

SCHEDULES

SCHEDULE 10

Section 58(1)

MINOR AND CONSEQUENTIAL AMENDMENTS

Colonial Prisoners Removal Act 1884 (c. 31)

- 1 In section 10 of the Colonial Prisoners Removal Act 1884 (application of Act to removal of criminal lunatics), in subsection (3), in paragraph (a) for the words from “give” to the end substitute “by warrant direct that he is to be detained in such hospital, within the meaning given by section 145(1) of the Mental Health Act 1983, as may be specified in the direction; and any such direction shall have the same effect as a hospital order under section 37 of that Act together with a restriction order under section 41 of that Act, made without limitation of time;”.

Children and Young Persons Act 1933 (c. 12)

- 2 In Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of the Act apply), after “Infanticide” insert—
- “An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004, in respect of a child or young person.”

Criminal Procedure (Insanity) Act 1964 (c. 84)

- 3 In section 8(2) of the Criminal Procedure (Insanity) Act 1964 (interpretation), after the definition of “duly approved” insert—
- ““local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000;”.

Criminal Appeal Act 1968 (c. 19)

- 4 In section 15 of the Criminal Appeal Act 1968 (right of appeal against finding of disability), in subsection (1), for the words “the jury has returned” substitute “there have been”.
- 5 In section 37 of that Act (detention of defendant on appeal by the Crown to House of Lords), in subsection (4), for paragraph (b) substitute—
- “(b) a hospital order made by virtue of section 5(2)(a) of the Criminal Procedure (Insanity) Act 1964 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc);”.
- 6 In section 51 of that Act (interpretation), in subsection (2A), for “6, 14 or 14A” substitute “6 or 14”.

Status: This is the original version (as it was originally enacted).

Children and Young Persons Act (Northern Ireland) 1968 (c. 34 (N.I.))

- 7 In Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968 (offences against children and young persons with respect to which special provisions of the Act apply), after “Infanticide” insert—
- “An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004, in respect of a child or young person.”

Juries Act 1974 (c. 23)

- 8 (1) Section 11 of the Juries Act 1974 (ballot and swearing of jurors) is amended as follows.
- (2) In subsection (5) omit paragraph (b).
- (3) In subsection (6) omit “, (b)”.

Rehabilitation of Offenders Act 1974 (c. 53)

- 9 In section 1(3) of the Rehabilitation of Offenders Act 1974 (meaning of “sentence” for the purposes of that Act), after “other than” insert—
- “(za) a surcharge imposed under section 161A of the Criminal Justice Act 2003;”.

Magistrates' Courts Act 1980 (c. 43)

- 10 In section 108 of the Magistrates' Courts Act 1980 (right of appeal to Crown Court), after subsection (3) insert—
- “(4) Subsection (3)(d) above does not prevent an appeal against a surcharge imposed under section 161A of the Criminal Justice Act 2003.”
- 11 In section 139 of that Act (disposal of sums adjudged to be paid by conviction)—
- (a) after paragraph (a) insert—
- “(aa) in the second place in payment to the fund mentioned in paragraph (c) below of surcharges imposed under section 161A of the Criminal Justice Act 2003;”;
- (b) in paragraph (b), for “second” substitute “third”.

Criminal Appeal (Northern Ireland) Act 1980 (c. 47)

- 12 In section 13A of the Criminal Appeal (Northern Ireland) Act 1980 (appeal against finding of unfitness to be tried), in subsection (1), for “the jury has returned” substitute “there has been”.
- 13 In section 19(1A)(a) of that Act (legal aid), after “appeal under” insert “section 18A of the Domestic Violence, Crime and Victims Act 2004,”.

Supreme Court Act 1981 (c. 54)

- 14 In section 55 of the Supreme Court Act 1981 (constitution of criminal division of Court of Appeal), in subsection (4)(a)(iii) omit the words “of a jury”.

- 15 In section 81 of that Act (power of Crown Court to grant bail), in subsection (1A), for “or 15” substitute “, 15 or 16A”.

Criminal Justice Act 1982 (c. 48)

- 16 In Schedule 1 to the Criminal Justice Act 1982 (offences excluded from early release provisions), in Part 2, after the entry relating to the Sexual Offences Act 2003 (c. 42) insert—

“Domestic Violence, Crime and Victims Act 2004

Section 5 (causing or allowing the death of a child or vulnerable adult).”

Representation of the People Act 1983 (c. 2)

- 17 In section 3A of the Representation of the People Act 1983 (disenfranchisement of offenders detained in mental hospitals), for subsection (5) substitute—

“(5) As respects any part of the United Kingdom, this section applies to any person in respect of whom a hospital order has been made by virtue of—

- (a) section 116A of the Army Act 1955 or the Air Force Act 1955 or section 63A of the Naval Discipline Act 1957, or
- (b) section 16 or 23 of the Courts-Martial (Appeals) Act 1968.”

Mental Health Act 1983 (c. 20)

- 18 In section 47 of the Mental Health Act 1983 (removal to hospital of persons serving sentences of imprisonment, etc), in subsection (5)(a), for the words “under any enactment to which section 46 applies” substitute “made in consequence of a finding of insanity or unfitness to stand trial”.

- 19 In section 69 of that Act (application to tribunals concerning patients subject to hospital orders etc), in subsection (2)(a)—

- (a) for “below,” substitute “below or”;
- (b) omit “or section 5(1) of the Criminal Procedure (Insanity) Act 1964”.

- 20 In section 71 of that Act (references by Home Secretary concerning restricted patients) omit subsections (5) and (6).

- 21 In section 79 of that Act (interpretation of Part 5), in subsection (1)—

- (a) for paragraph (a) substitute—

“(a) is treated by virtue of any enactment as subject to a hospital order and a restriction order; or”;
- (b) omit paragraph (b).

- 22 In section 84 of that Act (removal to England and Wales of offenders found insane in Channel Islands and Isle of Man), in subsection (2), for the words from “had been” to the end substitute “were subject to a hospital order together with a restriction order, made without limitation of time”.

- 23 (1) Schedule 5 to that Act (transitional and saving provisions) is amended as follows.

- (2) For paragraph 21 substitute—

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

“21. Any direction to which section 71(4) of the Mental Health Act 1959 applied immediately before the commencement of this Act shall have the same effect as a hospital order together with a restriction order, made without limitation of time.”

(3) In paragraph 37(2), for “direction under section 46 of this Act” substitute “hospital order together with a restriction order, made without limitation of time”.

Police and Criminal Evidence Act 1984 (c. 60)

24 In Schedule 5 to the Police and Criminal Evidence Act 1984 (serious arrestable offences), in Part 2, after paragraph 23 insert—

“Domestic Violence, Crime and Victims Act 2004

24 Section 5 (causing or allowing the death of a child or vulnerable adult).”

Prosecution of Offences Act 1985 (c. 23)

25 In section 16 of the Prosecution of Offences Act 1985 (defence costs), in subsection (4) (power of Court of Appeal to make defendant’s costs order), after paragraph (c) insert “or

(d) allows, to any extent, an appeal under section 16A of that Act (appeal against order made in cases of insanity or unfitness to plead);”.

Coroners Act 1988 (c. 13)

26 In section 16 of the Coroners Act 1988 (adjournment of inquest in event of criminal proceedings), in subsection (1)(a), after sub-paragraph (iii) insert—

“(iv) an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult); or”.

27 In section 17 of that Act (coroner to be informed of result of criminal proceedings), in subsections (1) and (2), at the end of paragraph (c) insert “; or

(d) an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult);”.

Criminal Justice Act 1988 (c. 33)

28 In section 41 of the Criminal Justice Act 1988 (power of Crown Court to deal with summary offence where person committed for either way offence), after subsection (4) insert—

“(4A) The committal of a person under this section in respect of an offence to which section 40 above applies shall not prevent him being found guilty of that offence under section 6(3) of the Criminal Law Act 1967 (alternative verdicts on trial on indictment); but where he is convicted under that provision of such an offence, the functions of the Crown Court under this section in relation to the offence shall cease.”

Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12))

- 29 In Schedule 5 to the Police and Criminal Evidence (Northern Ireland) Order 1989 (serious arrestable offences), in Part 2, after paragraph 14 insert—

“Domestic Violence, Crime and Victims Act 2004

- 15 Section 5 (causing or allowing the death of a child or vulnerable adult).”

Criminal Justice Act 1991 (c. 53)

- 30 In section 24 of the Criminal Justice Act 1991 (recovery of fines etc by deductions from income support), after subsection (3) insert—

“(3A) This section applies in relation to a surcharge imposed under section 161A of the Criminal Justice Act 2003 as if any reference in subsection (1) or (3) above to a fine included a reference to a surcharge.”

Criminal Appeal Act 1995 (c. 35)

- 31 In section 9 of the Criminal Appeal Act 1995 (references by Criminal Cases Review Commission to Court of Appeal), in subsection (6), for the words “a jury in England and Wales has returned” substitute “in England and Wales there have been”.

- 32 In section 10 of that Act (which makes equivalent provision for Northern Ireland), in subsection (7), for the words “a jury in Northern Ireland has returned” substitute “in Northern Ireland there has been”.

Law Reform (Year and a Day Rule) Act 1996 (c. 19)

- 33 In section 2 of the Law Reform (Year and a Day Rule) Act 1996 (restriction on institution of proceedings for fatal offence), in subsection (3), at the end of paragraph (b) insert “, or
- (c) an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).”

Family Law Act 1996 (c. 27)

- 34 (1) Section 36 of the Family Law Act 1996 (one cohabitant or former cohabitant with no existing right to occupy) is amended as follows.

(2) In subsection (1)(c), for the words from “live together as” to the end substitute “cohabit or a home in which they at any time cohabited or intended to cohabit”.

(3) In subsection (6)(f), for “lived together as husband and wife” substitute “cohabited”.

- 35 In section 38 of that Act (neither cohabitant or former cohabitant entitled to occupy), in subsection (1)(a), for “live or lived together as husband and wife” substitute “cohabit or cohabited”.

- 36 (1) Section 42 of that Act (non-molestation orders) is amended as follows.

(2) After subsection (4) insert—

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

“(4A) A court considering whether to make an occupation order shall also consider whether to exercise the power conferred by subsection (2)(b).

(4B) In this Part “the applicant”, in relation to a non-molestation order, includes (where the context permits) the person for whose benefit such an order would be or is made in exercise of the power conferred by subsection (2)(b).”

- (3) In subsection (5)(a) omit the words from “or” to “made”.
- 37 (1) Section 46 of that Act (undertakings) is amended as follows.
- (2) In subsection (3), after “under subsection (1)” insert “instead of making an occupation order”.
- (3) After that subsection insert—
- “(3A) The court shall not accept an undertaking under subsection (1) instead of making a non-molestation order in any case where it appears to the court that—
- (a) the respondent has used or threatened violence against the applicant or a relevant child; and
- (b) for the protection of the applicant or child it is necessary to make a non-molestation order so that any breach may be punishable under section 42A.”
- (4) In subsection (4), for “it were an order of the court” substitute “the court had made an occupation order or a non-molestation order in terms corresponding to those of the undertaking”.
- 38 (1) Section 47 of that Act (arrest for breach of occupation order or non-molestation order) is amended as follows.
- (2) Omit subsection (1).
- (3) In subsections (2) and (4), for “a relevant order” substitute “an occupation order”.
- (4) In subsections (3) and (5), for “the relevant order” substitute “the occupation order”.
- (5) In subsection (8), for the words up to the end of paragraph (b) substitute—
- “If the court—
- (a) has made a non-molestation order, or
- (b) has made an occupation order but has not attached a power of arrest under subsection (2) or (3) to any provision of the order, or has attached that power only to certain provisions of the order,”.
- 39 In section 49 of that Act (variation and discharge of orders), in subsection (4) omit “or non-molestation order”.
- 40 In section 62 of that Act (definitions), in subsection (1)(b), for ““former cohabitants” is to be read accordingly, but” substitute ““cohabit” and “former cohabitants” are to be read accordingly, but the latter expression”.
- 41 (1) In section 63 of that Act (interpretation of Part 4), subsection (1) is amended as follows.
- (2) At the beginning of the definition of “cohabitant” and “former cohabitant” insert ““cohabit”, ”.

- (3) In the definition of “relative”—
 - (a) for “or nephew” in paragraph (b) substitute “, nephew or first cousin”;
 - (b) for “is living or has lived with another person as husband and wife” substitute “is cohabiting or has cohabited with another person”.
- 42 (1) Schedule 7 to that Act (transfer of certain tenancies on divorce etc or on separation of cohabitants) is amended as follows.
 - (2) In paragraph 3(2), for “to live together as husband and wife” substitute “to cohabit”.
 - (3) In paragraph 4(b), for “lived together as husband and wife” substitute “cohabited”.

Protection from Harassment Act 1997 (c. 40)

- 43 (1) Section 5 of the Protection from Harassment Act 1997 (power to make restraining order where defendant convicted of offence under section 2 or 4 of that Act) is amended as follows.
 - (2) In the heading, at the end insert “**on conviction**”.
 - (3) In subsection (2) omit “further”.
- 44 In section 7 of that Act (interpretation), in subsection (1), for “sections 1 to 5” substitute “sections 1 to 5A”.

Crime (Sentences) Act 1997 (c. 43)

- 45 (1) Section 47 of the Crime (Sentences) Act 1997 (power to specify hospital units) is amended as follows.
 - (2) Omit subsections (1)(d) and (2)(c).
 - (3) For subsection (4) substitute—
 - “(4) A reference in this section to section 37 or 41 of the 1983 Act includes a reference to that section as it applies by virtue of—
 - (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
 - (b) section 6 or 14 of the Criminal Appeal Act 1968,
 - (c) section 116A of the Army Act 1955 or the Air Force Act 1955 or section 63A of the Naval Discipline Act 1957, or
 - (d) section 16 or 23 of the Courts-Martial (Appeals) Act 1968.”
- 46 (1) Schedule 1 to that Act (transfers of prisoners within the British Islands) (as amended by Schedule 32 to the Criminal Justice Act 2003) is amended as follows.
 - (2) In paragraph 8 (restricted transfers from England and Wales to Scotland), in sub-paragraphs (2)(a) and (4)(a), for “264” substitute “264A”.
 - (3) In paragraph 9 (restricted transfers from England and Wales to Northern Ireland), in sub-paragraphs (2)(a) and (4)(a), for “264” substitute “264A”.

Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9))

- 47 (1) Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 (power to make restraining order where defendant convicted of offence under Article 4 or 6 of that Act) is amended as follows.

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

(2) In the heading, at the end insert “**on conviction**”.

(3) In paragraph (2) omit “further”.

Crime and Disorder Act 1998 (c. 37)

- 48 In section 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment etc) omit subsection (7) (which is superseded by provision made by section 12(1) above).

Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)

- 49 In section 132 of the Powers of Criminal Courts (Sentencing) Act 2000 (compensation orders: appeals etc), after subsection (4) insert—

“(4A) Where an order is made in respect of a person under subsection (3) or (4) above, the Court of Appeal or House of Lords shall make such order for the payment of a surcharge under section 161A of the Criminal Justice Act 2003, or such variation of the order of the Crown Court under that section, as is necessary to secure that the person’s liability under that section is the same as it would be if he were being dealt with by the Crown Court.”

- 50 In section 136 of that Act (power to order statement as to financial circumstances of parent or guardian), in subsection (1), for “or compensation” substitute “, compensation or surcharge”.

- 51 (1) Section 137 of that Act (power to order parent or guardian to pay fine, costs or compensation) is amended as follows.

(2) In the heading, for “**or compensation**” substitute “, **compensation or surcharge**”.

(3) After subsection (1) insert—

“(1A) Where but for this subsection a court would order a child or young person to pay a surcharge under section 161A of the Criminal Justice Act 2003, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (a) that the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.”

(4) In subsection (3), for “subsections (1) and (2)” substitute “subsections (1) to (2)”.

- 52 (1) Section 138 of that Act (fixing of fine or compensation to be paid by parent or guardian) is amended as follows.

(2) In the heading, for “**or compensation**” substitute “, **compensation or surcharge**”.

(3) Before paragraph (a) of subsection (1) insert—

“(za) subsection (3) of section 161A of the Criminal Justice Act 2003 (surcharges) and subsection (4A) of section 164 of that Act (fixing of fines) shall have effect as if any reference in those subsections to the offender’s means were a reference to those of the parent or guardian;”.

- 53 In section 142(1) of that Act (power of Crown Court to order search of persons before it)—
- (a) before paragraph (a) insert—
 - “(za) the Crown Court orders a person to pay a surcharge under section 161A of the Criminal Justice Act 2003,”;
 - (b) in paragraph (d), for “or compensation” substitute “, compensation or surcharge”.

Criminal Justice and Court Services Act 2000 (c. 43)

- 54 The Criminal Justice and Court Services Act 2000 is amended as follows.
- 55 Section 69 (duties in connection with victims of certain offences) (which is superseded by section 35 of this Act) is repealed.
- 56 In Schedule 4 (offences against children for the purposes of disqualification orders), in paragraph 3, after paragraph (sa) insert—
- “(sb) he commits an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult) in respect of a child.”

Sexual Offences Act 2003 (c. 42)

- 57 (1) Section 133 of the Sexual Offences Act 2003 (general interpretation of Part 2) is amended as follows.
- (2) In subsection (1)—
- (a) in the definition of “admitted to a hospital”, for paragraph (c) substitute—
 - “(c) section 46 of the Mental Health Act 1983, section 69 of the Mental Health (Scotland) Act 1984 or Article 52 of the Mental Health (Northern Ireland) Order 1986;”;
 - (b) in the definition of “detained in a hospital”, for paragraph (c) substitute—
 - “(c) section 46 of the Mental Health Act 1983, section 69 of the Mental Health (Scotland) Act 1984 or Article 52 of the Mental Health (Northern Ireland) Order 1986;”;
 - (c) in the definition of “restriction order”, for paragraph (c) substitute—
 - “(c) a direction under section 46 of the Mental Health Act 1983, section 69 of the Mental Health (Scotland) Act 1984 or Article 52 of the Mental Health (Northern Ireland) Order 1986;”.
- (3) After that subsection insert—
- “(1A) A reference to a provision specified in paragraph (a) of the definition of “admitted to a hospital”, “detained in a hospital” or “restriction order” includes a reference to the provision as it applies by virtue of—
 - (a) section 5 of the Criminal Procedure (Insanity) Act 1964,
 - (b) section 6 or 14 of the Criminal Appeal Act 1968,
 - (c) section 116A of the Army Act 1955 or the Air Force Act 1955 or section 63A of the Naval Discipline Act 1957, or
 - (d) section 16 or 23 of the Courts-Martial (Appeals) Act 1968.”

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

- 58 In section 135 of that Act (interpretation: mentally disordered offenders), omit subsection (4)(c).
- 59 (1) Schedule 5 to that Act (other offences for the purposes of sexual offences prevention orders) is amended as follows.
- (2) After paragraph 63 insert—
- “63A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).”
- (3) After paragraph 171 insert—
- “171A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).”
- (4) In paragraph 172, for “63” substitute “63A”.

Criminal Justice Act 2003 (c. 44)

- 60 In section 48 of the Criminal Justice Act 2003 (c. 44) (further provisions about trial without a jury), in subsection (6), for paragraphs (a) and (b) substitute “the requirement under section 4A of the Criminal Procedure (Insanity) Act 1964 that any question, finding or verdict mentioned in that section be determined, made or returned by a jury”.
- 61 In section 50 of that Act (application of Part 7 to Northern Ireland), in subsection (13), for paragraphs (a) to (c) substitute—
- “(a) for “section 4A of the Criminal Procedure (Insanity) Act 1964” substitute “Article 49A of the Mental Health (Northern Ireland) Order 1986”, and
- (b) for “that section” substitute “that Article”.”
- 62 In section 74 of that Act (interpretation of Part 9), after subsection (6) insert—
- “(7) In its application to a trial on indictment in respect of which an order under section 17(2) of the Domestic Violence, Crime and Victims Act 2004 has been made, this Part is to have effect with such modifications as the Secretary of State may by order specify.”
- 63 In section 151 of that Act (community order for persistent offender previously fined), in subsection (5), after “compensation order” insert “or a surcharge under section 161A”.
- 64 In section 305 of that Act (interpretation of Part 12), in subsection (1), insert at the appropriate place—
- ““compensation order” has the meaning given by section 130(1) of the Sentencing Act;”.
- 65 In Schedule 15 to that Act (specified offences for the purposes of Chapter 5 of Part 12 of that Act), in Part 1 (specified violent offences), after paragraph 63 insert—
- “63A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).”
- 66 In Schedule 17 to that Act (Northern Ireland offences specified for the purposes of section 229(4)), in Part 1 (specified violent offences), after paragraph 60 insert—

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

“60A An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (causing or allowing the death of a child or vulnerable adult).”