

## SCHEDULES

### SCHEDULE 1

Article 2(2).

#### DEFINITIONS OF “SEXUAL OFFENCE” AND “VIOLENT OFFENCE”

1. In this Order “sexual offence” means the common law offence of rape or an offence under any of the following provisions—

(a) sections 52 to 55, 61 and 62 of the Offences Against the Person Act 1861;

(b) sections 2 to 8, 11 and 13 of the Criminal Law Amendment Act 1885;

*Sub para. (c) rep. by 2003 c.42*

(d) sections 1 and 2 of the Punishment of Incest Act 1908;

*Sub para. (e) rep. by 2003 c.42*

(f) section 2 of the Attempted Rape, etc. Act (Northern Ireland) 1960;

(g) sections 21 and 22 of the Children and Young Persons Act (Northern Ireland) 1968;

(h) Article 3 of the Protection of Children (Northern Ireland) Order 1978;

(i) Article 9 of the Criminal Justice (Northern Ireland) Order 1980;

*Sub para. (j) rep. by 2003 c.42*

(k) Articles 122 and 123 of the Mental Health (Northern Ireland) Order 1986.

[<sup>F1</sup>(l) Articles 19, 20 and 21 of the Criminal Justice (Northern Ireland) Order 2003]

[<sup>F2</sup>(m) Section 69 of the Sexual Offences Act 2003.]

**F1** 2003 NI 13

**F2** 2003 c. 42

2. In this Order “violent offence” means an offence which leads or is intended or likely to lead to a person's death or to physical injury to a person, and includes an offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968 or an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).

### [<sup>F3</sup>SCHEDULE 1A

Articles 36D, 36I and 36K

#### BREACH, REVOCATION AND AMENDMENT OF REPARATION ORDERS, COMMUNITY RESPONSIBILITY ORDERS AND YOUTH CONFERENCE ORDERS

**F3** 2002 c. 26

**Status:** Point in time view as at 01/01/2006.

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*[<sup>F4</sup>Introductory]*

**F4** 2002 c. 26

1.—(1) In this Schedule “relevant order” means a reparation order, a community responsibility order or a youth conference order.

(2) In this Schedule “the appropriate court”, in relation to a relevant order, means a youth court acting for the petty sessions district for the time being named in the order under Article 36D(1), 36I(1) or 36K(5).

(3) For the purposes of this Schedule a relevant order made on an appeal brought from a magistrates' court is to be treated as if made by the magistrates' court; and a relevant order made on appeal brought from the Crown Court or from the Court of Appeal is to be treated as if made by the Crown Court.

*[<sup>F5</sup>Breach of relevant order]*

**F5** 2002 c. 26

2.—(1) Paragraphs 3 and 4 make provision for dealing with an offender if, while a relevant order is in force in respect of him, it is proved to the satisfaction of the appropriate court, on the application of the responsible officer, that the offender has failed to comply with any requirement of the order.

(2) But nothing in those paragraphs prevents the appropriate court from making an order revoking, amending or extending the relevant order under paragraph 5 in such circumstances.

(3) In dealing with an offender under paragraph 3 or 4, a court must take into account the extent to which he has complied with the requirements of the relevant order.

(4) An offender who is required by a youth conference order to submit to treatment for a mental condition, or for a dependency on drugs or alcohol, is not to be treated for the purposes of paragraph 3 or 4 as having failed to comply with that requirement on the ground only that he has refused to undergo any treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

*[<sup>F6</sup>Order as punishment for breach]*

**F6** 2002 c. 26

3.—(1) The court may—

- (a) in the case of a reparation order, make an attendance centre order in respect of the offender; or
- (b) in the case of a community responsibility order or a youth conference order, make an attendance centre order or a community service order in respect of him.

(2) The court may make an order under sub-paragraph (1) whether or not it also makes an order revoking, amending or extending the relevant order under paragraph 5.

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(3) Articles 37 and 38 of this Order have effect in relation to attendance centre orders under sub-paragraph (1), but as if the references in paragraph (1) of Article 37 to any court having (or, but for certain provisions, having) the power mentioned in that paragraph were to the appropriate court.

(4) Article 13(1), (4), (6), (7)(b) to (9) and (11) and Article 14 of the Criminal Justice (Northern Ireland) Order 1996 (N.I. 24) have effect in relation to community service orders under sub-paragraph (1)(b), but as if—

- (a) the reference in paragraph (1) of Article 13 to a court by or before which a person is convicted of an offence punishable with imprisonment were to the appropriate court; and
- (b) the reference in that paragraph to the age of a person when convicted were to his age when the appropriate court determines that he has failed to comply with any requirement in a community responsibility order or youth conference order.

(5) Article 13(2) of that Order has effect in relation to community service orders under sub-paragraph (1)(b), but as if for sub-paragraphs (a) and (b) there were substituted “not more than 60 hours”.

(6) Schedule 2 to that Order has effect in relation to a community service order under sub-paragraph (1)(b), but as if references to the offence were to the failure to comply with the order in respect of which the community service order was made.

(7) Article 8(1) and (2) and Article 9 of that Order do not apply to any order under sub-paragraph (1).

*[<sup>F7</sup>Re-sentencing for breach]*

F7 2002 c. 26

4.—(1) Where the relevant order was made by a magistrates' court, the appropriate court may (instead of making an order under paragraph 3)—

- (a) revoke the order (if it is still in force); and
- (b) deal with the offender, for the offence in respect of which it was made, in any way in which it could deal with him if he had just been found guilty of the offence by the court.

(2) Where the relevant order was made by the Crown Court, the appropriate court may (instead of making an order under paragraph 3) commit the offender to custody or release him on bail until he can be brought or appear before the Crown Court.

(3) Where the appropriate court deals with an offender under sub-paragraph (2), it must send to the Crown Court a certificate signed by a resident magistrate giving—

- (a) particulars of the offender's failure to comply with the requirement in question; and
- (b) such other particulars of the case as may be desirable;

and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

(4) Where it is proved to the satisfaction of the Crown Court that an offender brought or appearing before the court by virtue of sub-paragraph (2) has failed to comply with the requirement in question, the court may—

- (a) revoke the order (if it is still in force); and
- (b) deal with the offender, for the offence in respect of which it was made, in any way in which it could deal with him if he had just been found guilty of the offence by or before the court.

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(5) In proceedings before the Crown Court under sub-paragraph (4) any question whether the offender has failed to comply with the requirements of the relevant order is to be determined by the Crown Court and not by the verdict of a jury.

(6) In dealing under this paragraph with an offender who has wilfully and persistently failed to comply with a requirement, the court may assume that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent or a youth conference order.

*[<sup>F8</sup>Revocation, amendment and extension of relevant order]*

**F8** 2002 c. 26

**5.—**(1) If, while a relevant order is in force in respect of an offender, it appears to the relevant court, on the application of the responsible officer or the offender, that it is appropriate to do so, the court may—

- (a) make an order revoking the relevant order;
- (b) make an order amending the relevant order; or
- (c) make an order extending the period specified in Article 3C(5), 36C(3)(b) or 36G(4).

(2) In this paragraph “the relevant court” means—

- (a) the appropriate court, if the relevant order was made by a magistrates' court; and
- (b) the Crown Court, if the relevant order was made by the Crown Court.

(3) The relevant court may make an order under paragraph (c) of sub-paragraph (1) whether or not it also makes an order under paragraph (b) of that sub-paragraph.

(4) An order under sub-paragraph (1)(b) may amend a relevant order by—

- (a) cancelling any provision of it; or
- (b) inserting in it (either in addition to or in substitution for any of its provisions) any provision which the relevant court could include if it were then making the order.

(5) The relevant court must not make an order under sub-paragraph (1)(b) or (c) unless the offender consents.

(6) But sub-paragraph (5) does not apply to an order—

- (a) cancelling a requirement of the relevant order;
- (b) reducing the period of any requirement;
- (c) substituting a new petty sessions district for the one specified in the relevant order; or
- (d) substituting a new responsible officer for the one specified in the relevant order.

(7) The relevant court must not make an order under sub-paragraph (1) amending a youth conference order on the application of the offender unless the relevant court has consulted the responsible officer.

(8) The relevant court must not make an order under sub-paragraph (1)(b) or (c) in relation to a reparation order or youth conference order which affects any action required to be taken by the offender in relation to another person unless that other person agrees.

(9) The relevant court must not make an order under sub-paragraph (1)(b) or (c) in relation to a youth conference order which affects any action falling to be taken by a person other than the offender unless that person agrees.

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(10) Where an application under sub-paragraph (1)(a) for the revocation of a relevant order is dismissed, no further application for its revocation may be made under that sub-paragraph by any person except with the consent of the relevant court.

*[<sup>F9</sup>Dealing with relevant order when sentencing after subsequent conviction*

**F9** 2002 c. 26

6.—(1) This paragraph applies where an offender in respect of whom a relevant order is in force is dealt with for an offence by the appropriate court, a court of summary jurisdiction other than the appropriate court or the Crown Court.

(2) The court may do anything which it could do under paragraph 5 in relation to the order if an application were made to it by the responsible officer (and, in the case of a court which is not the relevant court, it were the relevant court).

(3) If the court is the appropriate court or a court of summary jurisdiction other than the appropriate court and the order was made by the Crown Court, sub-paragraph (2) does not apply but the court may commit the offender to custody or release him on bail until he can be brought or appear before the Crown Court.

(4) Where a court deals with an offender's case under sub-paragraph (3), it must send to the Crown Court such particulars of the case as may be desirable.

(5) Where by virtue of that sub-paragraph an offender is brought or appears before the Crown Court, the Crown Court may do anything which it could do under paragraph 5 if an application were made to it by the responsible officer.]

*[<sup>F10</sup>Copies of revoking, amending or extending order*

**F10** 2002 c. 26

7.—(1) On the making of an order under this Schedule revoking, amending or extending a relevant order, the clerk to the court must immediately give a copy of the revoking, amending or extending order to the responsible officer.

(2) The responsible officer must give a copy of the revoking, amending or extending order to—

- (a) the offender subject to the relevant order; and
- (b) his parent or guardian or, if he is in the care of an authority (within the meaning of the Children (Northern Ireland) Order 1995 (N.I. 2)), a social worker of the authority.

(3) Where an amending order amends a relevant order by substituting a new petty sessions district for the one specified in the relevant order, the clerk to the court must also send to the clerk of petty sessions for the new district—

- (a) a copy of the amending order; and
- (b) such documents and information relating to the case as he considers likely to be of assistance to a youth court acting for that district in exercising its functions in relation to the order.]

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## *F<sup>11</sup> Presence of offender in court, remands etc.*

**F11** 2002 c. 26

**8.—(1)** Where the responsible officer makes an application to a court under paragraph 2 or 5, he may bring the offender before the court; and, subject to sub-paragraph (8), a court must not make an order under paragraph 3, 4, 5 or 6 unless the offender is present before the court.

(2) The court to which an application under paragraph 2 or 5 is made, or which is considering exercising its powers under paragraph 6, may issue a summons or warrant for the purpose of securing the attendance of the offender before it.

(3) Where the offender has failed to appear in answer to a summons, the court must not issue a warrant under sub-paragraph (2) for his arrest unless it is proved that—

- (a) the summons was duly served on him;
- (b) he is evading service; or
- (c) the summons cannot be served on him.

(4) Where the offender has failed to appear at an adjourned hearing, the court must not issue a warrant under sub-paragraph (2) unless it is satisfied that reasonable steps have been taken to bring to his attention notice of the time and place of the adjourned hearing.

(5) Where the offender is arrested under a warrant issued under sub-paragraph (2) and cannot be brought immediately before the court by which the warrant was issued, the person in whose custody he is—

- (a) may make arrangements for his detention in a place of safety for a period of not more than 72 hours from the time of the arrest (and it is lawful for him to be detained under the arrangements); and
- (b) must within that period bring him before the Crown Court (if the warrant was issued by that court and it is reasonably practicable to bring him before that court within that period) or (otherwise) a youth court.

(6) Where an offender is brought under sub-paragraph (5)(b) before a youth court which is not the court by which the warrant was issued, that youth court may—

- (a) direct that he be immediately released on bail until he can appear before the court by which the warrant was issued; or
- (b) remand him to the place to which it would remand him if making an order under Article 13, or (if he is aged 18 or over) to a remand centre, until he can be brought before that court.

(7) Where an application is made to a court under paragraph 2 or 5, or a court is considering exercising its powers under paragraph 6, the court may remand (or further remand) the offender as specified in sub-paragraph (6)(b) if—

- (a) a warrant has been issued under sub-paragraph (2) for the purpose of securing his attendance before the court; or
- (b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers.

(8) A court may make an order under paragraph 5 in the absence of the offender if the effect of the order is confined to one or more of the following—

- (a) revoking the relevant order;
- (b) cancelling a requirement of the relevant order;
- (c) reducing the period of any requirement;

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- (d) substituting a new petty sessions district for the one specified in the relevant order; and
- (e) substituting a new responsible officer for the one specified in the relevant order.]]

## SCHEDULE 2

Article 51(3).

### JUVENILE JUSTICE CENTRES

1.—(1) A juvenile justice centre order or any other order under which a person is to be detained in a juvenile justice centre shall be authority for his detention in any juvenile justice centre and the juvenile justice centre in which that person is to be detained at any time shall be determined by the Secretary of State.

(2) Sub-paragraph (1) applies to an order under Article 13 but sub-paragraph

(3) does not apply to a person detained under an order under that Article.

(3) The Secretary of State may at any time order a person detained by the managers of a juvenile justice centre to be discharged.

(4) Where a person detained in a juvenile justice centre is transferred to another centre, he shall be taken to his new centre by and at the expense of the managers of the first-mentioned centre.

2. A minister of the religious persuasion to which a person in a juvenile justice centre belongs may visit him at the centre for the purpose of affording him religious assistance and instruction.

3. If it appears to the managers of a juvenile justice centre—

(a) that a person who has been ordered to be sent to their centre requires medical attention before he can properly be received into the centre; or

(b) that a person detained in the centre requires such attention,

they may make arrangements for him to be received into and detained in any hospital or other institution where he can receive the necessary attention; and that person, while so detained, shall for the purposes of this Order be deemed to be detained in the juvenile justice centre.

4. At any time during the period of a person's detention in a juvenile justice centre the managers of the centre may grant leave to him to be absent from it in the charge of such person and for such period as they think fit, but during such period he shall, for the purposes of this Order, be deemed to be detained by the managers of the centre, and the managers may at any time require him to return to the centre.

5.—(1) If in the case of a person detained in a juvenile justice centre who has attained the age of 16 the Secretary of State is satisfied by the samereports as are required for the purposes of Article 53 of the Mental Health (Northern Ireland) Order 1986 that that person is suffering from mental disorder of a nature or degree which warrants his reception into guardianship under that Order, the Secretary of State may, if he is of the opinion having regard to the public interest and to all the circumstances that it is expedient to do so, by warrant direct that that person be placed under the guardianship of a Board or HSS trust or such other person approved by a Board or HSS trust as may be specified in the direction.

(2) A direction shall not be given under this paragraph placing a person under the guardianship of a Board or HSS trust or other person unless the Secretary of State is satisfied as to the willingness of that Board, trust or person to receive that person into guardianship.

(3) A direction under this paragraph with respect to any person shall have the same effect as a guardianship order made in his case.

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(4) Expressions used in this paragraph and in the Mental Health (Northern Ireland) Order 1986 have the same meanings in this paragraph as in that Order.

6.—(1) If a person detained in a juvenile justice centre has attained the age of 15 and the managers of the centre consider that he is likely to injure himself or other persons, the managers may bring him before a court of summary jurisdiction.

(2) A court may order a person brought before it under this paragraph to be transferred to a young offenders centre for the unexpired part of the period for which he is liable to be detained in a juvenile justice centre.

(3) In relation to a person who is transferred to a young offenders centre under this paragraph—

- (a) an order under which he was detained in the juvenile justice centre shall continue to have effect (subject to the order made under this paragraph);
- (b) Article 54 (escapes) shall have effect as if references to a juvenile justice centre were references to a young offenders centre and references to the order referred to in paragraph (1) were references to the order under which he was detained in a juvenile justice centre as it has effect by virtue of this paragraph;
- (c) the references in Articles 40(2)(a), 49 and 54(1) to the managers of the juvenile justice centre shall be construed as references to the governor of the young offenders centre.

(4) The Secretary of State may at any time order a person who is transferred to a young offenders centre under this paragraph to be discharged.

7. Every person who—

- (a) is authorised by the managers of a juvenile justice centre to take charge of a person detained by them, or to apprehend such a person and bring him back to the centre; or
- (b) is authorised by the Secretary of State or, being a probation officer, is authorised by a court, to take to a juvenile justice centre a person ordered to be detained there;

shall, for the purposes of this duty, have all the powers, protection and privileges of a constable.

### *Schedule 3—Modifications*

## SCHEDULE 4

Article 64(2).

### TRANSITIONAL PROVISIONS AND SAVINGS

1. Each of Articles 35, 36, 37, 39, 44, 45, 47 and 48 shall apply in relation to offenders convicted (but not sentenced) before the commencement of that Article as it applies to offenders convicted afterwards.

2. Any training school which at the commencement of this paragraph is approved or provided under the Act of 1968 shall be deemed to be a juvenile justice centre provided under Article 51.

3. Where at the commencement of this paragraph there is in force in relation to any person any of the following orders under the Act of 1968—

- (a) a supervision order;
- (b) a training school order; or



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(c) an order committing a person to the care of a fit person,  
the repeal by this Order of any provision of the Act of 1968 or of any other statutory provision shall not have effect in relation to that order.

**4.** In this Schedule the “Act of 1968” means the Children and Young Persons Act (Northern Ireland) 1968.

#### *Schedule 5—Amendments*

#### *Schedule 6—Repeals*

**Status:**

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