section 84 of the Powers of Criminal Courts (Sentencing) Act 2000. The section provides that if an offender is sentenced to imprisonment for an offence while he is on licence in connection with a sentence for another offence, the prison term for the new offence is to start immediately, and not wait until the first term expires.

Section 266: Release on licence, etc: drug testing requirements

605. This section amends section 64 of the Criminal Justice and Court Services Act 2000. It provides that should a responsible officer, as defined in subsection (6), be of the opinion that the offender has a propensity to misuse any specified Class A drugs and that such misuse has caused or contributed to any offence of which he was convicted or is likely to cause or contribute to him committing further offences, the offender must provide, when requested, a sample to ascertain whether he has a specified Class A drug in his system. The requirement that a trigger offence has been committed is removed. The minimum age of persons to whom drug testing under this provision applies is lowered to 14 years. A sentence of detention under section 226 or 228 of this Act will be included for the purposes of this section. The presence of an appropriate adult, as defined in subsection (6), is required for the taking of a sample in the case of an offender who is under the age of 17 years.

Section 267: Alteration by order of relevant proportion of sentence

606. This section gives the Secretary of State the power to amend by order the proportion of a custodial sentence of 12 months or more which must be served in prison before the release. It also enables the Secretary of State to amend by order the proportion of an extended sentence for certain sexual and violent offences (see sections 227 and 228) which must be served before a prisoner is eligible for release on the recommendation of the Parole Board.

Section 268: Interpretation of Chapter 6

607. This section explains various terms used in the Chapter.

Chapter 7: Effect of Life Sentence

Section 269: Determination of minimum term in relation to mandatory life sentence

608. This section relates to mandatory life sentences (that is, life sentences fixed by law). The only offences carrying a mandatory life sentence are murder and certain offences involving murder.

609. This Section requires a court passing a mandatory life sentence to make an order specifying a period of time the prisoner must serve before the Parole Board can consider release on licence under the provisions of section 28 of the Crime (Sentences) Act 1997 (i.e. the "minimum term"). The exception is that if the offender was 21 or over at the time of the offence, and the court takes the view that the murder is so grave that the offender ought to spend the rest of his life in prison, the order is that those early release provisions are not to apply to the offender (See subsection (4)).

610. A life sentence is defined (by section 277) as meaning a sentence of imprisonment for life, which is imposed on those convicted of murder who are 21 or more years of age, a sentence of custody for life, which is for those aged 18, 19 or 20 years of age, and a sentence of detention during Her Majesty's Pleasure, which is for those under 18 years of age.

611. The "whole life", 30 year, and 15 year starting points set out in Schedule 21 do not apply to juveniles: all juveniles who receive a mandatory life sentence are subject to a starting point of 12 years.

612. *Subsection (3)* requires the court to set the minimum term by reference to the seriousness of the offence, and also to take into account time spent on remand.

613. *Subsection (5)* makes further provision in relation to the assessment of the seriousness of the offence. It requires the court to have regard to the principles set out in Schedule 21, and to any guidelines issued by the Sentencing Guidelines Council (provided they are compatible with the provisions of Schedule 21). Schedule 21 is explained in detail below.

614. *Subsection (6)* enables the Secretary of State to amend Schedule 21 by order (subject to affirmative resolution procedure). The Secretary of State has a duty to consult the Sentencing Guidelines Council before making such an order.

Section 270: Duty to give reasons

615. *Section 270* is designed to ensure that everyone concerned is afforded a clear and readily understood explanation of the reasoning of the court in arriving at the minimum term imposed. (The court is also required by section 174(1)(b) to explain the effect of the sentence.)

Section 271: Appeals

616. *Subsection (1)* ensures that the opportunity to apply to the Court of Appeal, and thereafter to House of Lords, in order to appeal against a minimum term is open to prisoners in respect of whom an order under section 269 is made following sentence in the Crown Court. *Subsection (2)* contains similar provisions in relation to sentences passed by courts-martial.

Section 272: Review of minimum term on reference by Attorney General

617. Section 36 of the Criminal Justice Act 1988 provides for the Attorney General to refer a case concerning certain offences to the Court of Appeal for review if he is of the opinion that the sentence imposed is unduly lenient. As a matter of sentencing practice the Court of Appeal, when increasing a sentence which in its view is unduly lenient, operates a "double jeopardy" discount in favour of the offender to take account of the fact that he or she is being sentenced for a second time. A person convicted of murder is in any event subject to a life sentence and has no certain prospect of a particular release date. The amendment to section 36 of the Criminal Justice Act 1988 will prevent the Court of Appeal from applying a discount of this kind in referred cases relating to minimum term orders under section 269(2). (Equivalent amendments are made to relevant legislation covering the different armed forces.)

Section 273: Life prisoners transferred to England and Wales & Section 274: Further provisions about references relating to transferred life prisoners

618. The need to provide for judicial determination of minimum terms in mandatory life sentences affects not only those convicted here but also the small number of prisoners who have been convicted in jurisdictions outside the British Islands (i.e. the United Kingdom, the Channel Islands and the Isle of Man) and who consent to be transferred to England and Wales in order to serve their sentence here. Section 273 provides for the cases of these transferred life sentence prisoners to be referred to the High Court for a minimum term to be fixed. section 274 contains further provisions about references under section 273, including provision for appeals.

Section 275: Duty to release certain life prisoners

619. *Section 275* deals with the release of mandatory life prisoners. In accordance with the ruling of the European Court of Human Rights in the case of *Stafford* this provision brings the arrangements for the release of mandatory life prisoners into line with those for discretionary life prisoners under section 28 of the Crime (Sentences) Act 1997. The amendments ensure that, like discretionary life sentence prisoners, a mandatory life sentence prisoner will be able to require the Secretary of State to refer his case to the Parole Board once he has served his minimum term. Once a case is referred to it the Parole Board decides whether a prisoner is to be released and may direct his release only if it is satisfied that the prisoner's continued detention is no longer necessary for the protection of the public. The Secretary of State is then under a duty to release the prisoner on a life licence.

Section 276: Mandatory life sentences : transitional cases

620. This section introduces Schedule 22 dealing with existing life sentence prisoners. This Schedule is explained below.

Chapter 8: Other Provisions about sentencing

Section 278: Deferment of Sentence

621. This section introduces Schedule 23, which deals with deferred sentences.

Section 279: Drug treatment and testing requirement in action plan order or supervision order

622. This section introduces Schedule 24, which enables a requirement as to drug treatment and testing to be included in an action plan order or a supervision order.

623. The action plan order is a community sentence, which is available where a child or young person aged between 10 and 17 years old is convicted of any offence for which the sentence is not fixed by law. The order lasts for a period of three months and provides a short but intensive and individually tailored programme of intervention designed to address the young person's offending behaviour and associated risk factors. The court may attach a range of requirements such as offending behaviour work, education and reparation.

624. The supervision order is a community sentence available for a child or young person aged between 10 and 17 years old. The duration of the order may range from a minimum of six months to a maximum of three years. A range of requirements may be attached to the supervision order such as residence, reparation, night restrictions and activities specified by a youth offending team.

Section 280: Alteration of penalties for summary offences

625. This section is consequential on the changes in the structure of short sentences which this Act introduces and the corresponding increase in magistrates' sentencing powers. It introduces Schedules 25 and 26, which make changes to the maximum penalties for summary only offences that previously carried a maximum penalty of less than 12 months. These offences are either to have the maximum penalty lowered so that they are no longer punishable with imprisonment (see Schedule 25) or raised to 51 weeks imprisonment so that they may be punishable with a new sentence of imprisonment of less than 12 months, custody plus (see Schedule 26).

Section 281: Alteration of penalties for other summary offences

626. This section provides for the alteration of penalties for certain summary offences. *Subsections (1) to (3)* enable the Secretary of State to amend by order the maximum penalties for summary only offences currently carrying a maximum custodial penalty of five months or less. Under *subsection (1)* such amendments may be made only in relation to offences which are not listed in Schedule 25 or 26 and are contained either in an Act passed before or in the same Session as this Act, or any subordinate legislation made before the passing of this Act. In such cases the Secretary of State may (by order) either remove imprisonment as a penalty for the offence or raise the maximum penalty for the offence to 51 weeks imprisonment. *Subsections (4) and (5)* provide for all summary offences contained in Acts passed before or in the same Session as this Act with a maximum penalty of six months imprisonment to have this maximum penalty raised automatically to 51 weeks. *Subsection (6)*ensures that any alteration of penalties made under this section does not affect the penalty for any offence committed before the commencement of this section.

Section 282: Increase in maximum term that may be imposed on summary conviction of offence triable either way

627. This section provides for an increase in the maximum sentence available on the summary conviction of a triable either way offence following commencement of this section so that it corresponds with the extent of the magistrates' sentencing powers. S*ubsection (4)* provides for the maximum penalties for offences falling within subsection (3) to be increased to 12 months imprisonment on summary conviction. This section also makes consequential amendments to the Magistrates' Courts Act 1980 in so far as it deals with penalties on summary conviction of triable either way offences.

Section 283: Enabling powers: alteration of maximum penalties

628. *Section 283* makes the necessary provisions for offences created under enabling powers to have their maximum penalties altered so that they may be compatible with the new sentencing framework. *Subsection (1)* gives the Secretary of State the power to amend by order any enabling powers within any Act (passed before or in the same Session as this Act) which allow for making offences punishable with imprisonment on summary conviction, excluding those listed in Schedule 27. *Subsection (2)* provides that an order under this power may amend the relevant enactment containing an enabling power so as either to remove its ability (through subordinate legislation) to make a summary offence punishable with imprisonment or to increase the maximum term of imprisonment to 51 weeks. *Subsection (3)* also enables an order under *subsection (1)* to amend enabling powers which make a triable either way offence punishable with imprisonment on summary conviction. *Subsection (4*) introduces Schedule 27.

Section 284: Increase in penalties for drug related offences

629. This section introduces Schedule 28, which increases the maximum penalty for trafficking Class C drugs from 5 years' to 14 years'imprisonment.

Section 285: Increase in penalties for certain driving-related offences causing deaths

630. This section increases to 14 years' imprisonment the maximum penalty for the three offences of causing death by dangerous driving, causing death by careless driving under the influence of drink or drugs and aggravated vehicle-taking where the aggravating feature is that, owing to the driving of the vehicle, an accident occurs and death results. These increases in maximum penalties also apply to similar driving offences in Northern Ireland.

Section 286: Increase in penalties for offences under section 174 of Road Traffic Act 1988

631. This section increases the maximum penalties for the offences of giving false statements and withholding material information in relation to road traffic documentation/offences. For those offences, when tried on indictment the maximum penalty is increased to 2 years or a fine or both; and when tried summarily the maximum penalty is increased to 6 months or the statutory maximum or both.

Section 287: Minimum sentence for certain firearms offences

632. This section inserts a new section 51A into the Firearms Act 1968 ("the 1968 Act") to provide a new minimum custodial sentence for unauthorised possession of certain types of firearm.

633. *Subsection(1)* of the new section 51A sets out the particular offences which will attract the new minimum sentence, and applies it to persons aged 16 or over when the offence was committed. Under subsection (5) the minimum is fixed at five years for persons aged 18 or over (in England and Wales) or aged 21 or over (in Scotland) when the offence was committed, and three years for persons aged under 18 (in England and Wales) or aged under 21 (in Scotland).

634. Under*subsection (2)* courts will be required to impose the minimum sentence, unless there are exceptional circumstances relating to the offence or offender which justify not doing so. Examples of exceptional circumstances might be where the holder of a firearms certificate inadvertently forgets to renew his authority or where a war trophy is discovered among a deceased person's effects.

Section 288: Certain firearms offences to be triable only on indictment

635. This Section amends Part 1 of Schedule 6 to the 1968 Act and makes all offences to which the minimum sentence applies triable on indictment only. At present, these offences are triable either way. However, the minimum sentence is beyond the sentencing powers of magistrates and (but for this section) magistrates would have to make a preliminary assessment of whether any exceptional circumstances were involved before determining whether a case should go to the Crown Court.

Section 289: Power to sentence young offender to detention in respect of certain firearms offences: England and Wales

636. This section amends section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 to ensure that persons aged 16 or 17 can be sentenced to the term of detention required by the new section 51A of the 1968 Act.

Section 290: Power to sentence young offender to detention in respect of certain firearms offences: Scotland

637. This section amends the Criminal Procedure (Scotland) Act 1995 to ensure that where offenders aged 16 or 17 are convicted on indictment under section 5 of the 1968 Act, the court itself retains the power to order detention and to dispose of the case.

Section 291: Power by order to exclude application of minimum sentence to those under 18

638. This section enables the Secretary of State by order to prevent the minimum sentence applying to those aged 16 or 17. There is also power to make consequential amendments of other legislation. An order under this power is subject to affirmative resolution procedure.

Section 292: Sentencing for firearms offences in Northern Ireland

639. Section 292 introduces Schedule 29, which makes provision for Northern Ireland similar to that made for England and Wales found in sections 287 and 288 of the Act. In particular the Schedule applies the minimum sentence provision to handguns, which are currently not prohibited in Northern Ireland.

Section 293: Increase in penalty for offences relating to importation or exportation of certain firearms

640. This section amends the Customs and Excise Management Act 1979 to increase from 7 years' imprisonment to 10 years' imprisonment the maximum penalty for smuggling prohibited weapons covered by the minimum sentence provisions. The offences concerned are: improper importation of goods (section 50), exportation of prohibited or restricted goods (section 68) and fraudulent evasion of duty etc (section 170).

Section 294: Duration of directions under Mental Health Act 1983 in relation to offenders

641. *Section 294* makes amendments to section 50 of the Mental Health Act 1983 dealing with arrangements for the release, or return to prison, of serving prisoners who have been transferred to hospital for medical treatment. It replaces references to the expiration of a prisoner's sentence with references to his release date. This means that the Secretary of State can only treat the patient as a restricted patient until the time when the prisoner would have been released from prison. On the release date the Secretary of State ceases to be able to send the patient back to prison or control decisions on leave, transfer or discharge from hospital under the 1983 Act. New section 50(3) of the 1983 Act provides that the release date means the date on which the prisoner would be entitled to be released if he had not been transferred to hospital, disregarding any powers that the Parole Board would have if he were still detained in prison, or any discretionary powers of early release exercisable by the Secretary of State. This means that schemes for early release such as the home detention curfew scheme are not taken into account and that (subject to the changes made in section 295 of the Act) life prisoners have to return to prison and to apply to the Parole Board in order to be released.

Section 295: Access to Parole Board for certain patients serving prison sentences

642. *Section 295* makes amends section 74 of the Mental Health Act 1983. The inserted subsection (5A) relates to transferred prisoners detained in hospital beyond their release date whose detention in hospital has been found by the mental health review tribunal to be no longer justified by their mental disorder, but who the tribunal has recommended should remain in hospital, rather than return to prison, in the event that the Secretary of State does not agree to discharge them from hospital. It provides that the fact that restrictions under the Mental Health Act remain in force does not prevent an application or reference to the Parole Board for release. It further provides that if the Parole Board directs or recommends release, the restrictions cease to have effect at the time he is entitled to release. The effect of this is that the transferred prisoner is assured access to the Parole Board, and the possibility of release on licence, once he has reached his release date and the mental health review tribunal find he is no longer appropriately detained in hospital for medical treatment.

Section 296: Duration of directions under Mental Health (Northern Ireland) Order 1986 in relation to offenders

643. *Section 296* makes amendments to Article 56 of the Mental Health (Northern Ireland) Order 1986 dealing with the arrangements in Northern Ireland for the release or return to prison of serving prisoners who have been transferred to hospital for medical treatment. It substitutes references to the expiration of a prisoner's sentence with references to his release date. This ensures that the Secretary of State can only treat the patient as a restricted patient until the time when the prisoner would have been released from prison. New article 56(3) provides that the release date means the date on which the prisoner would be entitled to release if he had not been transferred to hospital, (regardless of any powers of the Sentence Review Commissioners or the Life Sentence Review Commissioners), if he was still detained in prison.

Section 297: Access to Sentence Review Commissioners and Life Sentence Review Commissioners for certain Northern Ireland patients

644. *Section 297* makes an insertion into Article 79 of the Mental Health (Northern Ireland) Order 1986. It relates to transferred prisoners detained in hospital beyond their release date whose detention in hospital has been found by the mental health review tribunal for Northern Ireland to be no longer justified by their mental disorder but who the tribunal has recommended should remain in hospital rather than return to prison in the event that the Secretary of State does not agree to their discharge from hospital. It provides that the fact that restrictions under the Mental Health Order remain in force does not prevent an application or reference to the Sentence Review Commissioners or the Life Sentence Review Commissioners for release. It further provides that if the Commissioners direct release, the restrictions cease to have effect at the time he is entitled to release. The effect of this is that the transferred prisoner is assured access to the Review Commissioners, and the possibility of release on licence once he has reached his release date and the mental health review tribunal find that he is no longer detained in hospital for medical treatment.

Section 298: Term of a detention and training order

645. This section is related to the increase in the maximum sentence for some summary-only offences from 6 months to 51 weeks. The Section provides that the maximum sentence for such offences in the case of those under 18 will remain as a 6-month detention and training order.

Section 299: Disqualification from working with children

646. This section introduces Schedule 30, which is explained below.

Section 300: Power to impose unpaid work requirement or curfew requirement on fine defaulter

647. This section re-enacts, with appropriate modifications to make them applicable for the new sentencing framework, the fine default provisions in section 35 of the Crime Sentences Act 1997.

648. Where a court has the power to commit an offender to prison in default of payment of a fine, *subsection (2)* provides the court with an alternative power to order the offender to comply with an unpaid work or curfew requirement. Such an order is named a "default order" by *subsection (3). Subsection (4)* allows these requirements to be subject to electronic monitoring. *Subsection (5)* provides the Court with a power to postpone the making of a default order until such time as thinks fit. *Subsection (6)* applies the breach provisions in Schedule 8, the transfer of community order provisions in Schedule 9 and the provisions of Chapter 4, subject to set out the modifications outline in Schedule 31, to the making of default orders.

649. Should the offender pay the whole or part of the sum of the fine originally defaulted, *Subsection (7)* provides for the number of hours of unpaid work or days of curfew to be reduced by a proportion corresponding to the amount repaid, or for the order to cease to have effect altogether.

Section 301: Fine defaulters: driving disqualification

650. This section re-enacts the provisions of section 40 of the Crime Sentences Act 1997. As an alternative to committing an offender to custody in default of payment of a sum, it provides the Court in subsection (2) with a power to disqualify an offender from driving for a period of up to 12 months.

651. Under *subsection (3)* if the fine is repaid the order ceases to have effect, or if it is repaid in part, the total number of weeks or months is reduced by a corresponding proportion. *Subsection (5)* provides the Secretary of State with an order-making power to alter the period of disqualification (currently 12 months) specified in *subsection (2).*

Chapter 9 : Supplementary

Section 302: Execution of process between England and Wales and Scotland

652. This section enables summonses and warrants issued to persons under the sentencing provisions of the Act to be served in Scotland. The section lists the relevant sentencing provisions which involve summonses and warrants. This section applies only applies to the magistrates' court, as nothing is needed to allow summonses and warrants issued by the Crown Court to be served in Scotland.

Section 303: Sentencing: repeals

653. This section lists the main provisions superseded by this Part of the Act. Full details of all repeals are found in Schedule 37.

Section 304: Amendments relating to sentencing

654. This Section introduces Schedule 32.

Section 305: Interpretation of Part 12

655. This Section defines various terms used in this Part of the Act. It also outlines how to determine the age of an offender for sentencing purposes and how to construe "imprisonment" in relation to young offenders.