

SCHEDULES

SCHEDULE 4

Sections 44, 49, 51.

TRANSFER OF CERTAIN COMMUNITY ORDERS TO SCOTLAND OR NORTHERN IRELAND

Probation orders: Scotland

- 1 (1) Where a court considering the making of a probation order is satisfied that the offender resides in Scotland, or will be residing there when the order comes into force, section 41 of this Act (probation orders) shall have effect as if subsections (3) to (7) and (9) to (11) were omitted and as if after subsection (2) there were inserted the following subsection—
- “(2A) A court shall not make a probation order in respect of any offender unless it is satisfied that suitable arrangements for his supervision can be made by the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 in whose area he resides, or will be residing when the order comes into force.”
- (2) Where a probation order has been made and—
- (a) a magistrates' court acting for the petty sessions area specified in the order is satisfied that the offender proposes to reside or is residing in Scotland, and
 - (b) it appears to the court that suitable arrangements for his supervision can be made by the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 in whose area he proposes to reside or is residing,
- the power of the court to amend the order under Part IV of Schedule 3 to this Act shall include power to amend it by requiring him to be supervised in accordance with arrangements so made.
- (3) Where a court is considering the making or amendment of a probation order in accordance with this paragraph, Schedule 2 to this Act (additional requirements in probation orders) shall have effect as if—
- (a) for sub-paragraphs (i) and (ii) of paragraph 2(2)(a) there were substituted a reference to an officer of the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 in whose area the offender resides or will be residing when the order or amendment comes into force;
 - (b) any reference to the offender's responsible officer were a reference to the officer of the council mentioned in paragraph (a) above responsible for the offender's supervision;
 - (c) the reference in paragraph 2(5) to the probation committee for the area in which the premises are situated were a reference to the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 for that area;
 - (d) paragraph 3 (requirements as to attendance at probation centre) were omitted; and
 - (e) for paragraph 5(3)(a) there were substituted—

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“(a) treatment as a resident patient in a hospital within the meaning of the Mental Health (Scotland) Act 1984, not being a State hospital within the meaning of that Act;”.

- (4) A probation order made or amended in accordance with this paragraph shall—
- (a) specify the locality in Scotland in which the offender resides or will be residing when the order or amendment comes into force; and
 - (b) specify as the appropriate court for the purposes of subsection (4) of section 228 of the Criminal Procedure (Scotland) Act 1995 a court of summary jurisdiction (which, in the case of an offender convicted on indictment, shall be the sheriff court) having jurisdiction in the locality specified under paragraph (a) above.

Probation orders: Northern Ireland

- 2 (1) Where a court considering the making of a probation order is satisfied that the offender resides in Northern Ireland, or will be residing there when the order comes into force, section 41 of this Act shall have effect as if subsections (3) to (7) and (9) to (11) were omitted and as if after subsection (2) there were inserted the following subsection—
- “(2A) A court shall not make a probation order in respect of any offender unless it is satisfied that suitable arrangements for his supervision can be made by the Probation Board for Northern Ireland.”
- (2) Where a probation order has been made and—
- (a) a magistrates' court acting for the petty sessions area specified in the order is satisfied that the offender proposes to reside or is residing in Northern Ireland, and
 - (b) it appears to the court that suitable arrangements for his supervision can be made by the Probation Board for Northern Ireland,
- the power of the court to amend the order under Part IV of Schedule 3 to this Act shall include power to amend it by requiring him to be supervised in accordance with arrangements so made.
- (3) Where a court is considering the making or amendment of a probation order in accordance with this paragraph, Schedule 2 to this Act shall have effect as if—
- (a) for sub-paragraphs (i) and (ii) of paragraph 2(2)(a) there were substituted a reference to a probation officer assigned to the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment comes into force;
 - (b) any reference to the offender's responsible officer were a reference to the probation officer assigned as mentioned in paragraph (a) above responsible for the offender's supervision;
 - (c) the reference in paragraph 2(5) to the probation committee for the area in which the premises are situated were a reference to the Probation Board for Northern Ireland;
 - (d) references in paragraph 3 to a probation centre were references to a day centre within the meaning of paragraph 3 of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996;

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- (e) for paragraphs (a) and (b) of paragraph 3(2) there were substituted a reference to a probation officer assigned as mentioned in paragraph (a) above; and
- (f) for paragraph 5(3)(a) there were substituted—
 - “(a) treatment (whether as an in-patient or an out-patient) at such hospital as may be specified in the order, being a hospital within the meaning of the Health and Personal Social Services (Northern Ireland) Order 1972, approved by the Department of Health and Social Services for Northern Ireland for the purposes of paragraph 4(3) of Schedule 1 to the Criminal Justice (Northern Ireland) Order 1996;”.

- (4) A probation order made or amended in accordance with this paragraph shall specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment comes into force.

Community service orders: Scotland

- 3 (1) Where a court considering the making of a community service order is satisfied that the offender resides in Scotland, or will be residing there when the order comes into force, section 46 of this Act (community service orders) shall have effect as if subsections (6), (7) and (9) to (13) were omitted and as if after subsection (5) there were inserted the following subsection—

“(5A) A court shall not make a community service order in respect of any offender unless—

- (a) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in Scotland in which the offender resides, or will be residing when the order comes into force, to perform work under community service orders made under section 238 of the Criminal Procedure (Scotland) Act 1995; and
- (b) it appears to the court that provision can be made for him to perform work under those arrangements.”,

and, accordingly, section 47 and the reference to it in section 46(1) shall not apply.

- (2) Where a community service order has been made and—
 - (a) a magistrates' court acting for a petty sessions area for the time being specified in it is satisfied that the offender proposes to reside or is residing in Scotland,
 - (b) the court has been notified by the Secretary of State that arrangements exist for persons who reside in the locality in Scotland in which the offender proposes to reside or is residing to perform work under community service orders made under section 238 of the Criminal Procedure (Scotland) Act 1995, and
 - (c) it appears to the court that provision can be made for him to perform work under the community service order under those arrangements,it may amend the order by specifying that the unpaid work required to be performed by the order be so performed.

- (3) A community service order made or amended in accordance with this paragraph shall—

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- (a) specify the locality in Scotland in which the offender resides or will be residing when the order or amendment comes into force; and
- (b) require the council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 in whose area the locality specified under paragraph (a) above is situated to appoint or assign an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the local authority officer by sections 239 to 245 of the Criminal Procedure (Scotland) Act 1995.

Community service orders: Northern Ireland

- 4 (1) Where a court considering the making of a community service order is satisfied that the offender resides in Northern Ireland, or will be residing there when the order comes into force, section 46 of this Act shall have effect as if subsections (6), (7) and (9) to (13) were omitted and as if after subsection (5) there were inserted the following subsection—
- “(5A) A court shall not make a community service order in respect of any offender unless it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order.”,
- and, accordingly, section 47 and the reference to it in section 46(1) shall not apply.
- (2) Where a community service order has been made and—
- (a) a magistrates' court acting for a petty sessions area for the time being specified in it is satisfied that the offender proposes to reside or is residing in Northern Ireland, and
 - (b) it appears to the court that provision can be made by the Probation Board for Northern Ireland for him to perform work under the order,
- it may amend the order by specifying that the unpaid work required to be performed by the order be so performed.
- (3) A community service order made or amended in accordance with this paragraph shall—
- (a) specify the petty sessions district in Northern Ireland in which the offender resides or will be residing when the order or amendment comes into force; and
 - (b) require the Probation Board for Northern Ireland to select an officer who will discharge in respect of the order the functions in respect of community service orders conferred on the relevant officer by Part II of the Criminal Justice (Northern Ireland) Order 1996.

Combination orders: Scotland

- 5 Paragraphs 1 and 3 above shall apply in relation to combination orders—
- (a) in so far as those orders impose such a requirement as is mentioned in section 51(1)(a) of this Act, as if they were probation orders; and
 - (b) in so far as they impose such a requirement as is mentioned in section 51(1)(b) of this Act, as if they were community service orders.

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Probation, community service and combination orders: general provisions

- 6 (1) Where a community order is made or amended in any of the circumstances specified in this Schedule, the court which makes or amends the order shall send three copies of it as made or amended to the home court, together with such documents and information relating to the case as it considers likely to be of assistance to that court.
- (2) Where a community order is made or amended in any of the circumstances specified in this Schedule, then, subject to the following provisions of this paragraph—
- (a) the order shall be treated as if it were a corresponding order made in the part of the United Kingdom in which the offender resides, or will be residing at the relevant time; and
 - (b) the legislation relating to such orders which has effect in that part of the United Kingdom shall apply accordingly.
- (3) Before making or amending a community order in those circumstances the court shall explain to the offender in ordinary language—
- (a) the requirements of the legislation relating to corresponding orders which has effect in the part of the United Kingdom in which he resides or will be residing at the relevant time;
 - (b) the powers of the home court under that legislation, as modified by this paragraph; and
 - (c) its own powers under this paragraph.
- (4) The home court may exercise in relation to the community order any power which it could exercise in relation to a corresponding order made by a court in the part of the United Kingdom in which the home court exercises jurisdiction, by virtue of the legislation relating to such orders which has effect in that part, except the following, namely—
- (a) in the case of a probation order or a combination order, a power conferred by section 232(2)(b) or 233 of, or paragraph 1 of Schedule 6 to, the Criminal Procedure (Scotland) Act 1995;
 - (b) in the case of a probation order, a power conferred by paragraph 3(1)(d), 4(1)(d), 7(2) or 8(2) of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996; and
 - (c) in the case of a community service order—
 - (i) a power conferred by section 239(5)(b) or 240(1)(c) or (d) of the Criminal Procedure (Scotland) Act 1995;
 - (ii) a power conferred by paragraph 3(1)(d), 4(1)(d), 7(2) or 8(2) of Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996; or
 - (iii) a power to vary the order by substituting for the number of hours of work specified in it any greater number than the court which made the order could have specified.
- (5) If at any time while legislation relating to corresponding orders which has effect in Scotland or Northern Ireland applies by virtue of sub-paragraph (2) above to a community order made in England and Wales—
- (a) it appears to the home court—
 - (i) if that court is in Scotland, on information from the local authority officer concerned, or

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- (ii) if it is in Northern Ireland, upon a complaint being made to a justice of the peace acting for the petty sessions district for the time being specified in the order,
that the offender has failed to comply with any of the requirements of the legislation applicable to the order, or
- (b) it appears to the home court—
- (i) if that court is in Scotland, on the application of the offender or of the local authority officer concerned, or
- (ii) if it is in Northern Ireland, on the application of the offender or of the probation officer concerned,
- that it would be in the interests of justice for a power conferred by paragraph 10 or 11 of Schedule 3 to this Act to be exercised,
- the home court may require the offender to appear before the court which made the order.
- (6) Where an offender is required by virtue of sub-paragraph (5) above to appear before the court which made the community order, that court—
- (a) may issue a warrant for his arrest; and
- (b) may exercise any power which it could exercise in respect of the community order if the offender resided in England and Wales;
- and any enactment relating to the exercise of such powers shall have effect accordingly, and with any reference to the responsible officer being construed as a reference to the local authority officer or probation officer concerned.
- (7) Where an offender is required by virtue of paragraph (a) of sub-paragraph (5) above to appear before the court which made the community order—
- (a) the home court shall send to that court a certificate certifying that the offender has failed to comply with such of the requirements of the order as may be specified in the certificate, together with such other particulars of the case as may be desirable; and
- (b) a certificate purporting to be signed by the clerk of the home court shall be admissible as evidence of the failure before the court which made the order.
- (8) In this paragraph—
- “corresponding order”, in relation to a combination order, means a probation order including such a requirement as is mentioned in section 229(4) of the Criminal Procedure (Scotland) Act 1995;
- “home court” means—
- (a) if the offender resides in Scotland, or will be residing there at the relevant time, the sheriff court having jurisdiction in the locality in which he resides or proposes to reside; and
- (b) if he resides in Northern Ireland, or will be residing there at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside;
- “the local authority officer concerned”, in relation to an offender, means the officer of a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 responsible for his supervision or, as the case may be, discharging in relation to him the functions in respect of community service orders assigned by sections 239 to 245 of the Criminal Procedure (Scotland) Act 1995;

“the probation officer concerned”, in relation to an offender, means the probation officer responsible for his supervision or, as the case may be, discharging in relation to him the functions conferred by Part II of the Criminal Justice (Northern Ireland) Order 1996;

“the relevant time” means the time when the order or the amendment to it comes into force.