



Criminal Justice and Courts Act 2015

2015 CHAPTER 2

PART 1

CRIMINAL JUSTICE

Dangerous offenders

1 Maximum sentence for certain offences to be life imprisonment

- (1) In section 4 of the Explosive Substances Act 1883 (making or possession of explosive under suspicious circumstances)—
 - (a) in subsection (1), for the words from “guilty” to the end substitute “guilty of an offence”, and
 - (b) after that subsection insert—

“(1A) A person who is guilty of an offence under subsection (1) is liable, on conviction on indictment, to imprisonment for life.

(1B) Where a person is convicted of an offence under subsection (1) the explosive substance is to be forfeited.”
- (2) In section 54(6)(a) of the Terrorism Act 2000 (penalty on conviction on indictment of offence involving weapons training for terrorism), for “imprisonment for a term not exceeding ten years” substitute “imprisonment for life”.
- (3) In section 6(5)(a) of the Terrorism Act 2006 (penalty on conviction on indictment of offence involving training for terrorism), for “imprisonment for a term not exceeding 10 years” substitute “imprisonment for life”.
- (4) The amendments made by this section apply only in relation to an offence committed on or after the day on which they come into force.
- (5) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (4) to have been committed on the last of those days.

2 Specified offences

- (1) Schedule 15 to the Criminal Justice Act 2003 (specified offences for purposes of Chapter 5 of Part 12 of that Act) is amended as follows.
- (2) After paragraph 22 (offence under section 3 of the Explosive Substances Act 1883) insert—
 - “22A An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).”
- (3) For paragraph 64 (accessories and inchoate offences: violent offences) substitute—
 - “64 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in the preceding paragraphs of this Part of this Schedule.
 - (2) An attempt to commit such an offence.
 - (3) Conspiracy to commit such an offence.
 - (4) Incitement to commit such an offence.
 - (5) An offence under Part 2 of the Serious Crime Act 2007 in relation to which an offence specified in the preceding paragraphs of this Part of this Schedule is the offence (or one of the offences) which the person intended or believed would be committed.”
- (4) For paragraph 65 (attempt or conspiracy to commit murder) substitute—
 - “65 (1) An attempt to commit murder.
 - (2) Conspiracy to commit murder.
 - (3) Incitement to commit murder.
 - (4) An offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed.”
- (5) Omit paragraph 92 (offence of keeping a brothel under section 33 of the Sexual Offences Act 1956).
- (6) After that paragraph insert—
 - “92A An offence under section 33A of that Act (keeping a brothel used for prostitution).”
- (7) For paragraph 153 (accessories and inchoate offences: sexual offences) substitute—
 - “153 (1) Aiding, abetting, counselling or procuring the commission of an offence specified in this Part of this Schedule.
 - (2) An attempt to commit such an offence.
 - (3) Conspiracy to commit such an offence.
 - (4) Incitement to commit such an offence.
 - (5) An offence under Part 2 of the Serious Crime Act 2007 in relation to which an offence specified in this Part of this Schedule is the offence (or one of the offences) which the person intended or believed would be committed.”

- (8) The amendments made by this section apply in relation to a person sentenced for an offence on or after the day on which they come into force, whenever the offence was committed.
- (9) But subsection (8) does not apply for the purposes of the provisions referred to in subsection (10).
- (10) For the purposes of sections 225(1)(a) and 226(1)(a) of the Criminal Justice Act 2003 and sections 219(1)(b) and 221(1)(b) of the Armed Forces Act 2006, the amendments made by subsections (2) and (4) apply only in relation to a person sentenced for an offence that was committed on or after the day on which they come into force.
- (11) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (10) to have been committed on the last of those days.

3 Schedule 15B offences

- (1) Part 1 of Schedule 15B to the Criminal Justice Act 2003 (offences under the law of England and Wales listed for the purposes of sections 224A(1) and (4), 226A and 246A of that Act) is amended as follows.
- (2) After paragraph 3 (offence under section 18 of the Offences Against the Person Act 1861) insert—
 - “3A An offence under section 28 of that Act (causing bodily injury by explosives).
 - 3B An offence under section 29 of that Act (using explosives etc with intent to do grievous bodily harm).
 - 3C An offence under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).
 - 3D An offence under section 3 of that Act (attempt to cause explosion, or making or keeping explosive with intent to endanger life or property).
 - 3E An offence under section 4 of that Act (making or possession of explosive under suspicious circumstances).”
- (3) After paragraph 8 insert—
 - “8A An offence under section 54 of the Terrorism Act 2000 (weapons training).”
- (4) In paragraph 9, for “the Terrorism Act 2000” substitute “that Act”.
- (5) After paragraph 40 (offence under section 5 of the Terrorism Act 2006) insert—
 - “40A An offence under section 6 of that Act (training for terrorism).”
- (6) Part 4 of Schedule 15B to the Criminal Justice Act 2003 (offences under the law of Scotland, Northern Ireland or a member State other than the United Kingdom listed for the purposes of sections 224A(4) and 226A of that Act) is amended as follows.
- (7) In paragraph 49, for “An offence” substitute “A civilian offence”.
- (8) After paragraph 49 insert—

“49A A member State service offence which, if committed in England and Wales at the time of the conviction, would have constituted an offence specified in Part 1 or 2 of this Schedule.

49B In this Part of this Schedule—

“civilian offence” means an offence other than an offence described in Part 3 of this Schedule or a member State service offence;

“member State service offence” means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.”

- (9) For the purposes of section 224A of the Criminal Justice Act 2003 and section 218A of the Armed Forces Act 2006, the amendments made by this section apply only in relation to a person sentenced for an offence that was committed on or after the day on which they come into force.
- (10) For the purposes of section 226A of the Criminal Justice Act 2003 and section 219A of the Armed Forces Act 2006, the amendments made by this section apply in relation to a person sentenced for an offence on or after the day on which they come into force, whenever the offence was committed.
- (11) For the purposes of section 246A of the Criminal Justice Act 2003, the amendments made by subsections (2) to (5) apply in relation to a person serving an extended sentence imposed on or after the day on which they come into force, whenever the offence in question was committed.
- (12) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (9) to have been committed on the last of those days.

4 Parole Board release when serving extended sentences

- (1) Section 246A of the Criminal Justice Act 2003 (release on licence of prisoners serving extended sentences under section 226A or 226B) is amended as follows.
- (2) In subsection (2) (automatic release at the end of requisite custodial period), for the words from “unless” to the end substitute “if—
- (a) the sentence was imposed before the coming into force of section 4 of the Criminal Justice and Courts Act 2015,
 - (b) the appropriate custodial term is less than 10 years, and
 - (c) the sentence was not imposed in respect of an offence listed in Parts 1 to 3 of Schedule 15B or in respect of offences that include one or more offences listed in those Parts of that Schedule.”
- (3) In subsection (3) (release following Parole Board direction), for “If either or both of those conditions are met” substitute “In any other case”.

5 Minor amendments

- (1) In section 224A of the Criminal Justice Act 2003 (life sentence for second listed offence), at the end insert—

Status: This is the original version (as it was originally enacted).

“(12) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(b) and (4)(a) to have been committed on the last of those days.”

(2) In section 232A of that Act (certificates of conviction), for “section 224A” substitute “sections 224A and 226A”.

(3) In section 218A of the Armed Forces Act 2006 (life sentence for second listed offence), at the end insert—

“(8) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it must be taken for the purposes of subsections (1)(c) and (5)(a) to have been committed on the last of those days.”

Other offenders of particular concern

6 Sentence and Parole Board release for offenders of particular concern

(1) Part 1 of Schedule 1 contains—

- (a) provision about the sentence to be imposed on certain offenders of particular concern, and
- (b) provision for such offenders to be released on licence following a Parole Board direction.

(2) That Schedule also contains—

- (a) equivalent provision in respect of offenders convicted of service offences (see Part 2),
- (b) transitional and transitory provision (see Part 3), and
- (c) consequential provision (see Part 4).

Release and recall of prisoners

7 Electronic monitoring following release on licence etc

(1) Part 3 of the Criminal Justice and Court Services Act 2000 (dealing with offenders) is amended as follows.

(2) In section 62 (release on licence etc: conditions as to monitoring)—

(a) for subsection (2) substitute—

“(2) The conditions may include electronic monitoring conditions.

(2A) An electronic monitoring condition imposed under this section must include provision for making a person responsible for the monitoring.

(2B) A person may not be made responsible for the monitoring unless the person is of a description specified in an order made by the Secretary of State.”, and

(b) after subsection (5) insert—

Status: This is the original version (as it was originally enacted).

“(5A) In this section “electronic monitoring condition” means a condition requiring the person to submit to either or both of the following—

- (a) electronic monitoring of the person’s compliance with another condition of release, and
- (b) electronic monitoring of the person’s whereabouts (other than for the purpose of monitoring compliance with another condition of release).”

(3) After section 62 insert—

“62A Release on licence etc: compulsory electronic monitoring conditions

- (1) The Secretary of State may by order provide that the power under section 62 to impose an electronic monitoring condition must be exercised.
- (2) An order under this section may—
 - (a) require an electronic monitoring condition to be included for so long as the person’s release is required to be, or may be, subject to conditions or for a shorter period;
 - (b) make provision generally or in relation to a case described in the order.
- (3) An order under this section may, in particular—
 - (a) make provision in relation to cases in which compliance with a condition imposed on a person’s release is monitored by a person specified or described in the order;
 - (b) make provision in relation to persons selected on the basis of criteria specified in the order or on a sampling basis;
 - (c) make provision by reference to whether a person specified in the order is satisfied of a matter.
- (4) An order under this section may not make provision about a case in which the sentence imposed on the person is—
 - (a) a detention and training order,
 - (b) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 (detention of offenders under 18 convicted of certain offences),
 - (c) a sentence of detention under section 209 of the Armed Forces Act 2006 (detention of offenders under 18 convicted of certain offences),
or
 - (d) an order under section 211 of that Act.
- (5) In this section, “electronic monitoring condition” has the same meaning as in section 62.

62B Data from electronic monitoring: code of practice

- (1) The Secretary of State must issue a code of practice relating to the processing of data gathered in the course of monitoring persons under electronic monitoring conditions imposed under section 62.
- (2) A failure to observe a code issued under this section does not of itself make a person liable to any criminal or civil proceedings.”

- (4) Schedule 2 to this Act contains consequential provision.
- (5) The amendments made by this section and Schedule 2 apply in relation to a person who is released from prison on or after the day on which they come into force.

8 Recall adjudicators

- (1) After section 239 of the Criminal Justice Act 2003 insert—

“239A Recall adjudicators

- (1) In this Chapter, “recall adjudicator” means a person for the time being appointed as such by the Secretary of State.
 - (2) The Secretary of State may appoint the Board or another person.
 - (3) The Secretary of State may, in particular, appoint a person—
 - (a) to carry out all or only some of the functions of a recall adjudicator;
 - (b) to carry out such functions only in relation to a specified area;
 - (c) to carry out such functions only in relation to a specified description of case.
 - (4) The Secretary of State may make rules with respect to the proceedings of recall adjudicators.
 - (5) The Secretary of State may appoint a recall adjudicator (referred to in this section as “the chief recall adjudicator”) to oversee the activities of recall adjudicators.
 - (6) The chief recall adjudicator may, in particular—
 - (a) issue guidance with respect to the carrying out of the functions of recall adjudicators, and
 - (b) make recommendations to the Secretary of State about the termination of appointments under this section.
 - (7) Before issuing guidance the chief recall adjudicator must consult the recall adjudicators and the Secretary of State.
 - (8) A recall adjudicator must carry out his or her functions in accordance with guidance issued from time to time by the chief recall adjudicator.
 - (9) The Secretary of State may make payments to a recall adjudicator.
 - (10) A person is not to be regarded as acting on behalf of the Crown, or as enjoying any status, immunity or privilege of the Crown, by virtue of an appointment under this section.”
- (2) The amendments of Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) in section 9 of this Act confer functions on recall adjudicators in connection with the release of fixed-term prisoners following their recall.
 - (3) Schedule 3 to this Act contains further provision relating to recall adjudicators.

9 Test for release after recall: determinate sentences

(1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) is amended as follows.

(2) In section 255A (suitability for automatic release after recall), after subsection (4) insert—

“(4A) But a person is not suitable for automatic release if—

- (a) it appears to the Secretary of State that the person is highly likely to breach a condition included in the person’s licence if released at the end of the automatic release period, and
- (b) for that reason, the Secretary of State considers that it would not be appropriate to release the person at the end of that period.”

(3) In section 255B (automatic release)—

- (a) in subsection (2), at the end insert “(but see subsections (3) and (3A))”,
- (b) after subsection (3), insert—

“(3A) The Secretary of State must not release P under subsection (2) if—

- (a) it appears to the Secretary of State that, if released, P is highly likely to breach a condition included in P’s licence, and
- (b) for that reason, the Secretary of State considers that it is not appropriate to release P under that subsection.”

(c) in subsection (4)—

- (i) for “that period” substitute “the period mentioned in subsection (1)(b)”, and
- (ii) for “the Board” substitute “a recall adjudicator”,

(d) after subsection (4) insert—

“(4A) On a reference under subsection (4), the recall adjudicator must determine the reference by—

- (a) directing P’s immediate release on licence under this Chapter,
- (b) directing P’s release on licence under this Chapter as soon as conditions specified in the direction are met, or
- (c) giving no direction as to P’s release,

(but see subsections (4B) and (4C)).

(4B) The recall adjudicator must not give a direction under subsection (4A)

(a) or (b) unless satisfied that it is not necessary for the protection of the public that P should remain in prison until the end of the period mentioned in subsection (1)(b).

(4C) The recall adjudicator must not give a direction under subsection (4A)

(a) or (b) if—

- (a) it appears to the recall adjudicator that, if released, P is highly likely to breach a condition included in P’s licence, and
- (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and

(e) for subsection (5) substitute—

“(5) The Secretary of State must give effect to any direction under subsection (4A)(a) or (b).”

(4) In section 255C (extended sentence prisoners and those not suitable for automatic release)—

- (a) in subsection (2), at the end insert “(but see subsections (3) and (3A))”,
- (b) after subsection (3), insert—

“(3A) The Secretary of State must not release P under subsection (2) if—

- (a) it appears to the Secretary of State that, if released, P is highly likely to breach a condition included in P’s licence, and
- (b) for that reason, the Secretary of State considers that it is not appropriate to release P under that subsection.”,
- (c) in subsection (4), for “the Board” substitute “a recall adjudicator”,
- (d) after subsection (4) insert—

“(4A) On a reference under subsection (4), the recall adjudicator must determine the reference by—

- (a) directing P’s immediate release on licence under this Chapter,
- (b) directing P’s release on licence under this Chapter as soon as conditions specified in the direction are met, or
- (c) giving no direction as to P’s release,

(but see subsections (4B) and (4C)).

(4B) The recall adjudicator must not give a direction under subsection (4A) (a) or (b) unless satisfied that it is not necessary for the protection of the public that P should remain in prison.

(4C) The recall adjudicator must not give a direction under subsection (4A) (a) or (b) if—

- (a) it appears to the recall adjudicator that, if released, P is highly likely to breach a condition included in P’s licence, and
- (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and

(e) for subsection (5) substitute—

“(5) The Secretary of State must give effect to any direction under subsection (4A)(a) or (b).”

(5) Omit section 256 (powers of Board where it does not direct immediate release).

(6) In section 256A (further review)—

(a) for subsection (1) substitute—

“(1) Where a case has been referred to a recall adjudicator under section 255C(4) or this section and the person has not been released, the Secretary of State must refer the person’s case back to a recall adjudicator no later than the review date.

(1A) In the case of a person serving one sentence of imprisonment, “the review date” is the first anniversary of the determination by the recall adjudicator on the reference mentioned in subsection (1).

(1B) In the case of a person serving more than one sentence of imprisonment, “the review date” is—

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- (a) the first anniversary of the determination by the recall adjudicator on the reference mentioned in subsection (1), or
- (b) if later, the day on which the person has served—
 - (i) the requisite custodial period, and
 - (ii) if the sentences include a life sentence, the minimum term.”,
- (b) in subsection (2)—
 - (i) for “that anniversary” substitute “the review date”, and
 - (ii) for “the Board” substitute “a recall adjudicator”,
- (c) in subsection (3), for “The Board” substitute “A recall adjudicator”,
- (d) in subsection (4)—
 - (i) for “Board” substitute “recall adjudicator”, and
 - (ii) for paragraph (b) substitute—
 - “(b) directing the person’s release on licence under this Chapter as soon as conditions specified in the direction are met.”,
- (e) at the end of subsection (4) insert—
 - “(but see subsections (4A) and (4B)).”,
- (f) after subsection (4) insert—
 - “(4A) The recall adjudicator must not give a direction under subsection (4) (a) or (b) unless satisfied that it is not necessary for the protection of the public that the person should remain in prison.
 - (4B) The recall adjudicator must not give a direction under subsection (4) (a) or (b) if—
 - (a) it appears to the recall adjudicator that, if released, the person is highly likely to breach a condition included in the person’s licence, and
 - (b) for that reason, the recall adjudicator considers that it is not appropriate to give the direction.”, and
- (g) for subsection (5) substitute—
 - “(5) The Secretary of State must give effect to any direction under subsection (4)(a) or (b).
 - (6) In subsection (1B)(b)—
 - “life sentence” means a sentence mentioned in section 34(2) of the Crime (Sentences) Act 1997, and
 - “the minimum term” means the part of the sentence specified in the minimum term order (as defined by section 28 of that Act).”
- (7) In Schedule 20A (application of Chapter 6 of Part 12 to pre 4 April 2005 cases), omit paragraph 6(5) (certain determinations to be treated as determinations under section 256(1) of the Criminal Justice Act 2003).
- (8) The amendments made by this section apply to a person recalled before the day on which they come into force as well as to a person recalled on or after that day.

10 Power to change test for release after recall: determinate sentences

- (1) In Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners), after section 256A insert—

“256AZA Power to change test for release following recall

- (1) The Secretary of State may by order change—
- (a) the test to be applied by the Secretary of State in deciding under section 255A whether a person is suitable for automatic release;
 - (b) the tests to be applied by the Secretary of State in deciding whether to release a person under section 255B(2) or 255C(2);
 - (c) the tests to be applied by the recall adjudicator in deciding how to determine a reference under section 255B(4), 255C(4) or 256A(1) or (2).
- (2) An order under subsection (1) may, in particular—
- (a) apply to people recalled before the day on which it comes into force as well as to people recalled on or after that day;
 - (b) amend this Chapter.”
- (2) In section 330(5)(a) of that Act (orders subject to affirmative procedure) at the appropriate place insert—
“section 256AZA,”.

11 Initial release and release after recall: life sentences

- (1) In section 28(7)(c) of the Crime (Sentences) Act 1997 (duty to release certain life prisoners), for “one-half of that sentence” substitute “the requisite custodial period (as defined in section 268 of the Criminal Justice Act 2003)”.
- (2) In section 32 of the Crime (Sentences) Act 1997 (recall of life prisoners while on licence), after subsection (5) insert—
“(5A) The Board must not give a direction unless satisfied that it is no longer necessary for the protection of the public that the life prisoner should remain in prison.”
- (3) In section 128 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (power to change test for release on licence of certain prisoners), in subsection (3), after paragraph (a) insert—
“(aa) amend section 32 of the Crime (Sentences) Act 1997 (recall of IPP prisoners and others while on licence and further release),”.
- (4) The amendment made by subsection (1) applies to a person sentenced before the day on which it comes into force as well as to a person sentenced on or after that day.
- (5) The amendment made by subsection (2) applies in relation to a person recalled before the day on which it comes into force as well as in relation to a person recalled on or after that day.

12 Offence of remaining unlawfully at large after recall

- (1) After section 32 of the Crime (Sentences) Act 1997 (recall of life prisoners) insert—

“32ZA Offence of remaining unlawfully at large after recall

- (1) A person recalled to prison under section 32 commits an offence if the person—
 - (a) has been notified of the recall orally or in writing, and
 - (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
- (2) A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
 - (a) written notice of the recall has been delivered to an appropriate address, and
 - (b) a period specified in the notice has elapsed.
- (3) In subsection (2) “an appropriate address” means—
 - (a) an address at which, under the person’s licence, the person is permitted to reside or stay, or
 - (b) an address nominated, in accordance with the person’s licence, for the purposes of this section.
- (4) A person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
 - (a) the person’s licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
 - (b) the person has failed to comply with such an instruction, and
 - (c) the person has not complied with such an instruction for at least 6 months.
- (5) A person who is guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
- (6) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
- (7) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”

- (2) After section 255 of the Criminal Justice Act 2003 (recall of prisoners) insert—

“255ZA Offence of remaining unlawfully at large after recall

- (1) A person recalled to prison under section 254 or 255 commits an offence if the person—
 - (a) has been notified of the recall orally or in writing, and

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- (b) while unlawfully at large fails, without reasonable excuse, to take all necessary steps to return to prison as soon as possible.
 - (2) A person is to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
 - (a) written notice of the recall has been delivered to an appropriate address, and
 - (b) a period specified in the notice has elapsed.
 - (3) In subsection (2) “an appropriate address” means—
 - (a) an address at which, under the person’s licence, the person is permitted to reside or stay, or
 - (b) an address nominated, in accordance with the person’s licence, for the purposes of this section.
 - (4) A person is also to be treated for the purposes of subsection (1)(a) as having been notified of the recall if—
 - (a) the person’s licence requires the person to keep in touch in accordance with any instructions given by an officer of a provider of probation services,
 - (b) the person has failed to comply with such an instruction, and
 - (c) the person has not complied with such an instruction for at least 6 months.
 - (5) A person who is guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both);
 - (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).
 - (6) In relation to an offence committed before section 154(1) comes into force, the reference in subsection (5)(b) to 12 months is to be read as a reference to 6 months.
 - (7) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (5)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”
- (3) Section 32ZA of the Crime (Sentences) Act 1997 and section 255ZA of the Criminal Justice Act 2003 apply in relation to a person recalled to prison before or after this section comes into force.

13 Offence of remaining unlawfully at large after temporary release

- (1) Section 1 of the Prisoners (Return to Custody) Act 1995 (remaining at large after temporary release) is amended as follows.
- (2) For subsection (3) substitute—
 - “(3) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine (or both), and

- (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).”

(3) At the end insert—

“(7) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (3)(b) to 12 months is to be read as a reference to 6 months.

(8) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (3)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”

- (4) The amendment made by subsection (2) does not apply where the period of temporary release expired, or the order of recall was made, before this section comes into force.

14 Definition of “requisite custodial period”

- (1) Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release etc of fixed-term prisoners) is amended as follows.

- (2) In section 268 (interpretation of Chapter), after subsection (1) insert—

“(1A) In this Chapter, “the requisite custodial period” means—

- (a) in relation to a person serving an extended sentence imposed under section 226A or 226B, the requisite custodial period for the purposes of section 246A;
- (b) in relation to a person serving an extended sentence imposed under section 227 or 228, the requisite custodial period for the purposes of section 247;
- (c) in relation to a person serving a sentence imposed under section 236A, the requisite custodial period for the purposes of section 244A;
- (d) in relation to any other fixed-term prisoner, the requisite custodial period for the purposes of section 243A or section 244 (as appropriate).”

- (3) In section 247 (release on licence of prisoner serving extended sentence under section 227 or 228)—

- (a) in subsection (2)(a), for “one-half of the appropriate custodial term” substitute “the requisite custodial period”, and
- (b) for subsection (7) substitute—

“(7) In this section—

“the appropriate custodial term” means the period determined by the court as the appropriate custodial term under section 227 or 228;

“the requisite custodial period” means—

- (a) in relation to a person serving one sentence, one-half of the appropriate custodial term, and
- (b) in relation to a person serving two or more concurrent or consecutive sentences, the period determined under sections 263(2) and 264(2).”

- (4) In section 260 (early removal of prisoners liable to removal from United Kingdom), omit subsection (7).
- (5) In section 261 (re-entry into United Kingdom of offender removed from prison early)
 - (a) in subsection (5), omit paragraph (a),
 - (b) in subsection (5)(b)—
 - (i) omit “in any other case,” and
 - (ii) for “or 246A” substitute “, 246A or 247”, and
 - (c) in subsection (6), omit the definition of “requisite custodial period”.
- (6) In Schedule 20A (application of Chapter 6 of Part 12 to pre-4 April 2005 cases)—
 - (a) omit paragraph 8(2) (modification of section 260), and
 - (b) after paragraph 8 insert—

“8A Section 268(1A) (definition of “the requisite custodial period”) has effect as if it provided that, in relation to a person serving an extended sentence under section 85 of the Sentencing Act, the requisite custodial period means one-half of the custodial term determined under that section (subject to sections 263 and 264).”
- (7) The amendments made by this section apply in relation to a person sentenced before the day on which they come into force as well as in relation to a person sentenced on or after that day.

15 Minor amendments and transitional cases

- (1) In section 82A(3) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of tariffs for life sentences), for paragraph (b) substitute—
 - “(b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—
 - (i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);
 - (ii) section 246 of the Armed Forces Act 2006 (equivalent provision for service courts);
 - (iii) any direction which the court would have given under section 240A of the Criminal Justice Act 2003 (crediting periods of remand on bail subject to certain types of condition);”.
- (2) In section 97 of the Powers of Criminal Courts (Sentencing) Act 2000 (term of detention in a young offender institution)—
 - (a) in subsection (2), omit “Subject to subsection (3) below,” and
 - (b) omit subsection (3) (power to pass sentence of less than 21 days for offence under section 65(6) of the Criminal Justice Act 1991).
- (3) In section 106(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (persons subject concurrently to detention and training order and sentence of detention in young offender institution), for “Part II of the Criminal Justice Act 1991 (early release)” substitute “Chapter 6 of Part 12 of the Criminal Justice Act 2003 (release, licences, supervision and recall)”.

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- (4) In section 246(4) of the Criminal Justice Act 2003 (cases in which power to release before required to do so is not available), after paragraph (g) insert—
- “(ga) the prisoner has at any time been released on licence under section 34A of the Criminal Justice Act 1991 and has been recalled to prison under section 38A(1)(a) of that Act (and the revocation of the licence has not been cancelled under section 38A(3) of that Act);”.
- (5) In section 250 of the Criminal Justice Act 2003 (licence conditions), for subsection (5A) substitute—
- “(5A) Subsection (5B) applies to a licence granted, either on initial release or after recall to prison, to a prisoner serving an extended sentence imposed under section 226A or 226B, other than a sentence that meets the conditions in section 246A(2) (release without direction of the Board).
- (5B) The Secretary of State must not—
- (a) include a condition referred to in subsection (4)(b)(ii) in the licence, either on release or subsequently, or
- (b) vary or cancel any such condition included in the licence, unless the Board directs the Secretary of State to do so.”
- (6) In section 260(2B) of the Criminal Justice Act 2003 (early removal from prison of extended sentence prisoners liable to removal from United Kingdom), for “section 246A” substitute “this Chapter”.
- (7) In Schedule 20A to the Criminal Justice Act 2003 (application of Chapter 6 of Part 12 to pre-4 April 2005 cases), in paragraph 4 (modification of section 246: power to release before required to do so)—
- (a) number the existing text as sub-paragraph (1),
- (b) in that sub-paragraph, for “Section 246 applies as if, in subsection (4)” substitute “Section 246(4) applies as if—”,
- (c) in that sub-paragraph, omit paragraph (c), and
- (d) after that sub-paragraph insert—
- “(2) Section 246(6) applies as if, in the definition of “term of imprisonment”, the reference to section 227 or 228 included a reference to section 85 of the Sentencing Act.”
- (8) In Schedule 20B to the Criminal Justice Act 2003 (modifications of Chapter 6 of Part 12 in certain transitional cases), omit paragraph 3(2)(a) (application of Part 2 of the Schedule to an extended sentence under section 85 of the Powers of Criminal Courts (Sentencing) Act 2000).
- (9) In paragraph 34 of that Schedule (licence conditions in certain transitional cases)—
- (a) in sub-paragraph (1), at the end insert “and which was granted to a person serving—
- (a) a 1967 Act sentence,
- (b) a 1991 Act sentence, or
- (c) a 2003 Act sentence which is an extended sentence imposed under section 227 or 228 before 14 July 2008.”, and
- (b) in sub-paragraph (6)(a), after “condition” insert “referred to in section 250(4)(b)(ii)”.

- (10) The amendments made by subsections (1), (3) and (4) apply in relation to a person sentenced before the day on which they come into force as well as in relation to a person sentenced on or after that day.

Prisons

16 Drugs for which prisoners etc may be tested

- (1) The Prison Act 1952 is amended as follows.
- (2) In section 16A (testing prisoners for drugs), in subsection (3)—
- (a) at the end of the definition of “drug” insert “or specified drug”,
 - (b) omit the “and” that follows the definition of “prison officer”, and
 - (c) at the appropriate place insert—
““specified drug” means any substance or product specified in prison rules for the purposes of this section.”
- (3) In section 47 (rules for the management of prisons etc), after subsection (3) insert—
- “(3A) Rules made under this section may specify any substance or product (which is not a controlled drug for the purposes of the Misuse of Drugs Act 1971) in relation to which a person may be required to provide a sample for the purposes of section 16A of this Act.”

Cautions etc

17 Restrictions on use of cautions

- (1) This section applies where, in England and Wales, a person aged 18 or over admits that he or she has committed an offence.
- (2) If the offence is an indictable-only offence, a constable may not give the person a caution except—
- (a) in exceptional circumstances relating to the person or the offence, and
 - (b) with the consent of the Director of Public Prosecutions.
- (3) If the offence is an either-way offence specified by order made by the Secretary of State, a constable may not give the person a caution except in exceptional circumstances relating to the person or the offence.
- (4) If—
- (a) the offence is a summary offence or an either-way offence not specified under subsection (3), and
 - (b) in the two years before the commission of the offence the person has been convicted of, or cautioned for, a similar offence,
- a constable may not give the person a caution except in exceptional circumstances relating to the person, the offence admitted or the previous offence.
- (5) It is for a police officer not below a rank specified by order made by the Secretary of State to determine—

- (a) whether there are exceptional circumstances for the purposes of subsection (2), (3) or (4), and
 - (b) whether a previous offence is similar to the offence admitted for the purposes of subsection (4)(b).
- (6) A determination under subsection (5) must be made in accordance with guidance issued by the Secretary of State.
- (7) The Secretary of State may by order amend this section so as to provide for a different period for the purposes of subsection (4)(b).
- (8) For the purposes of this section—
- (a) “caution” does not include a conditional caution under Part 3 of the Criminal Justice Act 2003, but
 - (b) a person has been “cautioned for” an offence if he or she has been given a caution, a conditional caution or a youth caution or youth conditional caution under Chapter 1 of Part 4 of the Crime and Disorder Act 1998.
- (9) In this section—
- “either-way offence” means an offence triable either way;
 - “indictable-only offence” means an offence which, if committed by an adult, is triable only on indictment.
- (10) This section applies whether the offence admitted was committed before or after the time when this section comes into force.

18 Restrictions on use of cautions: supplementary

- (1) An order under section 17 may make different provision for different purposes.
- (2) An order under section 17 must be made by statutory instrument.
- (3) A statutory instrument containing an order under section 17(3) (specification of either-way offences) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) An order under section 17(7) (change to period in section 17(4)(b)) may not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (5) In section 37B of the Police and Criminal Evidence Act 1984 (consultation with the Director of Public Prosecutions), in subsection (7), after “such a caution” insert “(whether because of section 17 of the Criminal Justice and Courts Act 2015 or for any other reason)”.

19 Alternatives to prosecution: rehabilitation of offenders in Scotland

In Schedule 3 to the Rehabilitation of Offenders Act 1974 (protection for spent alternatives to prosecution: Scotland), at the end insert—

- “9 (1) The powers conferred on the Scottish Ministers by—
- (a) paragraph 6, and
 - (b) section 7(4), as applied by paragraph 8,

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may be exercised to make provision relating to reserved matters and are not subject to the restrictions imposed by section 29(2)(b) or (c) of, or Schedule 4 to, the Scotland Act 1998.

- (2) In this paragraph, “reserved matters” has the same meaning as in the Scotland Act 1998.”

Offences involving ill-treatment or wilful neglect

20 Ill-treatment or wilful neglect: care worker offence

- (1) It is an offence for an individual who has the care of another individual by virtue of being a care worker to ill-treat or wilfully to neglect that individual.
- (2) An individual guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both);
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).
- (3) “Care worker” means an individual who, as paid work, provides—
- (a) health care for an adult or child, other than excluded health care, or
 - (b) social care for an adult,
- including an individual who, as paid work, supervises or manages individuals providing such care or is a director or similar officer of an organisation which provides such care.
- (4) An individual does something as “paid work” if he or she receives or is entitled to payment for doing it other than—
- (a) payment in respect of the individual’s reasonable expenses,
 - (b) payment to which the individual is entitled as a foster parent,
 - (c) a benefit under social security legislation, or
 - (d) a payment made under arrangements under section 2 of the Employment and Training Act 1973 (arrangements to assist people to select, train for, obtain and retain employment).
- (5) “Health care” includes—
- (a) all forms of health care provided for individuals, including health care relating to physical health or mental health and health care provided for or in connection with the protection or improvement of public health, and
 - (b) procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition,
- and “excluded health care” has the meaning given in Schedule 4.
- (6) “Social care” includes all forms of personal care and other practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or any other similar circumstances.
- (7) References in this section to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person.

- (8) In this section—
- “adult” means an individual aged 18 or over;
 - “child” means an individual aged under 18;
 - “foster parent” means—
 - (a) a local authority foster parent within the meaning of the Children Act 1989,
 - (b) a person with whom a child has been placed by a voluntary organisation under section 59(1)(a) of that Act, or
 - (c) a private foster parent within the meaning of section 53 of the Safeguarding Vulnerable Groups Act 2006.
- (9) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (2)(b) to 12 months is to be read as a reference to 6 months.
- (10) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (2)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

21 Ill-treatment or wilful neglect: care provider offence

- (1) A care provider commits an offence if—
- (a) an individual who has the care of another individual by virtue of being part of the care provider’s arrangements ill-treats or wilfully neglects that individual,
 - (b) the care provider’s activities are managed or organised in a way which amounts to a gross breach of a relevant duty of care owed by the care provider to the individual who is ill-treated or neglected, and
 - (c) in the absence of the breach, the ill-treatment or wilful neglect would not have occurred or would have been less likely to occur.
- (2) “Care provider” means—
- (a) a body corporate or unincorporated association which provides or arranges for the provision of—
 - (i) health care for an adult or child, other than excluded health care, or
 - (ii) social care for an adult, or
 - (b) an individual who provides such care and employs, or has otherwise made arrangements with, other persons to assist him or her in providing such care, subject to section 22.
- (3) An individual is “part of a care provider’s arrangements” where the individual—
- (a) is not the care provider, but
 - (b) provides health care or social care as part of health care or social care provided or arranged for by the care provider,
- including where the individual is not the care provider but supervises or manages individuals providing health care or social care as described in paragraph (b) or is a director or similar officer of an organisation which provides health care or social care as described there.
- (4) A “relevant duty of care” means—
- (a) a duty owed under the law of negligence, or

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- (b) a duty that would be owed under the law of negligence but for a provision contained in an Act, or an instrument made under an Act, under which liability is imposed in place of liability under that law,
but only to the extent that the duty is owed in connection with providing, or arranging for the provision of, health care or social care.
- (5) For the purposes of this section, there is to be disregarded any rule of the common law that has the effect of—
- (a) preventing a duty of care from being owed by one person to another by reason of the fact that they are jointly engaged in unlawful conduct, or
 - (b) preventing a duty of care being owed to a person by reason of that person’s acceptance of a risk of harm.
- (6) A breach of a duty of care by a care provider is a “gross” breach if the conduct alleged to amount to the breach falls far below what can reasonably be expected of the care provider in the circumstances.
- (7) In this section—
- (a) references to a person providing health care or social care do not include a person whose provision of such care is merely incidental to the carrying out of other activities by the person, and
 - (b) references to a person arranging for the provision of such care do not include a person who makes arrangements under which the provision of such care is merely incidental to the carrying out of other activities.
- (8) References in this section to providing or arranging for the provision of health care or social care do not include making payments under—
- (a) regulations under section 57 of the Health and Social Care Act 2001 (direct payments for community services and carers);
 - (b) section 12A of the National Health Act 2006 (direct payments for health care);
 - (c) section 31 or 32 of the Care Act 2014 (direct payments for care and support);
 - (d) regulations under section 50 of the [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#) (direct payments to meet an adult’s needs).
- (9) In this section—
- “Act” includes an Act or Measure of the National Assembly for Wales;
“adult”, “child”, “excluded health care”, “health care” and “social care” have the same meaning as in section 20.

22 Care provider offence: excluded care providers

- (1) A local authority in England is not a care provider for the purposes of section 21 to the extent that it carries out functions to which Chapter 4 of Part 8 of the Education and Inspections Act 2006 applies.
- (2) A person is not a care provider for the purposes of section 21 to the extent that the person carries out a function of a local authority in England mentioned in subsection (1) in respect of which either of the following has effect—
- (a) a direction under section 15(6)(a) of the Local Government Act 1999 (power of Secretary of State to direct functions of a best value authority to be carried out by another person);

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- (b) a direction under section 497A(4) or (4A) of the Education Act 1996 (power of Secretary of State to direct certain functions to be carried out by another person).
- (3) Where a body corporate has entered into arrangements with a local authority in England under Part 1 of the Children and Young Persons Act 2008 (social work services for children and young persons), the body is not a care provider for the purposes of section 21 to the extent that it carries out relevant care functions of that authority (as defined in that Part of that Act) under those arrangements.
- (4) A local authority in Wales is not a care provider for the purposes of section 21 to the extent that it—
- carries out functions under Part 2 of the Childcare Act 2006;
 - carries out the education functions of the authority (as defined in section 579(1) of the Education Act 1996);
 - carries out the social services functions of the authority (as defined in the Local Authority Social Services Act 1970), so far as relating to a child.
- (5) A person is not a care provider for the purposes of section 21 to the extent that the person carries out a function of a local authority in Wales mentioned in subsection (4) in respect of which any of the following has effect—
- a direction under section 29(6)(a) of the Local Government (Wales) Measure 2009 ([nawm 2](#)) (power of Welsh Ministers to direct certain functions of a Welsh improvement authority to be carried out by another person);
 - a direction under section 25 or 26 of the [School Standards and Organisation \(Wales\) Act 2013](#) ([anaw 1](#)) (powers of Welsh Ministers to direct education functions to be carried out by another person);
 - a direction under section 154 or 155 of the [Social Services and Well-Being \(Wales\) Act 2014](#) ([anaw 4](#)) (powers of Welsh Ministers to direct social services functions to be carried out by another person).
- (6) A registered adoption society or registered adoption support agency is not a care provider for the purposes of section 21 to the extent that it provides adoption support services (as defined in section 2(6) of the Adoption and Children Act 2002).
- (7) In this section, “local authority” means—
- in England, a county council, a metropolitan district council, a non-metropolitan district council for an area for which there is no county council, a London borough council, the Council of the Isles of Scilly and (in its capacity as a local authority) the Common Council of the City of London, and
 - in Wales, a county council or a county borough council.
- (8) In this section—
- “child” has the same meaning as in section 20;
- “registered adoption society” means an adoption society (as defined in section 2 of the Adoption and Children Act 2002) which is a voluntary organisation (as defined in that section) and in respect of which a person is registered under Part 2 of the Care Standards Act 2000;
- “registered adoption support agency” means an adoption support agency (as defined in section 8 of the Adoption and Children Act 2002) in respect of which a person is registered under Part 2 of the Care Standards Act 2000.

23 Care provider offence: penalties

- (1) A person guilty of an offence under section 21 is liable, on conviction on indictment or summary conviction, to a fine.
- (2) A court before which a person is convicted of an offence under section 21 may make either or both of the following orders—
 - (a) a remedial order;
 - (b) a publicity order;(whether instead of or as well as imposing a fine).
- (3) A “remedial order” is an order requiring the person to take specified steps to remedy one or more of the following—
 - (a) the breach mentioned in section 21(1)(b) (“the relevant breach”);
 - (b) any matter that appears to the court to have resulted from the relevant breach and to be connected with the ill-treatment or neglect;
 - (c) any deficiency in the person’s policies, systems or practices of which the relevant breach appears to the court to be an indication.
- (4) A “publicity order” is an order requiring the person to publicise in a specified manner—
 - (a) the fact that the person has been convicted of the offence;
 - (b) specified particulars of the offence;
 - (c) the amount of any fine imposed;
 - (d) the terms of any remedial order made.
- (5) A remedial order—
 - (a) may be made only on an application by the prosecution which specifies the terms of the proposed order,
 - (b) must be made on such terms as the court considers appropriate having regard to any representations made, and any evidence adduced, in relation to its terms by the prosecution or by or on behalf of the person convicted, and
 - (c) must specify a period within which the steps specified in the order must be taken.
- (6) A publicity order must specify a period within which the requirements specified in the order must be complied with.
- (7) A person who fails to comply with a remedial order or a publicity order commits an offence and is liable, on conviction on indictment or summary conviction, to a fine.
- (8) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, subsections (1) and (7) have effect as if they provided for a fine on summary conviction not exceeding the statutory maximum.

24 Care provider offence: application to unincorporated associations

- (1) For the purposes of sections 21 and 23, an unincorporated association is to be treated as owing whatever duties of care it would owe if it were a body corporate.

- (2) Proceedings for an offence under those sections alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).
- (3) In relation to such proceedings, rules of court relating to the service of documents have effect as if the unincorporated association were a body corporate.
- (4) In proceedings under section 21 or 23 brought against an unincorporated association, the following apply as they apply in relation to a body corporate—
 - (a) section 33 of the Criminal Justice Act 1925 (procedure on charge of offence against corporation);
 - (b) Schedule 3 to the Magistrates’ Courts Act 1980 (provision about corporation charged with offence before a magistrates’ court).
- (5) A fine imposed on an unincorporated association on its conviction of an offence under section 21 or 23 is to be paid out of the funds of the association.

25 Care provider offence: liability for ancillary and other offences

- (1) An individual cannot be guilty of—
 - (a) aiding, abetting, counselling or procuring the commission of an offence under section 21, or
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) by reference to an offence under section 21.
- (2) Where, in the same proceedings, there is—
 - (a) a charge under section 21 arising out of a particular set of circumstances, and
 - (b) a charge against the same defendant of a relevant offence arising out of some or all of those circumstances,
 the defendant may, if the interests of justice so require, be convicted of both offences.
- (3) A person convicted of an offence under section 21 arising out of a particular set of circumstances may, if the interests of justice so require, be charged with a relevant offence arising out of some or all of those circumstances.
- (4) “Relevant offence” means an offence under an Act, or an instrument made under an Act, dealing with—
 - (a) health and safety matters, or
 - (b) the provision of health care or social care.
- (5) In this section—

“Act” includes an Act or Measure of the National Assembly for Wales;

“health care” and “social care” have the same meaning as in section 20.

Offences involving police or prison officers

26 Corrupt or other improper exercise of police powers and privileges

- (1) A police constable listed in subsection (3) commits an offence if he or she—
 - (a) exercises the powers and privileges of a constable improperly, and
 - (b) knows or ought to know that the exercise is improper.

- (2) A police constable guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).
- (3) The police constables referred to in subsection (1) are—
 - (a) a constable of a police force in England and Wales;
 - (b) a special constable for a police area in England and Wales;
 - (c) a constable or special constable of the British Transport Police Force;
 - (d) a constable of the Civil Nuclear Constabulary;
 - (e) a constable of the Ministry of Defence Police;
 - (f) a National Crime Agency officer designated under section 9 or 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable.
- (4) For the purposes of this section, a police constable exercises the powers and privileges of a constable improperly if—
 - (a) he or she exercises a power or privilege of a constable for the purpose of achieving—
 - (i) a benefit for himself or herself, or
 - (ii) a benefit or a detriment for another person, and
 - (b) a reasonable person would not expect the power or privilege to be exercised for the purpose of achieving that benefit or detriment.
- (5) For the purposes of this section, a police constable is to be treated as exercising the powers and privileges of a constable improperly in the cases described in subsections (6) and (7).
- (6) The first case is where—
 - (a) the police constable fails to exercise a power or privilege of a constable,
 - (b) the purpose of the failure is to achieve a benefit or detriment described in subsection (4)(a), and
 - (c) a reasonable person would not expect a constable to fail to exercise the power or privilege for the purpose of achieving that benefit or detriment.
- (7) The second case is where—
 - (a) the police constable threatens to exercise, or not to exercise, a power or privilege of a constable,
 - (b) the threat is made for the purpose of achieving a benefit or detriment described in subsection (4)(a), and
 - (c) a reasonable person would not expect a constable to threaten to exercise, or not to exercise, the power or privilege for the purpose of achieving that benefit or detriment.
- (8) An offence is committed under this section if the act or omission in question takes place in the United Kingdom or in United Kingdom waters.
- (9) In this section—

“benefit” and “detriment” mean any benefit or detriment, whether or not in money or other property and whether temporary or permanent;

“United Kingdom waters” means the sea and other waters within the seaward limits of the United Kingdom’s territorial sea.
- (10) References in this section to exercising, or not exercising, the powers and privileges of a constable include performing, or not performing, the duties of a constable.

- (11) Nothing in this section affects what constitutes the offence of misconduct in public office at common law in England and Wales or Northern Ireland.

27 Term of imprisonment for murder of police or prison officer

- (1) Schedule 21 to the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence) is amended as follows.
- (2) In paragraph 4(2) (cases for which a whole life order is the appropriate starting point), after paragraph (b) insert—
- “(ba) the murder of a police officer or prison officer in the course of his or her duty.”.
- (3) In paragraph 5(2) (cases for which 30 years is the appropriate starting point), omit paragraph (a).
- (4) The amendments made by this section apply only in relation to an offence committed on or after the day on which they come into force.

Repeat offences involving offensive weapons etc

28 Minimum sentence for repeat offences involving offensive weapons etc

- (1) The Prevention of Crime Act 1953 is amended as follows.
- (2) In section 1 (prohibition of the carrying of offensive weapons without lawful authority or reasonable excuse), after subsection (2) insert—
- “(2A) Subsection (2B) applies where—
- (a) a person is convicted of an offence under subsection (1) committed after this subsection is commenced, and
- (b) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 1ZA).
- (2B) Where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence, to the previous offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.
- (2C) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- (2D) In considering whether it is of the opinion mentioned in subsection (2B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).
- (2E) Where—

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- (a) an appropriate custodial sentence has been imposed on a person under subsection (2B), and
- (b) a relevant conviction without which subsection (2B) would not have applied has been subsequently set aside on appeal,

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).

(2F) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.

(2G) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (2C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.”

(3) After section 1 insert—

“1ZA Offence under section 1: previous relevant convictions

(1) For the purposes of section 1, “relevant conviction” means—

- (a) a conviction for an offence under—
 - (i) section 1 or 1A of this Act, or
 - (ii) section 139, 139A or 139AA of the Criminal Justice Act 1988,(a “relevant offence”), whenever committed,
- (b) a conviction in Scotland, Northern Ireland or a member State other than the United Kingdom for a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of that conviction,
- (c) a conviction for an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
- (d) a conviction for an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, and
- (e) a conviction for a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.

(2) In this section—

“civilian offence” means an offence other than—

- (a) an offence under an enactment mentioned in subsection (1)(c) or (d), or
- (b) a member State service offence;

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“conviction” includes—

- (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction and
- (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;

“member State service offence” means an offence which was the subject of proceedings under the law of a member State, other than the United Kingdom, governing all or any of the naval, military or air forces of that State.

- (3) For the purposes of subsection (1)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.”

(4) The Criminal Justice Act 1988 is amended as follows.

(5) In section 139 (offence of having article with blade or point in public place), after subsection (6) insert—

“(6A) Subsection (6B) applies where—

- (a) a person is convicted of an offence under subsection (1) by a court in England and Wales,
- (b) the offence was committed after this subsection is commenced, and
- (c) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 139AZA).

(6B) Where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—

- (a) relate to the offence, to the previous offence or to the offender, and
- (b) would make it unjust to do so in all the circumstances.

(6C) In this section “appropriate custodial sentence” means—

- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
- (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.

(6D) In considering whether it is of the opinion mentioned in subsection (6B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).

(6E) Where—

- (a) an appropriate custodial sentence has been imposed on a person under subsection (6B), and
- (b) a relevant conviction without which subsection (6B) would not have applied has been subsequently set aside on appeal,

Status: This is the original version (as it was originally enacted).

notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).

- (6F) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be taken for the purposes of this section to have been committed on the last of those days.
- (6G) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (6C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.”
- (6) In section 139A (offence of having article with blade or point (or offensive weapon) on school premises), after subsection (5) insert—
- “(5A) Subsection (5B) applies where—
- (a) a person is convicted of an offence under subsection (1) or (2) by a court in England and Wales,
 - (b) the offence was committed after this subsection is commenced, and
 - (c) when the offence was committed, the person was aged 16 or over and had at least one relevant conviction (see section 139AZA).
- (5B) Where this subsection applies, the court must impose an appropriate custodial sentence (with or without a fine) unless the court is of the opinion that there are particular circumstances which—
- (a) relate to the offence, to the previous offence or to the offender, and
 - (b) would make it unjust to do so in all the circumstances.
- (5C) In this section “appropriate custodial sentence” means—
- (a) in the case of a person who is aged 18 or over when convicted, a sentence of imprisonment for a term of at least 6 months;
 - (b) in the case of a person who is aged at least 16 but under 18 when convicted, a detention and training order of at least 4 months.
- (5D) In considering whether it is of the opinion mentioned in subsection (5B) in the case of a person aged 16 or 17, the court must have regard to its duty under section 44 of the Children and Young Persons Act 1933 (general considerations).
- (5E) Where—
- (a) an appropriate custodial sentence has been imposed on a person under subsection (5B), and
 - (b) a relevant conviction without which subsection (5B) would not have applied has been subsequently set aside on appeal,
- notice of appeal against the sentence may be given at any time within 28 days from the date on which the conviction was set aside (despite anything in section 18 of the Criminal Appeal Act 1968 (initiating procedure)).
- (5F) Where an offence is found to have been committed over a period of two or more days, or at some time during a period of two or more days, it shall be

taken for the purposes of this section to have been committed on the last of those days.

(5G) In relation to times before the coming into force of paragraph 180 of Schedule 7 to the Criminal Justice and Court Services Act 2000, the reference in subsection (5C)(a) to a sentence of imprisonment, in relation to an offender aged under 21 at the time of conviction, is to be read as a reference to a sentence of detention in a young offender institution.”

(7) After section 139A insert—

“139AZA Offences under sections 139 and 139A: previous relevant convictions

- (1) For the purposes of sections 139 and 139A, “relevant conviction” means—
- (a) a conviction for an offence under—
 - (i) section 1 or 1A of the Prevention of Crime Act 1953, or
 - (ii) section 139, 139A or 139AA of this Act,
 (a “relevant offence”), whenever committed,
 - (b) a conviction in Scotland, Northern Ireland or a member State other than the United Kingdom for a civilian offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of that conviction,
 - (c) a conviction for an offence under section 42 of the Armed Forces Act 2006, whenever committed, in respect of which the corresponding offence under the law of England and Wales (within the meaning of that section) is a relevant offence,
 - (d) a conviction for an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957, whenever committed, in respect of which the corresponding civil offence (within the meaning of the Act in question) is a relevant offence, and
 - (e) a conviction for a member State service offence, whenever committed, which would have constituted a relevant offence if committed in England and Wales at the time of conviction.
- (2) In this section—
- “civilian offence” means an offence other than—
 - (a) an offence under an enactment mentioned in subsection (1)(c) or (d), or
 - (b) a member State service offence;
 - “conviction” includes—
 - (a) in relation to an offence under section 42 of the Armed Forces Act 2006, anything which by virtue of section 376(1) and (2) of that Act is to be treated as a conviction, and
 - (b) in relation to an offence under section 42 of the Naval Discipline Act 1957 and a member State service offence, a finding of guilt in respect of the person;
 - “member State service offence” means an offence which was the subject of proceedings under the law of a member State, other than

the United Kingdom, governing all or any of the naval, military or air forces of that State.

(3) For the purposes of subsection (1)(c) and (d), where the offence was committed by aiding, abetting, counselling or procuring, it must be assumed that the act aided, abetted, counselled or procured was done in England and Wales.”

(8) Schedule 5 to this Act contains consequential provision.

Driving offences

29 Offences committed by disqualified drivers

(1) After section 3ZB of the Road Traffic Act 1988 insert—

“3ZC Causing death by driving: disqualified drivers

A person is guilty of an offence under this section if he or she—

- (a) causes the death of another person by driving a motor vehicle on a road, and
- (b) at that time, is committing an offence under section 103(1)(b) of this Act (driving while disqualified).

3ZD Causing serious injury by driving: disqualified drivers

(1) A person is guilty of an offence under this section if he or she—

- (a) causes serious injury to another person by driving a motor vehicle on a road, and
- (b) at that time, is committing an offence under section 103(1)(b) of this Act (driving while disqualified).

(2) In this section “serious injury” means—

- (a) in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and
- (b) in Scotland, severe physical injury.”

(2) In Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 (prosecution and punishment of offences under the Traffic Acts) at the appropriate place insert—

“RTA section 3ZC	Causing death by driving: disqualified drivers	On indictment	10 years or a fine or both	Obligatory	Obligatory	3-11
RTA section 3ZD	Causing serious injury by driving: disqualified drivers	(a) Summarily	(a) On conviction in England and Wales: 12 months	Obligatory	Obligatory	3-11

Status: This is the original version (as it was originally enacted).

		or a fine or both. On conviction in Scotland: 12 months or the statutory maximum or both.		
	(b) indictment	On (b) 4 years or a fine or both”.		

- (3) In the entries in Part 1 of Schedule 2 to the Road Traffic Offenders Act 1988 relating to an offence under section 3ZD of the Road Traffic Act 1988—
- in relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in column 4 to 12 months on summary conviction in England and Wales is to be read as a reference to 6 months, and
 - in relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in column 4 to a fine on summary conviction in England and Wales is to be read as a reference to the statutory maximum.
- (4) Schedule 6 to this Act contains further amendments relating to the offences under sections 3ZC and 3ZD of the Road Traffic Act 1988.
- (5) The amendments made by this section and Schedule 6 have effect only in relation to driving which occurs after they come into force.

30 Extension of disqualification from driving where custodial sentence also imposed

- (1) In section 35A of the Road Traffic Offenders Act 1988 (extension of disqualification where custodial sentence also imposed)—
- in subsection (4)(e) and (f), omit “calculated after that term has been reduced by any relevant discount”,
 - in subsection (4)(h), omit “calculated after that sentence has been reduced by any relevant discount”, and
 - omit subsection (6) (definition of “relevant discount”).
- (2) In section 147A of the Powers of Criminal Courts (Sentencing) Act 2000 (extension of disqualification where custodial sentence also imposed)—
- in subsection (4)(e) and (f), omit “calculated after that term has been reduced by any relevant discount”,
 - in subsection (4)(h), omit “calculated after that sentence has been reduced by any relevant discount”, and
 - omit subsection (6) (definition of “relevant discount”).
- (3) In consequence of the amendments made by subsections (1) and (2), omit paragraphs 8 and 12 of Schedule 13 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

31 Mutual recognition of driving disqualification in UK and Republic of Ireland

(1) Chapter 1 of Part 3 of the Crime (International Co-operation) Act 2003 (EU Convention on driving disqualifications) is amended as follows.

(2) For the heading of the Chapter substitute “Mutual recognition of driving disqualification in UK and Republic of Ireland”.

(3) In section 54 (application of duty of the UK to give notice of driving disqualification)

(a) in subsection (1), for paragraph (a) substitute—

“(a) an individual (“the offender”) is convicted of a qualifying UK road traffic offence,

(aa) when convicted, the offender—

(i) is normally resident in the Republic of Ireland, or

(ii) is not normally resident in the Republic of Ireland but holds a Republic of Ireland licence,” and”

(b) after subsection (1) insert—

“(1A) A qualifying UK road traffic offence is—

(a) an offence under the law of England and Wales or Scotland mentioned in Schedule 3;

(b) an offence under the law of Northern Ireland mentioned in Schedule 3A.”

(4) In section 56(1) (application of duty of the UK to recognise driving disqualification imposed outside the UK), for paragraph (a) substitute—

“(a) an individual (“the offender”) is convicted in the Republic of Ireland of an offence described in Schedule 3B,

(aa) when convicted, the offender—

(i) is normally resident in the United Kingdom, or

(ii) is not normally resident in the United Kingdom but holds a Great Britain licence or a Northern Ireland licence,”.

(5) After section 71 insert—

“71A The specified agreement on driving disqualifications

(1) In this Chapter, “the specified agreement on driving disqualifications” means the agreement specified from time to time by the Secretary of State by regulations for the purposes of this Chapter.

(2) The Secretary of State may only specify an agreement made—

(a) between the United Kingdom and the Republic of Ireland, and

(b) for the purpose of giving effect in one of those States to disqualification from driving imposed in the other on conviction for an offence.

(3) In this section, “disqualification from driving” means disqualification from holding or obtaining a licence to drive a motor vehicle.”

(6) In Schedule 7 to this Act—

- (a) Part 1 contains further provision for the purpose of implementing an agreement between the United Kingdom and the Republic of Ireland on the mutual recognition of driving disqualification;
- (b) Part 2 contains provision about the transition from the EU Convention on driving disqualification to that agreement.

Offences involving intent to cause distress etc

32 Sending letters etc with intent to cause distress or anxiety

- (1) In section 1 of the Malicious Communications Act 1988 (offence of sending letters etc with intent to cause distress or anxiety), for subsection (4) substitute—

“(4) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment to imprisonment for a term not exceeding two years or a fine (or both);
- (b) on summary conviction to imprisonment for a term not exceeding 12 months or a fine (or both).

- (5) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (4)(b) to 12 months is to be read as a reference to six months.

- (6) In relation to an offence committed before section 85 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (4)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.”

- (2) The amendment made by this section applies only in relation to an offence committed on or after the day on which it comes into force.

33 Disclosing private sexual photographs and films with intent to cause distress

- (1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—

- (a) without the consent of an individual who appears in the photograph or film, and
- (b) with the intention of causing that individual distress.

- (2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).

- (3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

- (4) It is a defence for a person charged with an offence under this section to show that—

- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
- (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.

- (5) It is a defence for a person charged with an offence under this section to show that—

- (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1) (a) and (b) or another person, and
 - (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).
- (6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—
 - (a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsections (1) to (5)—
 - (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and
 - (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.
- (8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (9) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).
- (10) Schedule 8 makes special provision in connection with the operation of this section in relation to persons providing information society services.
- (11) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (9)(b) to 12 months is to be read as a reference to 6 months.
- (12) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (9) (b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

34 Meaning of “disclose” and “photograph or film”

- (1) The following apply for the purposes of section 33, this section and section 35.
- (2) A person “discloses” something to a person if, by any means, he or she gives or shows it to the person or makes it available to the person.
- (3) Something that is given, shown or made available to a person is disclosed—
 - (a) whether or not it is given, shown or made available for reward, and
 - (b) whether or not it has previously been given, shown or made available to the person.
- (4) “Photograph or film” means a still or moving image in any form that—
 - (a) appears to consist of or include one or more photographed or filmed images, and

- (b) in fact consists of or includes one or more photographed or filmed images.
- (5) The reference in subsection (4)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.
- (6) “Photographed or filmed image” means a still or moving image that—
 - (a) was originally captured by photography or filming, or
 - (b) is part of an image originally captured by photography or filming.
- (7) “Filming” means making a recording, on any medium, from which a moving image may be produced by any means.
- (8) References to a photograph or film include—
 - (a) a negative version of an image described in subsection (4), and
 - (b) data stored by any means which is capable of conversion into an image described in subsection (4).

35 Meaning of “private” and “sexual”

- (1) The following apply for the purposes of section 33.
- (2) A photograph or film is “private” if it shows something that is not of a kind ordinarily seen in public.
- (3) A photograph or film is “sexual” if—
 - (a) it shows all or part of an individual’s exposed genitals or pubic area,
 - (b) it shows something that a reasonable person would consider to be sexual because of its nature, or
 - (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.
- (4) Subsection (5) applies in the case of—
 - (a) a photograph or film that consists of or includes a photographed or filmed image that has been altered in any way,
 - (b) a photograph or film that combines two or more photographed or filmed images, and
 - (c) a photograph or film that combines a photographed or filmed image with something else.
- (5) The photograph or film is not private and sexual if—
 - (a) it does not consist of or include a photographed or filmed image that is itself private and sexual,
 - (b) it is only private or sexual by virtue of the alteration or combination mentioned in subsection (4), or
 - (c) it is only by virtue of the alteration or combination mentioned in subsection (4) that the person mentioned in section 33(1)(a) and (b) is shown as part of, or with, whatever makes the photograph or film private and sexual.

Offences involving sexual grooming or pornographic images

36 Meeting a child following sexual grooming etc

- (1) In section 15(1)(a) of the Sexual Offences Act 2003 (meeting a child following sexual grooming etc), for “on at least two occasions” substitute “on one or more occasions”.
- (2) In a case in which person A met or communicated with person B only once before the event mentioned in section 15(1)(a)(i) to (iii) of the Sexual Offences Act 2003, an offence under that section is committed only if the meeting or communication took place after this section comes into force.

37 Possession of pornographic images of rape and assault by penetration

- (1) Part 5 of the Criminal Justice and Immigration Act 2008 is amended as follows.
 - (2) In section 63 (possession of extreme pornographic images)—
 - (a) after subsection (5) insert—

“(5A) In relation to possession of an image in England and Wales, an “extreme image” is an image which—

 - (a) falls within subsection (7) or (7A), and
 - (b) is grossly offensive, disgusting or otherwise of an obscene character.”,
 - (b) in subsection (6), for “An” substitute “In relation to possession of an image in Northern Ireland, an”, and
 - (c) after subsection (7) insert—

“(7A) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following—

 - (a) an act which involves the non-consensual penetration of a person’s vagina, anus or mouth by another with the other person’s penis, or
 - (b) an act which involves the non-consensual sexual penetration of a person’s vagina or anus by another with a part of the other person’s body or anything else,

and a reasonable person looking at the image would think that the persons were real.
 - (7B) For the purposes of subsection (7A)—
 - (a) penetration is a continuing act from entry to withdrawal;
 - (b) “vagina” includes vulva.”
- (3) In section 66 (defence: participation in consensual acts)—
 - (a) before subsection (1) insert—

“(A1) Subsection (A2) applies where in England and Wales—

 - (a) a person (“D”) is charged with an offence under section 63, and
 - (b) the offence relates to an image that portrays an act or acts within subsection (7)(a) to (c) or (7A) of that section (but does not portray an act within subsection (7)(d) of that section).

Status: This is the original version (as it was originally enacted).

- (A2) It is a defence for D to prove—
- (a) that D directly participated in the act or any of the acts portrayed, and
 - (b) that the act or acts did not involve the infliction of any non-consensual harm on any person, and
 - (c) if the image portrays an act within section 63(7)(c), that what is portrayed as a human corpse was not in fact a corpse, and
 - (d) if the image portrays an act within section 63(7A), that what is portrayed as non-consensual penetration was in fact consensual.”, and
- (b) in subsection (1)—
- (i) for “This section” substitute “Subsection (2)”, and
 - (ii) after “where” insert “in Northern Ireland”.
- (4) In section 67 (penalties for possession of extreme pornographic images)—
- (a) in subsection (2), for “Except where subsection (3) applies to the offence” substitute “If the offence relates to an image that portrays any relevant act (with or without other acts)”,
 - (b) in subsection (3), for “act within section 63(7)(a) or (b)” substitute “relevant act”, and
 - (c) after subsection (4) insert—
- “(5) In this section “relevant act” means—
- (a) in relation to England and Wales, an act within section 63(7)(a) or (b) or (7A)(a) or (b);
 - (b) in relation to Northern Ireland, an act within section 63(7)(a) or (b).”
- (5) In Schedule 14 (special rules relating to providers of information society services)—
- (a) after paragraph 1(3) insert—
- “(3A) For the purposes of sub-paragraph (2), “extreme pornographic image” has the meaning given by section 63(2) and in determining whether a domestic service provider is in possession of such an image—
- (a) where the service provider is established in England and Wales, “extreme image” has the meaning given by section 63(5A);
 - (b) where the service provider is established in Northern Ireland, “extreme image” has the meaning given by section 63(6).”, and
- (b) omit paragraph 6(2).