# Coroners and Justice Act 2009

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# Coroners and Justice Act 2009

**2009 CHAPTER 25**

An Act to amend the law relating to coroners, to investigation of deaths and to certification and registration of deaths; to amend the criminal law; to make provision about criminal justice and about dealing with offenders; to make provision about the Commissioner for Victims and Witnesses; to make provision relating to the security of court and other buildings; to make provision about legal aid and about payments for legal services provided in connection with employment matters; to make provision for payments to be made by offenders in respect of benefits derived from the exploitation of material pertaining to offences; to amend the Data Protection Act 1998; and for connected purposes. [12th November 2009]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

CORONERS ETC

### CHAPTER 1

INVESTIGATIONS INTO DEATHS

*Duty to investigate*

**1 Duty to investigate certain deaths**

(1) A senior coroner who is made aware that the body of a deceased person is within that coroner's area must as soon as practicable conduct an investigation into the person's death if subsection (2) applies.

(2) This subsection applies if the coroner has reason to suspect that—

(a) the deceased died a violent or unnatural death,
(b) the cause of death is unknown, or
(c) the deceased died while in custody or otherwise in state detention.

(3) Subsection (1) is subject to sections 2 to 4.

(4) A senior coroner who has reason to believe that—
(a) a death has occurred in or near the coroner's area,
(b) the circumstances of the death are such that there should be an investigation into it, and
(c) the duty to conduct an investigation into the death under subsection (1) does not arise because of the destruction, loss or absence of the body,
may report the matter to the Chief Coroner.

(5) On receiving a report under subsection (4) the Chief Coroner may direct a senior coroner (who does not have to be the one who made the report) to conduct an investigation into the death.

(6) The coroner to whom a direction is given under subsection (5) must conduct an investigation into the death as soon as practicable.
This is subject to section 3.

(7) A senior coroner may make whatever enquiries seem necessary in order to decide—
(a) whether the duty under subsection (1) arises;
(b) whether the power under subsection (4) arises.

(8) This Chapter is subject to Schedule 10.

*Investigation by other coroner*

**2 Request for other coroner to conduct investigation**

(1) A senior coroner (coroner A) who is under a duty under section 1(1) to conduct an investigation into a person's death may request a senior coroner for another area (coroner B) to conduct the investigation.

(2) If coroner B agrees to conduct the investigation, that coroner (and not coroner A) must conduct the investigation, and must do so as soon as practicable.

(3) Subsection (2) does not apply if a direction concerning the investigation is given under section 3 before coroner B agrees to conduct the investigation.

(4) Subsection (2) is subject to—
(a) any direction concerning the investigation that is given under section 3 after the agreement, and
(b) section 4.

(5) A senior coroner must give to the Chief Coroner notice in writing of any request made by him or her under subsection (1), stating whether or not the other coroner agreed to it.

**3 Direction for other coroner to conduct investigation**

(1) The Chief Coroner may direct a senior coroner (coroner B) to conduct an investigation under this Part into a person's death even though, apart from the

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direction, a different senior coroner (coroner A) would be under a duty to conduct it.

(2) Where a direction is given under this section, coroner B (and not coroner A) must conduct the investigation, and must do so as soon as practicable.

(3) Subsection (2) is subject to—

(a) any subsequent direction concerning the investigation that is given under this section, and

(b) section 4.

(4) The Chief Coroner must give notice in writing of a direction under this section to coroner A.

(5) A reference in this section to conducting an investigation, in the case of an investigation that has already begun, is to be read as a reference to continuing to conduct the investigation.

*Discontinuance of investigation*

**4 Discontinuance where cause of death revealed by post-mortem examination**

(1) A senior coroner who is responsible for conducting an investigation under this Part into a person's death must discontinue the investigation if—

(a) an examination under section 14 reveals the cause of death before the coroner has begun holding an inquest into the death, and

(b) the coroner thinks that it is not necessary to continue the investigation.

(2) Subsection (1) does not apply if the coroner has reason to suspect that the deceased—

(a) died a violent or unnatural death, or

(b) died while in custody or otherwise in state detention.

(3) Where a senior coroner discontinues an investigation into a death under this section—

(a) the coroner may not hold an inquest into the death;

(b) no determination or finding under section 10(1) may be made in respect of the death.

This subsection does not prevent a fresh investigation under this Part from being conducted into the death.

(4) A senior coroner who discontinues an investigation into a death under this section must, if requested to do so in writing by an interested person, give to that person as soon as practicable a written explanation as to why the investigation was discontinued.

*Purpose of investigation*

**5 Matters to be ascertained**

(1) The purpose of an investigation under this Part into a person's death is to ascertain—

(a) who the deceased was;

(b) how, when and where the deceased came by his or her death;

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(c) the particulars (if any) required by the 1953 Act to be registered concerning the death.

(2) Where necessary in order to avoid a breach of any Convention rights (within the meaning of the Human Rights Act 1998 (c. 42)), the purpose mentioned in subsection (1)(b) is to be read as including the purpose of ascertaining in what circumstances the deceased came by his or her death.

(3) Neither the senior coroner conducting an investigation under this Part into a person's death nor the jury (if there is one) may express any opinion on any matter other than—

(a) the questions mentioned in subsection (1)(a) and (b) (read with subsection (2) where applicable);

(b) the particulars mentioned in subsection (1)(c).

This is subject to paragraph 7 of Schedule 5.

*Inquests*

### 6 Duty to hold inquest

A senior coroner who conducts an investigation under this Part into a person's death must (as part of the investigation) hold an inquest into the death.

This is subject to section 4(3)(a).

### 7 Whether jury required

(1) An inquest into a death must be held without a jury unless subsection (2) or (3) applies.

(2) An inquest into a death must be held with a jury if the senior coroner has reason to suspect—

(a) that the deceased died while in custody or otherwise in state detention, and that either—

(i) the death was a violent or unnatural one, or

(ii) the cause of death is unknown,

(b) that the death resulted from an act or omission of—

(i) a police officer, or

(ii) a member of a service police force,

in the purported execution of the officer's or member's duty as such, or

(c) that the death was caused by a notifiable accident, poisoning or disease.

(3) An inquest into a death may be held with a jury if the senior coroner thinks that there is sufficient reason for doing so.

(4) For the purposes of subsection (2)(c) an accident, poisoning or disease is "notifiable" if notice of it is required under any Act to be given—

(a) to a government department,

(b) to an inspector or other officer of a government department, or

(c) to an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 (c. 37).

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### 8 Assembling a jury

(1) The jury at an inquest (where there is a jury) is to consist of seven, eight, nine, ten or eleven persons.

(2) For the purpose of summoning a jury, a senior coroner may summon persons (whether within or without the coroner area for which that coroner is appointed) to attend at the time and place stated in the summons.

(3) Once assembled, the members of a jury are to be sworn by or before the coroner to inquire into the death of the deceased and to give a true determination according to the evidence.

(4) Only a person who is qualified to serve as a juror in the Crown Court, the High Court and the county courts, under section 1 of the Juries Act 1974 (c. 23), is qualified to serve as a juror at an inquest.

(5) The senior coroner may put to a person summoned under this section any questions that appear necessary to establish whether or not the person is qualified to serve as a juror at an inquest.

### 9 Determinations and findings by jury

(1) Subject to subsection (2), a determination or finding that a jury is required to make under section 10(1) must be unanimous.

(2) A determination or finding need not be unanimous if—

(a) only one or two of the jury do not agree on it, and

(b) the jury has deliberated for a period of time that the senior coroner thinks reasonable in view of the nature and complexity of the case.

Before accepting a determination or finding not agreed on by all the members of the jury, the coroner must require one of them to announce publicly how many agreed and how many did not.

(3) If the members of the jury, or the number of members required by subsection (2)(a), do not agree on a determination or finding, the coroner may discharge the jury and another one may be summoned in its place.

*Outcome of investigation*

### 10 Determinations and findings to be made

(1) After hearing the evidence at an inquest into a death, the senior coroner (if there is no jury) or the jury (if there is one) must—

(a) make a determination as to the questions mentioned in section 5(1)(a) and (b) (read with section 5(2) where applicable), and

(b) if particulars are required by the 1953 Act to be registered concerning the death, make a finding as to those particulars.

(2) A determination under subsection (1)(a) may not be framed in such a way as to appear to determine any question of—

(a) criminal liability on the part of a named person, or

(b) civil liability.

(3) In subsection (2) "criminal liability" includes liability in respect of a service offence.

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*Suspension*

### 11 Duty or power to suspend or resume investigations

Schedule 1 makes provision about suspension and resumption of investigations.

*Death of service personnel abroad*

### 12 Investigation in Scotland

(1) This section applies to the death outside the United Kingdom of a person within subsection (2) or (3).

(2) A person is within this subsection if at the time of the death the person was subject to service law by virtue of section 367 of the Armed Forces Act 2006 (c. 52) and was engaged in—

(a) active service,

(b) activities carried on in preparation for, or directly in support of, active service, or

(c) training carried out in order to improve or maintain the effectiveness of those engaged in active service.

(3) A person is within this subsection if at the time of the death the person was not subject to service law but—

(a) by virtue of paragraph 7 of Schedule 15 to the Armed Forces Act 2006 was a civilian subject to service discipline, and

(b) was accompanying persons subject to service law who were engaged in active service.

(4) If—

(a) the person's body is within Scotland or is expected to be brought to the United Kingdom, and

(b) the Secretary of State thinks that it may be appropriate for the circumstances of the death to be investigated under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14),

the Secretary of State may notify the Lord Advocate accordingly.

(5) If—

(a) the person's body is within England and Wales, and

(b) the Chief Coroner thinks that it may be appropriate for the circumstances of the death to be investigated under that Act,

the Chief Coroner may notify the Lord Advocate accordingly.

### 13 Investigation in England and Wales despite body being brought to Scotland

(1) The Chief Coroner may direct a senior coroner to conduct an investigation into a person's death if—

(a) the deceased is a person within subsection (2) or (3) of section 12,

(b) the Lord Advocate has been notified under subsection (4) or (5) of that section in relation to the death,

(c) the body of the deceased has been brought to Scotland,

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(d) no inquiry into the circumstances of the death under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14) has been held (or any such inquiry that has been started has not been concluded),

(e) the Lord Advocate notifies the Chief Coroner that, in the Lord Advocate's view, it may be appropriate for an investigation under this Part into the death to be conducted, and

(f) the Chief Coroner has reason to suspect that—

(i) the deceased died a violent or unnatural death,

(ii) the cause of death is unknown, or

(iii) the deceased died while in custody or otherwise in state detention.

(2) The coroner to whom a direction is given under subsection (1) must conduct an investigation into the death as soon as practicable.

This is subject to section 3.

*Ancillary powers of coroners in relation to deaths*

**14 Post-mortem examinations**

(1) A senior coroner may request a suitable practitioner to make a post-mortem examination of a body if—

(a) the coroner is responsible for conducting an investigation under this Part into the death of the person in question, or

(b) a post-mortem examination is necessary to enable the coroner to decide whether the death is one into which the coroner has a duty under section 1(1) to conduct an investigation.

(2) A request under subsection (1) may specify the kind of examination to be made.

(3) For the purposes of subsection (1) a person is a suitable practitioner if he or she—

(a) is a registered medical practitioner, or

(b) in a case where a particular kind of examination is requested, a practitioner of a description designated by the Chief Coroner as suitable to make examinations of that kind.

(4) Where a person informs the senior coroner that, in the informant's opinion, death was caused wholly or partly by the improper or negligent treatment of a registered medical practitioner or other person, that practitioner or other person—

(a) must not make, or assist at, an examination under this section of the body, but

(b) is entitled to be represented at such an examination.

This subsection has no effect as regards a post-mortem examination already made.

(5) A person who makes a post-mortem examination under this section must as soon as practicable report the result of the examination to the senior coroner in whatever form the coroner requires.

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### 15 Power to remove body

(1) A senior coroner who—

(a) is responsible for conducting an investigation under this Part into a person's death, or

(b) needs to request a post-mortem examination under section 14 in order to decide whether the death is one into which the coroner has a duty under section 1(1) to conduct an investigation,

may order the body to be removed to any suitable place.

(2) That place may be within the coroner's area or elsewhere.

(3) The senior coroner may not order the removal of a body under this section to a place provided by a person who has not consented to its being removed there.

This does not apply to a place within the coroner's area that is provided by a district council, a county council, a county borough council, a London borough council or the Common Council.

*Miscellaneous*

### 16 Investigations lasting more than a year

(1) A senior coroner who is conducting an investigation under this Part into a person's death that has not been completed or discontinued within a year—

(a) must notify the Chief Coroner of that fact;

(b) must notify the Chief Coroner of the date on which the investigation is completed or discontinued.

(2) In subsection (1) "within a year" means within the period of 12 months beginning with the day on which the coroner was made aware that the person's body was within the coroner's area.

(3) The Chief Coroner must keep a register of notifications given under subsection (1).

### 17 Monitoring of and training for investigations into deaths of service personnel

(1) The Chief Coroner must—

(a) monitor investigations under this Part into service deaths;

(b) secure that coroners conducting such investigations are suitably trained to do so.

(2) In this section "service death" means the death of a person who at the time of the death was subject to service law by virtue of section 367 of the Armed Forces Act 2006 (c. 52) and was engaged in—

(a) active service,

(b) activities carried on in preparation for, or directly in support of, active service, or

(c) training carried out in order to improve or maintain the effectiveness of those engaged in active service.

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## CHAPTER 2

NOTIFICATION, CERTIFICATION AND REGISTRATION OF DEATHS

### 18 Notification by medical practitioner to senior coroner

(1) The Lord Chancellor may make regulations requiring a registered medical practitioner, in prescribed cases or circumstances, to notify a senior coroner of a death of which the practitioner is aware.

(2) Before making regulations under this section the Lord Chancellor must consult—

(a) the Secretary of State for Health, and

(b) the Chief Coroner.

### 19 Medical examiners

(1) Primary Care Trusts (in England) and Local Health Boards (in Wales) must appoint persons as medical examiners to discharge the functions conferred on medical examiners by or under this Chapter.

(2) Each Trust or Board must—

(a) appoint enough medical examiners, and make available enough funds and other resources, to enable those functions to be discharged in its area;

(b) monitor the performance of medical examiners appointed by the Trust or Board by reference to any standards or levels of performance that those examiners are expected to attain.

(3) A person may be appointed as a medical examiner only if, at the time of the appointment, he or she—

(a) is a registered medical practitioner and has been throughout the previous 5 years, and

(b) practises as such or has done within the previous 5 years.

(4) The appropriate Minister may by regulations make—

(a) provision about the terms of appointment of medical examiners and about termination of appointment;

(b) provision for the payment to medical examiners of remuneration, expenses, fees, compensation for termination of appointment, pensions, allowances or gratuities;

(c) provision as to training—

(i) to be undertaken as a precondition for appointment as a medical examiner;

(ii) to be undertaken by medical examiners;

(d) provision about the procedure to be followed in connection with the exercise of functions by medical examiners;

(e) provision conferring functions on medical examiners;

(f) provision for functions of medical examiners to be exercised, during a period of emergency, by persons not meeting the criteria in subsection (3).

(5) Nothing in this section, or in regulations under this section, gives a Primary Care Trust or a Local Health Board any role in relation to the way in which

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medical examiners exercise their professional judgment as medical practitioners.

(6) In this section "the appropriate Minister" means—
(a) in relation to England, the Secretary of State;
(b) in relation to Wales, the Welsh Ministers.

(7) For the purposes of this section a "period of emergency" is a period certified as such by the Secretary of State on the basis that there is or has been, or is about to be, an event or situation involving or causing, or having the potential to cause, a substantial loss of human life throughout, or in any part of, England and Wales.

(8) A certification under subsection (7) must specify—
(a) the date when the period of emergency begins, and
(b) the date when it is to end.

(9) Subsection (8)(b) does not prevent the Secretary of State certifying a new period of emergency in respect of the same event or situation.

**20 Medical certificate of cause of death**

(1) The Secretary of State may by regulations make the following provision in relation to a death that is required to be registered under Part 2 of the 1953 Act—
(a) provision requiring a registered medical practitioner who attended the deceased before his or her death (an "attending practitioner")—
(i) to prepare a certificate stating the cause of death to the best of the practitioner's knowledge and belief (an "attending practitioner's certificate"), or
(ii) where the practitioner is unable to establish the cause of death, to refer the case to a senior coroner;
(b) provision requiring a copy of an attending practitioner's certificate to be given to a medical examiner;
(c) provision allowing an attending practitioner, if invited to do so by the medical examiner or a registrar, to issue a fresh attending practitioner's certificate superseding the existing one;
(d) provision requiring a senior coroner to refer a case to a medical examiner;
(e) provision requiring a medical examiner to make whatever enquiries appear to be necessary in order to confirm or establish the cause of death;
(f) provision requiring a medical examiner to whom a copy of an attending practitioner's certificate has been given—
(i) to confirm the cause of death stated on the certificate and to notify a registrar that the cause of death has been confirmed, or
(ii) where the examiner is unable to confirm the cause of death, to refer the case to a senior coroner;
(g) provision for an attending practitioner's certificate, once the cause of death has been confirmed as mentioned in paragraph (f), to be given to a registrar;
(h) provision requiring a medical examiner to whom a case has been referred by a senior coroner—

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(i) to issue a certificate stating the cause of death to the best of the examiner's knowledge and belief (a "medical examiner's certificate") and to notify a registrar that the certificate has been issued, or

(ii) where the examiner is unable to establish the cause of the death, to refer the case back to the coroner;

(i) provision for a medical examiner's certificate to be given to a registrar;

(j) provision allowing a medical examiner, if invited to do so by the registrar, to issue a fresh medical examiner's certificate superseding the existing one;

(k) provision requiring a medical examiner or someone acting on behalf of a medical examiner—

(i) to discuss the cause of death with the informant or with some other person whom the examiner considers appropriate, and

(ii) to give him or her the opportunity to mention any matter that might cause a senior coroner to think that the death should be investigated under section 1;

(l) provision for confirmation to be given in writing, either by the informant or by a person of a prescribed description, that the requirement referred to in paragraph (k) has been complied with;

(m) provision prescribing forms (including the form of an attending practitioner's certificate and of a medical examiner's certificate) for use by persons exercising functions under the regulations, and requiring the forms to be made available to those persons;

(n) provision requiring the Chief Medical Officer of the Department of Health, after consulting—

(i) the Officer with corresponding functions in relation to Wales,

(ii) the Registrar General, and

(iii) the Statistics Board,

to issue guidance as to how certificates and other forms under the regulations are to be completed;

(o) provision for certificates or other forms under the regulations to be signed or otherwise authenticated.

(2) Regulations under subsection (1) imposing a requirement—

(a) may prescribe a period within which the requirement is to be complied with;

(b) may prescribe cases or circumstances in which the requirement does, or does not, apply (and may, in particular, provide for the requirement not to apply during a period of emergency).

(3) The power under subsection (1)(m) to prescribe forms is exercisable only after consultation with—

(a) the Welsh Ministers,

(b) the Registrar General, and

(c) the Statistics Board.

(4) Regulations under subsection (1) may provide for functions that would otherwise be exercisable by a registered medical practitioner who attended the deceased before his or her death to be exercisable, during a period of emergency, by a registered medical practitioner who did not do so.

(5) The appropriate Minister may by regulations provide for a fee to be payable to a Primary Care Trust or Local Health Board in respect of—

(a) a medical examiner's confirmation of the cause of death stated on an attending practitioner's certificate, or

(b) the issue of a medical examiner's certificate.

(6) Section 7 of the Cremation Act 1902 (c. 8) (regulations as to burning) does not require the Secretary of State to make regulations, or to include any provision in regulations, if or to the extent that he or she thinks it unnecessary to do so in consequence of—

(a) provision made by regulations under this Chapter or by Coroners regulations, or

(b) provision contained in, or made by regulations under, Part 2 of the 1953 Act as amended by Part 1 of Schedule 21 to this Act.

(7) In this section—

"the appropriate Minister" has the same meaning as in section 19;

"informant", in relation to a death, means the person who gave particulars concerning the death to the registrar under section 16 or 17 of the 1953 Act;

"period of emergency" has the same meaning as in section 19;

"the Statistics Board" means the body corporate established by section 1 of the Statistics and Registration Service Act 2007 (c. 18).

### 21 National Medical Examiner

(1) The Secretary of State may appoint a person as National Medical Examiner.

(2) The National Medical Examiner is to have—

(a) the function of issuing guidance to medical examiners with a view to securing that they carry out their functions in an effective and proportionate manner;

(b) any further functions conferred by regulations made by the Secretary of State.

(3) Before appointing a person as National Medical Examiner or making regulations under subsection (2)(b), the Secretary of State must consult the Welsh Ministers.

(4) A person may be appointed as National Medical Examiner only if, at the time of the appointment, he or she—

(a) is a registered medical practitioner and has been throughout the previous 5 years, and

(b) practises as such or has done within the previous 5 years.

(5) The appointment of a person as National Medical Examiner is to be on whatever terms and conditions the Secretary of State thinks appropriate.

(6) The Secretary of State may pay to the National Medical Examiner—

(a) amounts determined by the Secretary of State by way of remuneration or allowances;

(b) amounts determined by the Secretary of State towards expenses incurred in performing functions as such.

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(7) The National Medical Examiner may amend or revoke any guidance issued under subsection (2)(a).

(8) The National Medical Examiner must consult the Welsh Ministers before issuing, amending or revoking any such guidance.

(9) Medical examiners must have regard to any such guidance in carrying out their functions.

## CHAPTER 3

CORONER AREAS, APPOINTMENTS ETC

### 22 Coroner areas

Schedule 2 makes provision about coroner areas.

### 23 Appointment etc of senior coroners, area coroners and assistant coroners

Schedule 3 makes provision about the appointment etc of senior coroners, area coroners and assistant coroners.

### 24 Provision of staff and accommodation

(1) The relevant authority for a coroner area—

(a) must secure the provision of whatever officers and other staff are needed by the coroners for that area to carry out their functions;

(b) must provide, or secure the provision of, accommodation that is appropriate to the needs of those coroners in carrying out their functions;

(c) must maintain, or secure the maintenance of, accommodation provided under paragraph (b).

(2) Subsection (1)(a) applies to a particular coroner area only if, or to the extent that, the necessary officers and other staff for that area are not provided by a police authority.

(3) Subsection (1)(c) does not apply in relation to accommodation the maintenance of which is the responsibility of a person other than the relevant authority in question.

(4) In deciding how to discharge its duties under subsection (1)(b) and (c), the relevant authority for a coroner area must take into account the views of the senior coroner for that area.

(5) A reference in subsection (1) to the coroners for an area is to the senior coroner, and any area coroners or assistant coroners, for that area.

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## CHAPTER 4

INVESTIGATIONS CONCERNING TREASURE

### 25 Coroner for Treasure and Assistant Coroners for Treasure

Schedule 4 makes provision about the appointment etc of the Coroner for Treasure and Assistant Coroners for Treasure.

### 26 Investigations concerning treasure

(1) The Coroner for Treasure must conduct an investigation concerning an object in respect of which notification is given under section 8(1) of the Treasure Act 1996 (c. 24).

(2) The Coroner for Treasure may conduct an investigation concerning an object in respect of which notification has not been given under that section if he or she has reason to suspect that the object is treasure.

(3) The Coroner for Treasure may conduct an investigation concerning an object if he or she has reason to suspect that the object is treasure trove.

(4) Subsections (1) to (3) are subject to section 29.

(5) The purpose of an investigation under this section is to ascertain—

(a) whether or not the object in question is treasure or treasure trove;

(b) if it is treasure or treasure trove, who found it, where it was found and when it was found.

(6) Senior coroners, area coroners and assistant coroners have no functions in relation to objects that are or may be treasure or treasure trove.

This is subject to paragraph 11 of Schedule 4 (which enables an assistant coroner acting as an Assistant Coroner for Treasure to perform functions of the Coroner for Treasure).

### 27 Inquests concerning treasure

(1) The Coroner for Treasure may, as part of an investigation under section 26, hold an inquest concerning the object in question (a "treasure inquest").

(2) A treasure inquest must be held without a jury, unless the Coroner for Treasure thinks there is sufficient reason for it to be held with a jury.

(3) In relation to a treasure inquest held with a jury, sections 8 and 9 apply with the following modifications—

(a) a reference to a senior coroner is to be read as a reference to the Coroner for Treasure;

(b) the reference in section 8(3) to the death of the deceased is to be read as a reference to the matters mentioned in section 26(5).

### 28 Outcome of investigations concerning treasure

Where the Coroner for Treasure has conducted an investigation under section 26, a determination as to the question mentioned in subsection (5)(a) of that section, and (where applicable) the questions mentioned in subsection (5)(b) of that section, must be made—

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(a) by the Coroner for Treasure after considering the evidence (where an inquest is not held),

(b) by the Coroner for Treasure after hearing the evidence (where an inquest is held without a jury), or

(c) by the jury after hearing the evidence (where an inquest is held with a jury).

**29 Exception to duty to investigate**

(1) Where the Coroner for Treasure is conducting, or proposes to conduct, an investigation under section 26 concerning—

(a) an object that would vest in the Crown under the Treasure Act 1996 (c. 24) if the object was in fact treasure and there were no prior interests or rights, or

(b) an object that would belong to the Crown under the law relating to treasure trove if the object was in fact treasure trove,

the Secretary of State may give notice to the Coroner for Treasure disclaiming, on behalf of the Crown, any title that the Crown may have to the object.

(2) Where the Coroner for Treasure is conducting, or proposes to conduct, an investigation under section 26 concerning—

(a) an object that would vest in the franchisee under the Treasure Act 1996 if the object was in fact treasure and there were no prior interests or rights, or

(b) an object that would belong to the franchisee under the law relating to treasure trove if the object was in fact treasure trove,

the franchisee may give notice to the Coroner for Treasure disclaiming any title that the franchisee may have to the object.

(3) A notice under subsection (1) or (2) may be given only before the making of a determination under section 28.

(4) Where a notice is given under subsection (1) or (2)—

(a) the object is to be treated as not vesting in or belonging to the Crown, or (as the case may be) the franchisee, under the Treasure Act 1996, or the law relating to treasure trove;

(b) the Coroner for Treasure may not conduct an investigation concerning the object under section 26 or, if an investigation has already begun, may not continue with it;

(c) without prejudice to the interests or rights of others, the object may be delivered to a person in accordance with a code of practice published under section 11 of the Treasure Act 1996.

(5) For the purposes of this section the franchisee, in relation to an object, is the person who—

(a) was, immediately before the commencement of section 4 of the Treasure Act 1996, or

(b) apart from that Act, as successor in title, would have been,

the franchisee of the Crown in right of treasure trove for the place where the object was found.

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**30 Duty to notify Coroner for Treasure etc of acquisition of certain objects**

(1) After section 8 of the Treasure Act 1996 (c. 24) there is inserted—

**"8A Duty to notify coroner of acquisition of certain objects**

(1) A person who—

(a) acquires property in an object, and

(b) believes or has reasonable grounds for believing—

(i) that the object is treasure, and

(ii) that notification in respect of the object has not been given under section 8(1) or this subsection,

must notify the Coroner for Treasure before the end of the notice period.

(2) The notice period is fourteen days beginning with—

(a) the day after the person acquires property in the object; or

(b) if later, the day on which the person first believes or has reason to believe—

(i) that the object is treasure; and

(ii) that notification in respect of the object has not been given under section 8(1) or subsection (1) of this section.

(3) Any person who fails to comply with subsection (1) is guilty of an offence if—

(a) notification in respect of the object has not been given under section 8(1) or subsection (1) of this section; and

(b) there has been no investigation in relation to the object.

(4) Any person guilty of an offence under this section is liable on summary conviction to—

(a) imprisonment for a term not exceeding 51 weeks;

(b) a fine of an amount not exceeding level 5 on the standard scale; or

(c) both.

(5) In proceedings for an offence under this section, it is a defence for the defendant to show that he had, and has continued to have, a reasonable excuse for failing to notify the Coroner for Treasure.

(6) If the office of Coroner for Treasure is vacant, notification under subsection (1) must be given to an Assistant Coroner for Treasure.

(7) In determining for the purposes of this section whether a person has acquired property in an object, section 4 is to be disregarded.

(8) For the purposes of an investigation in relation to an object in respect of which notification has been given under subsection (1), the object is to be presumed, in the absence of evidence to the contrary, to have been found in England and Wales after the commencement of section 4.

(9) This section has effect subject to section 8B.

(10) In this section "investigation" means an investigation under section 26 of the Coroners and Justice Act 2009.

(11) In its application to Northern Ireland this section has effect as if—

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(a) in subsection (1), for "Coroner for Treasure" there were substituted "coroner for the district in which the object is located";

(b) in subsection (3)(b), for "investigation" there were substituted "inquest";

(c) in subsection (4)(a), for "51 weeks" there were substituted "three months";

(d) in subsection (5), for "Coroner for Treasure" there were substituted "coroner";

(e) in subsection (6), for the words from "Coroner for Treasure" to "Assistant Coroner for Treasure" there were substituted "coroner for a district is vacant, the person acting as coroner for that district is the coroner for the purposes of subsection (1)";

(f) in subsection (8), for "investigation" there were substituted "inquest" and for "England and Wales" there were substituted "Northern Ireland";

(g) in subsection (10), for ""investigation" means an investigation under section 26 of the Coroners and Justice Act 2009" there were substituted ""inquest" means an inquest held under section 7"."

(2) In section 10 of that Act (rewards), in subsection (5) (persons to whom reward may be paid), at the end insert—

"(d) any person who gave notice under section 8A in respect of the treasure."

(3) In relation to an offence under section 8A of that Act (inserted by subsection (1) above) committed before the commencement of section 280(2) of the Criminal Justice Act 2003 (c. 44), a reference in the inserted section to 51 weeks is to be read as a reference to three months.

### 31 Code of practice under the Treasure Act 1996

(1) A code of practice under section 11 of the Treasure Act 1996 (c. 24) may make provision to do with objects in respect of which notice is given under section 29(1) or (2).

(2) No civil liability on the part of the Coroner for Treasure arises where he or she delivers an object, or takes any other action, in accordance with a code of practice under section 11 of the Treasure Act 1996.

## CHAPTER 5

FURTHER PROVISION TO DO WITH INVESTIGATIONS AND DEATHS

### 32 Powers of coroners

Schedule 5 makes provision about powers of senior coroners and the Coroner for Treasure.

### 33 Offences

Schedule 6 makes provision about offences relating to jurors, witnesses and evidence.

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### 34 Allowances, fees and expenses

Schedule 7 makes provision about allowances, fees and expenses.

## CHAPTER 6

GOVERNANCE ETC

### 35 Chief Coroner and Deputy Chief Coroners

(1) Schedule 8 makes provision about the appointment etc of the Chief Coroner and Deputy Chief Coroners.

(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise any of the functions of the Lord Chief Justice under Schedule 8.

### 36 Reports and advice to the Lord Chancellor from the Chief Coroner

(1) The Chief Coroner must give the Lord Chancellor a report for each calendar year.

(2) The report must cover—

(a) matters that the Chief Coroner wishes to bring to the attention of the Lord Chancellor;

(b) matters that the Lord Chancellor has asked the Chief Coroner to cover in the report.

(3) The report must contain an assessment for the year of the consistency of standards between coroners areas.

(4) The report must also contain a summary for the year of—

(a) the number and length of—

(i) investigations in respect of which notification was given under subsection (1)(a) or (b) of section 16, and

(ii) investigations that were not concluded or discontinued by the end of the year and in respect of which notification was given under subsection (1)(a) of that section in a previous year,

as well as the reasons for the length of those investigations and the measures taken with a view to keeping them from being unnecessarily lengthy;

(b) the number, nature and outcome of appeals under section 40(1), (3), (4), (5) or (9);

(c) the matters recorded under paragraph 4 of Schedule 5;

(d) the matters reported under paragraph 7 of that Schedule and the responses given under sub-paragraph (2) of that paragraph.

(5) A report for a year under this section must be given to the Lord Chancellor by 1 July in the following year.

(6) The Lord Chancellor must publish each report given under this section and must lay a copy of it before each House of Parliament.

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(7) If requested to do so by the Lord Chancellor, the Chief Coroner must give advice to the Lord Chancellor about particular matters relating to the operation of the coroner system.

### 37 Regulations about training

(1) The Chief Coroner may, with the agreement of the Lord Chancellor, make regulations about the training of—

(a) senior coroners, area coroners and assistant coroners;

(b) the Coroner for Treasure and Assistant Coroners for Treasure;

(c) coroners' officers and other staff assisting persons within paragraph (a) or (b).

(2) The regulations may (in particular) make provision as to—

(a) the kind of training to be undertaken;

(b) the amount of training to be undertaken;

(c) the frequency with which it is to be undertaken.

### 38 Medical Adviser and Deputy Medical Advisers to the Chief Coroner

Schedule 9 makes provision about the appointment etc of the Medical Adviser to the Chief Coroner and Deputy Medical Advisers to the Chief Coroner.

### 39 Inspection of coroner system

(1) It is the duty of inspectors of court administration appointed under section 58(1) of the Courts Act 2003 (c. 39) ("the 2003 Act") to inspect and report to the Lord Chancellor on the operation of the coroner system.

(2) Subsection (1) is not to be read as enabling the inspectors—

(a) to inspect persons making judicial decisions or exercising any judicial discretion;

(b) to inspect the Chief Coroner or a Deputy Chief Coroner carrying out any functions as such.

(3) The Chief Inspector appointed under section 58(3) of the 2003 Act must report to the Lord Chancellor on any matter connected with the operation of the coroner system that the Lord Chancellor refers to the Chief Inspector.

(4) An inspector exercising functions under subsection (1) may—

(a) enter any place of work occupied by a senior coroner or the Coroner for Treasure or by an officer or member of staff provided for a senior coroner or the Coroner for Treasure;

(b) inspect and take copies of any records kept by any of those persons that relate to the operation of the coroner system and are considered by the inspector to be relevant to the discharge of his or her functions.

Paragraph 1(3) of Schedule 10 (under which a reference to a senior coroner may include the Chief Coroner) does not apply for the purposes of paragraph (a).

(5) Subsection (4)(a) does not entitle an inspector—

(a) to be present during an inquest, or a part of an inquest, from which people have been excluded by a direction given by virtue of section 45(3);

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(b) to attend any private deliberations of persons having jurisdiction to make any determination or finding.

(6) Section 61(4) and (5) of the 2003 Act (records kept on computers) applies to inspections under subsection (4)(b) above as it applies to inspections under section 61(2) of that Act (power to inspect court support system records).

(7) The powers conferred by subsection (4) or by virtue of subsection (6) may be exercised at reasonable times only.

(8) If a report under subsection (1) or (3) recommends the taking of any action by a senior coroner or the Coroner for Treasure, the Lord Chancellor may give a direction requiring the coroner to take the action within a period specified in the direction.

### 40 Appeals to the Chief Coroner

(1) An interested person may appeal to the Chief Coroner against a decision made by a senior coroner that falls within subsection (2).

(2) The decisions that fall within this subsection are—

(a) a decision whether to conduct an investigation under this Part into a person's death;

(b) a decision whether to discontinue an investigation under section 4;

(c) a decision whether to resume, under Part 2 of Schedule 1, an investigation suspended under Part 1 of that Schedule;

(d) a decision not to request a post-mortem examination under section 14;

(e) a decision to request a post-mortem examination under that section of a body that has already been the subject of a post-mortem examination, unless the decision is to request an examination of a different kind from the one already carried out;

(f) a decision to give a notice under paragraph 1 of Schedule 5;

(g) a decision whether there should be a jury at an inquest;

(h) a decision whether to exercise a power conferred by virtue of section 45(3)(a) to exclude persons from all or part of an inquest;

(i) a decision embodied in a determination as to the questions mentioned in section 5(1)(a) and (b) (read with section 5(2) where applicable);

(j) a decision embodied in a finding as to the particulars required by the 1953 Act to be registered concerning a death.

(3) An interested person may appeal to the Chief Coroner against a decision made by the Coroner for Treasure (or an Assistant Coroner for Treasure) in connection with—

(a) an object that is or may be treasure or treasure trove, or

(b) an investigation or inquest under Chapter 4 concerning such an object,

including a decision embodied in the determination of a question mentioned in section 26(5)(a) or (b).

(4) An interested person may appeal to the Chief Coroner against a failure to make—

(a) a decision that falls within subsection (2), or

(b) a decision of a kind mentioned in subsection (3).

(5) A person who the coroner decides is not an interested person may appeal to the Chief Coroner against that decision.

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(6) The Lord Chancellor may by order amend subsection (2).

(7) On an appeal under this section the Chief Coroner may consider evidence about any matter that appears to be relevant to the substance of the decision, determination or finding, including evidence that concerns a matter arising after the date of the decision, determination or finding.

(8) On an appeal under this section the Chief Coroner may, if the appeal is allowed, do one or more of the following—

(a) in the case of an appeal against a decision embodied in a determination or finding—

(i) amend the determination or finding, or

(ii) quash the determination or finding and order a fresh investigation under this Part;

(b) in the case of an appeal against a decision not embodied in a determination or finding—

(i) substitute any other decision that could have been made, or

(ii) quash the decision and remit the matter for a fresh decision;

(c) in the case of an appeal against a failure to make a decision—

(i) make any decision that could have been made, or

(ii) remit the matter for a decision to be made;

(d) make any order (including an order as to costs) that the Chief Coroner thinks appropriate.

(9) A party to an appeal under this section may appeal on a question of law to the Court of Appeal from a decision of the Chief Coroner.

(10) On an appeal under subsection (9) the Court of Appeal may—

(a) affirm the decision;

(b) substitute for the decision any decision that the Chief Coroner could have made;

(c) quash the decision and remit the matter to the Chief Coroner for a fresh decision.

### 41 Investigation by Chief Coroner or Coroner for Treasure or by judge, former judge or former coroner

Schedule 10 makes provision for an investigation into a person's death to be carried out by the Chief Coroner or the Coroner for Treasure or by a judge, former judge or former coroner.

### 42 Guidance by the Lord Chancellor

(1) The Lord Chancellor may issue guidance about the way in which the coroner system is expected to operate in relation to interested persons within section 47(2)(a).

(2) Guidance issued under this section may include provision—

(a) about the way in which such persons are able to participate in investigations under this Part into deaths;

(b) about the rights of such persons to appeal under section 40;

(c) about the role of coroners' officers and other staff in helping such persons to participate in investigations and to exercise rights of appeal.

This subsection is not to be read as limiting the power in subsection (1).

(3) The Lord Chancellor may amend or revoke any guidance issued under this section.

(4) The Lord Chancellor must consult the Chief Coroner before issuing, amending or revoking any guidance under this section.

## CHAPTER 7

SUPPLEMENTARY

*Regulations and rules*

### 43 Coroners regulations

(1) The Lord Chancellor may make regulations—

(a) for regulating the practice and procedure at or in connection with investigations under this Part (other than the practice and procedure at or in connection with inquests);

(b) for regulating the practice and procedure at or in connection with examinations under section 14;

(c) for regulating the practice and procedure at or in connection with exhumations under paragraph 6 of Schedule 5.

Regulations under this section are referred to in this Part as "Coroners regulations".

(2) Coroners regulations may be made only if—

(a) the Lord Chief Justice, or

(b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) nominated for the purposes of this subsection by the Lord Chief Justice,

agrees to the making of the regulations.

(3) Coroners regulations may make—

(a) provision for the discharge of an investigation (including provision as to fresh investigations following discharge);

(b) provision for or in connection with the suspension or resumption of investigations;

(c) provision for the delegation by a senior coroner, area coroner or assistant coroner of any of his or her functions;

(d) provision allowing information to be disclosed or requiring information to be given;

(e) provision giving to the Lord Chancellor or the Chief Coroner power to require information from senior coroners;

(f) provision requiring a summary of specified information given to the Chief Coroner by virtue of paragraph (e) to be included in reports under section 36;

(g) provision with respect to the preservation, retention, release or disposal of bodies (including provision with respect to reinterment and with respect to the issue of orders authorising burial);

(h) provision, in relation to authorisations under paragraph 3 of Schedule 5 or entry and search under such authorisations, equivalent to that made by any provision of sections 15 and 16 of the Police and Criminal

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Evidence Act 1984 (c. 60), subject to any modifications the Lord Chancellor thinks appropriate;

(i) provision, in relation to the power of seizure conferred by paragraph 3(4)(a) of that Schedule, equivalent to that made by any provision of section 21 of that Act, subject to any modifications the Lord Chancellor thinks appropriate;

(j) provision about reports under paragraph 7 of that Schedule.

This subsection is not to be read as limiting the power in subsection (1).

(4) Coroners regulations may apply any provisions of Coroners rules.

(5) Where Coroners regulations apply any provisions of Coroners rules, those provisions—

(a) may be applied to any extent;

(b) may be applied with or without modifications;

(c) may be applied as amended from time to time.

**44 Treasure regulations**

(1) The Lord Chancellor may make regulations for regulating the practice and procedure at or in connection with investigations under this Part concerning objects that are or may be treasure or treasure trove (other than the practice and procedure at or in connection with inquests concerning such objects).

Regulations under this section are referred to in this Part as "Treasure regulations".

(2) Treasure regulations may be made only if—

(a) the Lord Chief Justice, or

(b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) nominated for the purposes of this subsection by the Lord Chief Justice,

agrees to the making of the regulations.

(3) Treasure regulations may make—

(a) provision for the discharge of an investigation (including provision as to fresh investigations following discharge);

(b) provision for or in connection with the suspension or resumption of investigations;

(c) provision for the delegation by the Coroner for Treasure (or an Assistant Coroner for Treasure) of any of his or her functions;

(d) provision allowing information to be disclosed or requiring information to be given;

(e) provision giving to the Lord Chancellor or the Chief Coroner power to require information from the Coroner for Treasure;

(f) provision requiring a summary of specified information given to the Chief Coroner by virtue of paragraph (e) to be included in reports under section 36;

(g) provision of the kind mentioned in paragraph (h) or (i) of section 43(3).

This subsection is not to be read as limiting the power in subsection (1).

(4) Treasure regulations may apply any provisions of Coroners rules.

(5) Where Treasure regulations apply any provisions of Coroners rules, those provisions—

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(a) may be applied to any extent;
(b) may be applied with or without modifications;
(c) may be applied as amended from time to time.

**45 Coroners rules**

(1) Rules may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005 (c. 4)—
(a) for regulating the practice and procedure at or in connection with inquests;
(b) as to the way in which, and the time within which, appeals under section 40(1), (3), (4), (5) or (9) are to be brought;
(c) for regulating the practice and procedure at or in connection with appeals under that section.

Rules under this section are referred to in this Part as "Coroners rules".

(2) Coroners rules may make—
(a) provision about evidence (including provision requiring evidence to be given on oath except in prescribed cases);
(b) provision for the discharge of a jury (including provision as to the summoning of new juries following discharge);
(c) provision for the discharge of an inquest (including provision as to fresh inquests following discharge);
(d) provision for or in connection with the adjournment or resumption of inquests;
(e) provision for a senior coroner to have power to give a direction, in proceedings at an inquest, allowing or requiring a name or other matter not to be disclosed except to persons specified in the direction;
(f) provision for the delegation by—
(i) a senior coroner, area coroner or assistant coroner, or
(ii) the Coroner for Treasure (or an Assistant Coroner for Treasure),
of any of his or her functions, except for functions that involve making judicial decisions or exercising any judicial discretion;
(g) provision with respect to the disclosure of information;
(h) provision for persons to be excused from service as jurors at inquests in cases specified in the rules;
(i) provision as to the matters to be taken into account by the Coroner for Treasure in deciding whether to hold an inquest concerning an object that is or may be treasure or treasure trove;
(j) provision for requiring permission to be given for the making of an appeal to the Court of Appeal under any provision of this Part.

(3) Coroners rules may make provision conferring power on a senior coroner or the Coroner for Treasure—
(a) to give a direction excluding specified persons from an inquest, or part of an inquest, if the coroner is of the opinion that the interests of national security so require;
(b) to give a direction excluding specified persons from an inquest during the giving of evidence by a witness under the age of 18, if the coroner is of the opinion that doing so would be likely to improve the quality of the witness's evidence.

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In this subsection "specified persons" means persons of a description specified in the direction, or all persons except those of a description specified in the direction.

(4) Subsections (2) and (3) are not to be read as limiting the power in subsection (1).

(5) Coroners rules may apply—

(a) any provisions of Coroners regulations;

(b) any provisions of Treasure regulations;

(c) any rules of court that relate to proceedings other than inquests.

(6) Where any provisions or rules are applied by virtue of subsection (5), they may be applied—

(a) to any extent;

(b) with or without modifications;

(c) as amended from time to time.

(7) Practice directions may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 (c. 4) on any matter that could otherwise be included in Coroners rules.

(8) Coroners rules may, instead of providing for a matter, refer to provision made or to be made by practice directions under subsection (7).

(9) In this section "rules of court" include any provision governing the practice and procedure of a court that is made by or under an enactment.

*Coroner of the Queen's household*

**46 Abolition of the office of coroner of the Queen's household**

The office of coroner of the Queen's household is abolished.

*Interpretation*

**47 "Interested person"**

(1) This section applies for the purposes of this Part.

(2) "Interested person", in relation to a deceased person or an investigation or inquest under this Part into a person's death, means—

(a) a spouse, civil partner, partner, parent, child, brother, sister, grandparent, grandchild, child of a brother or sister, stepfather, stepmother, half-brother or half-sister;

(b) a personal representative of the deceased;

(c) a medical examiner exercising functions in relation to the death of the deceased;

(d) a beneficiary under a policy of insurance issued on the life of the deceased;

(e) the insurer who issued such a policy of insurance;

(f) a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so;

(g) in a case where the death may have been caused by—

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(i) an injury received in the course of an employment, or
(ii) a disease prescribed under section 108 of the Social Security Contributions and Benefits Act 1992 (c. 4) (benefit in respect of prescribed industrial diseases, etc),

a representative of a trade union of which the deceased was a member at the time of death;

(h) a person appointed by, or representative of, an enforcing authority;
(i) where subsection (3) applies, a chief constable;
(j) where subsection (4) applies, a Provost Marshal;
(k) where subsection (5) applies, the Independent Police Complaints Commission;
(l) a person appointed by a Government department to attend an inquest into the death or to assist in, or provide evidence for the purposes of, an investigation into the death under this Part;
(m) any other person who the senior coroner thinks has a sufficient interest.

(3) This subsection applies where it appears that a person has or may have committed—
(a) a homicide offence involving the death of the deceased, or
(b) a related offence (other than a service offence).

(4) This subsection applies where it appears that a person has or may have committed—
(a) the service equivalent of a homicide offence involving the death of the deceased, or
(b) a service offence that is a related offence.

(5) This subsection applies where the death of the deceased is or has been the subject of an investigation managed or carried out by the Independent Police Complaints Commission in accordance with Part 3 of Schedule 3 to the Police Reform Act 2002 (c. 30), including that Part as extended or applied by or under any statutory provision (whenever made).

(6) "Interested person", in relation to an object that is or may be treasure or treasure trove, or an investigation or inquest under Chapter 4 concerning such an object, means—
(a) the British Museum, if the object was found or is believed to have been found in England;
(b) the National Museum of Wales, if the object was found or is believed to have been found in Wales;
(c) the finder of the object or any person otherwise involved in the find;
(d) the occupier, at the time the object was found, of the land where it was found or is believed to have been found;
(e) a person who had an interest in that land at that time or who has had such an interest since;
(f) any other person who the Coroner for Treasure thinks has a sufficient interest.

(7) For the purposes of this section, a person is the partner of a deceased person if the two of them (whether of different sexes or the same sex) were living as partners in an enduring relationship at the time of the deceased person's death.

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**48 Interpretation: general**

(1) In this Part, unless the context otherwise requires—

"the 1953 Act" means the Births and Deaths Registration Act 1953 (c. 20);

"the 1988 Act" means the Coroners Act 1988 (c. 13);

"active service" means service in—

(a) an action or operation against an enemy (within the meaning given by section 374 of the Armed Forces Act 2006 (c. 52)),

(b) an operation outside the British Islands for the protection of life or property, or

(c) the military occupation of a foreign country or territory;

"area", in relation to a senior coroner, area coroner or assistant coroner, means the coroner area for which that coroner is appointed;

"area coroner" means a person appointed under paragraph 2(3) of Schedule 3;

"assistant coroner" means a person appointed under paragraph 2(4) of Schedule 3;

"Assistant Coroner for Treasure" means an assistant coroner, designated under paragraph 7 of Schedule 4, acting in the capacity of Assistant Coroner for Treasure;

"body" includes body parts;

"chief constable" means—

(a) a chief officer of police (within the meaning given in section 101(1) of the Police Act 1996 (c. 16));

(b) the Chief Constable of the Ministry of Defence Police;

(c) the Chief Constable of the Civil Nuclear Constabulary;

(d) the Chief Constable of the British Transport Police;

"the Chief Coroner" means a person appointed under paragraph 1 of Schedule 8;

"the Common Council" means the Common Council of the City of London, and "common councillor" is to be read accordingly;

"coroner area" is to be read in accordance with paragraph 1 of Schedule 2;

"the Coroner for Treasure" means a person appointed under paragraph 1 of Schedule 4;

"Coroners regulations" means regulations under section 43;

"Coroners rules" means rules under section 45;

"the coroner system" means the system of law and administration relating to investigations and inquests under this Part;

"the court of trial" means—

(a) in relation to an offence (other than a service offence) that is tried summarily, the magistrates' court by which the offence is tried;

(b) in relation to an offence tried on indictment, the Crown Court;

(c) in relation to a service offence, a commanding officer, a Court Martial or the Service Civilian Court (depending on the person before whom, or court before which, it is tried);

"Deputy Chief Coroner" means a person appointed under paragraph 2 of Schedule 8;

"document" includes information stored in an electronic form;

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"enforcing authority" has the meaning given by section 18(7) of the Health and Safety at Work etc. Act 1974 (c. 37);

"functions" includes powers and duties;

"homicide offence" has the meaning given in paragraph 1(6) of Schedule 1;

"interested person" is to be read in accordance with section 47;

"land" includes premises within the meaning of the Police and Criminal Evidence Act 1984 (c. 60);

"local authority" means—

(a) in relation to England, a county council, the council of any district comprised in an area for which there is no county council, a London borough council, the Common Council or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council;

"medical examiner" means a person appointed under section 19;

"person", in relation to an offence of corporate manslaughter, includes an organisation;

"prosecuting authority" means—

(a) the Director of Public Prosecutions, or

(b) a person of a description prescribed by an order made by the Lord Chancellor;

"related offence" has the meaning given in paragraph 1(6) of Schedule 1;

"relevant authority", in relation to a coroner area, has the meaning given by paragraph 3 of Schedule 2 (and see paragraph 2 of Schedule 22);

"senior coroner" means a person appointed under paragraph 1 of Schedule 3;

"the service equivalent of a homicide offence" has the meaning given in paragraph 1(6) of Schedule 1;

"service offence" has the meaning given by section 50(2) of the Armed Forces Act 2006 (c. 52) (read without regard to any order under section 380 of that Act) and also includes an offence under—

(a) Part 2 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or paragraph 4(6) of Schedule 5A to that Act,

(b) Part 2 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or paragraph 4(6) of Schedule 5A to that Act, or

(c) Part 1 or section 47K of the Naval Discipline Act 1957 (c. 53) or paragraph 4(6) of Schedule 4A to that Act;

"service police force" means—

(a) the Royal Navy Police,

(b) the Royal Military Police, or

(c) the Royal Air Force Police;

"state detention" has the meaning given by subsection (2);

"statutory provision" means provision contained in, or in an instrument made under, any Act (including this Act);

"treasure" means anything that is treasure for the purposes of the Treasure Act 1996 (c. 24) (and accordingly does not include anything found before 24 September 1997);

"Treasure regulations" means regulations under section 44;

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"treasure trove" does not include anything found on or after 24 September 1997.

(2) A person is in state detention if he or she is compulsorily detained by a public authority within the meaning of section 6 of the Human Rights Act 1998 (c. 42).

(3) For the purposes of this Part, the area of the Common Council is to be treated as including the Inner Temple and the Middle Temple.

(4) A reference in this Part to a coroner who is responsible for conducting an investigation under this Part into a person's death is to be read as a reference to the coroner who is under a duty to conduct the investigation, or who would be under such a duty but for the suspension of the investigation under this Part.

(5) A reference in this Part to producing or providing a document, in relation to information stored in an electronic form, is to be read as a reference to producing or providing a copy of the information in a legible form.

*Northern Ireland and Scotland amendments*

**49 Amendments to the Coroners Act (Northern Ireland) 1959**

(1) In section 13 of the Coroners Act (Northern Ireland) 1959 (c. 15) (coroner may hold inquest), in subsection (1), for the words from "a coroner within whose district" to "an unexpected or unexplained death" substitute "a coroner—

(a) who is informed that the body of a deceased person is lying within his district; or

(b) in whose district an unexpected or unexplained death".

(2) Schedule 11 inserts provisions into the Coroners Act (Northern Ireland) 1959 corresponding to certain provisions in Schedules 5 and 6.

**50 Amendments to the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976**

(1) The Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14) is amended as follows.

(2) After section 1 insert—

**"1A Death of service personnel abroad**

(1) Subsection (4) applies where—

(a) the Lord Advocate is notified under section 12(4) or (5) of the Coroners and Justice Act 2009 in relation to a death,

(b) the death is within subsection (2) or (3), and

(c) the Lord Advocate—

(i) decides that it would be appropriate in the public interest for an inquiry under this Act to be held into the circumstances of the death, and

(ii) does not reverse that decision.

(2) A death is within this subsection if the person who has died was, at the time of the death, in legal custody (as construed by reference to section 1(4)).

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(3) A death is within this subsection if it appears to the Lord Advocate that the death—

(a) was sudden, suspicious or unexplained, or

(b) occurred in circumstances such as to give rise to serious public concern.

(4) The procurator fiscal for the appropriate district must—

(a) investigate the circumstances of the death, and

(b) apply to the sheriff for the holding of an inquiry under this Act into those circumstances.

(5) But subsection (4) does not extend to a death within subsection (2) if the Lord Advocate is satisfied that the circumstances of the death have been sufficiently established in the course of any criminal proceedings against any person in respect of the death.

(6) An application under subsection (4)(b)—

(a) is to be made to the sheriff of the appropriate sheriffdom,

(b) must narrate briefly the circumstances of the death so far as known to the procurator fiscal,

(c) may relate to more than one death if the deaths occurred in the same or similar circumstances.

(7) It is for the Lord Advocate to determine the appropriate district and appropriate sheriffdom for the purposes of subsections (4) and (6)(a)."

(3) In section 2 (citation of witnesses for precognition), in subsection (1), after "section 1(1)" insert "or 1A(4)".

(4) In section 3 (holding of public inquiry), in subsections (1) and (3), after "section 1" insert "or 1A".

(5) In section 6 (sheriff's determination etc), in subsection (4)(a)(i), after "section 1" insert "or 1A".

*Amendments of Access to Justice Act 1999*

**51 Public funding for advocacy at certain inquests**

(1) Schedule 2 to the Access to Justice Act 1999 (c. 22) (Community Legal Service: excluded cases) is amended as follows.

(2) In paragraph 2, at the end insert ", and

(5) proceedings at an inquest under Part 1 of the Coroners and Justice Act 2009 to which sub-paragraph (1), (2) or (3) of paragraph 4 applies."

(3) After paragraph 3 there is inserted—

"4 (1) This sub-paragraph applies to an inquest into the death of a person who at the time of the death—

(a) was detained at a custodial institution or in a custody area at a court or police station,

(b) was detained at a removal centre or short-term holding centre,

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(c) was being transferred or held in pursuance of prison escort arrangements or immigration escort arrangements,

(d) was detained in secure accommodation,

(e) was a detained patient, or

(f) was in service custody.

(2) This sub-paragraph applies to an inquest into the death of a person that occurred in the course of the person's arrest by a constable or otherwise in the course of the execution or purported execution of any functions by a constable.

(3) This sub-paragraph applies to an inquest into the death of a person who at the time of the death was subject to service law by virtue of section 367 or 369(2)(a) of the Armed Forces Act 2006 and was engaged in active service.

(4) Paragraph 2(5) does not authorise the funding of the provision of services to anyone who is not an interested person within section 47(2)(a) of the Coroners and Justice Act 2009.

(5) In this paragraph—

"active service" means service in—

(a) an action or operation against an enemy (within the meaning given by section 374 of the Armed Forces Act 2006),

(b) an operation outside the British Islands for the protection of life or property, or

(c) the military occupation of a foreign country or territory;

"custodial institution" means a prison, a young offender institution, a secure training centre or a remand centre;

"detained patient" means a person who is detained in any premises under Part 2 or 3 or section 135(3B) or 136(4) of the Mental Health Act 1983;

"immigration escort arrangements" means arrangements made under section 156 of the Immigration and Asylum Act 1999;

"prison escort arrangements" means arrangements made under section 80 of the Criminal Justice Act 1991 or under section 102 or 118 of the Criminal Justice and Public Order Act 1994;

"removal centre" and "short-term holding facility" have the meaning given by section 147 of the Immigration and Asylum Act 1999;

"secure accommodation" means accommodation, not consisting of or forming part of a custodial institution, provided for the purpose of restricting the liberty of persons under the age of 18."

## PART 2

CRIMINAL OFFENCES

## CHAPTER 1

MURDER, INFANTICIDE AND SUICIDE

*Partial defence to murder: diminished responsibility*

### 52 Persons suffering from diminished responsibility (England and Wales)

(1) In section 2 of the Homicide Act 1957 (c. 11) (persons suffering from diminished responsibility), for subsection (1) substitute—

"(1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—

(a) arose from a recognised medical condition,

(b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and

(c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are—

(a) to understand the nature of D's conduct;

(b) to form a rational judgment;

(c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct."

(2) In section 6 of the Criminal Procedure (Insanity) Act 1964 (c. 84) (evidence by prosecution of insanity or diminished responsibility), in paragraph (b) for "mind" substitute "mental functioning".

### 53 Persons suffering from diminished responsibility (Northern Ireland)

(1) Section 5 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) (effect, in cases of homicide, of impaired mental responsibility) is amended as follows.

(2) For subsection (1) substitute—

"(1) A person ("D") who kills or is a party to the killing of another is not to be convicted of murder if D was suffering from an abnormality of mental functioning which—

(a) arose from a recognised mental condition,

(b) substantially impaired D's ability to do one or more of the things mentioned in subsection (1A), and

(c) provides an explanation for D's acts and omissions in doing or being a party to the killing.

(1A) Those things are—

(a) to understand the nature of D's conduct;

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(b) to form a rational judgment;
(c) to exercise self-control.

(1B) For the purposes of subsection (1)(c), an abnormality of mental functioning provides an explanation for D's conduct if it causes, or is a significant contributory factor in causing, D to carry out that conduct.

(1C) Where, but for this section, D would be liable, whether as principal or as accessory, to be convicted of murder, D is liable instead to be convicted of manslaughter."

(3) In subsection (2), for "subsection (1)" substitute "subsection (1C)".

(4) In subsections (4) and (5), for "mental abnormality" substitute "abnormality of mental functioning".

*Partial defence to murder: loss of control*

**54 Partial defence to murder: loss of control**

(1) Where a person ("D") kills or is a party to the killing of another ("V"), D is not to be convicted of murder if—
(a) D's acts and omissions in doing or being a party to the killing resulted from D's loss of self-control,
(b) the loss of self-control had a qualifying trigger, and
(c) a person of D's sex and age, with a normal degree of tolerance and self-restraint and in the circumstances of D, might have reacted in the same or in a similar way to D.

(2) For the purposes of subsection (1)(a), it does not matter whether or not the loss of control was sudden.

(3) In subsection (1)(c) the reference to "the circumstances of D" is a reference to all of D's circumstances other than those whose only relevance to D's conduct is that they bear on D's general capacity for tolerance or self-restraint.

(4) Subsection (1) does not apply if, in doing or being a party to the killing, D acted in a considered desire for revenge.

(5) On a charge of murder, if sufficient evidence is adduced to raise an issue with respect to the defence under subsection (1), the jury must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) For the purposes of subsection (5), sufficient evidence is adduced to raise an issue with respect to the defence if evidence is adduced on which, in the opinion of the trial judge, a jury, properly directed, could reasonably conclude that the defence might apply.

(7) A person who, but for this section, would be liable to be convicted of murder is liable instead to be convicted of manslaughter.

(8) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder does not affect the question whether the killing amounted to murder in the case of any other party to it.

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### 55 Meaning of "qualifying trigger"

(1) This section applies for the purposes of section 54.

(2) A loss of self-control had a qualifying trigger if subsection (3), (4) or (5) applies.

(3) This subsection applies if D's loss of self-control was attributable to D's fear of serious violence from V against D or another identified person.

(4) This subsection applies if D's loss of self-control was attributable to a thing or things done or said (or both) which—

(a) constituted circumstances of an extremely grave character, and

(b) caused D to have a justifiable sense of being seriously wronged.

(5) This subsection applies if D's loss of self-control was attributable to a combination of the matters mentioned in subsections (3) and (4).

(6) In determining whether a loss of self-control had a qualifying trigger—

(a) D's fear of serious violence is to be disregarded to the extent that it was caused by a thing which D incited to be done or said for the purpose of providing an excuse to use violence;

(b) a sense of being seriously wronged by a thing done or said is not justifiable if D incited the thing to be done or said for the purpose of providing an excuse to use violence;

(c) the fact that a thing done or said constituted sexual infidelity is to be disregarded.

(7) In this section references to "D" and "V" are to be construed in accordance with section 54.

### 56 Abolition of common law defence of provocation

(1) The common law defence of provocation is abolished and replaced by sections 54 and 55.

(2) Accordingly, the following provisions cease to have effect—

(a) section 3 of the Homicide Act 1957 (c. 11) (questions of provocation to be left to the jury);

(b) section 7 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) (questions of provocation to be left to the jury).

*Infanticide*

### 57 Infanticide (England and Wales)

(1) Section 1 of the Infanticide Act 1938 (c. 36) (offence of infanticide) is amended as follows.

(2) In subsection (1)—

(a) for "notwithstanding that" substitute "if", and

(b) after "murder" insert "or manslaughter".

(3) In subsection (2)—

(a) for "notwithstanding that" substitute "if", and

(b) after "murder" insert "or manslaughter".

**58 Infanticide (Northern Ireland)**

(1) Section 1 of the Infanticide Act (Northern Ireland) 1939 (c. 5) (offence of infanticide) is amended as follows.

(2) In subsection (1)—
(a) for "notwithstanding that" substitute "if", and
(b) after "murder" insert "or manslaughter".

(3) In subsection (2)—
(a) for "notwithstanding that" substitute "if", and
(b) after "murder" insert "or manslaughter".

*Suicide*

**59 Encouraging or assisting suicide (England and Wales)**

(1) The Suicide Act 1961 (c. 60) is amended as follows.

(2) In section 2 (criminal liability for complicity in another's suicide), for subsection (1) substitute—

"(1) A person ("D") commits an offence if—
(a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
(b) D's act was intended to encourage or assist suicide or an attempt at suicide.

(1A) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.

(1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(1C) An offence under this section is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years."

(3) In subsection (2) of that section, for "it" to the end substitute "of a person it is proved that the deceased person committed suicide, and the accused committed an offence under subsection (1) in relation to that suicide, the jury may find the accused guilty of the offence under subsection (1)."

(4) After that section insert—

**"2A Acts capable of encouraging or assisting**

(1) If D arranges for a person ("D2") to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is also to be treated for the purposes of this Act as having done it.

(2) Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this Act it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both).

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(3) A reference in this Act to a person ("P") doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening another person or otherwise putting pressure on another person to commit or attempt suicide.

**2B Course of conduct**

A reference in this Act to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly."

**60 Encouraging or assisting suicide (Northern Ireland)**

(1) The Criminal Justice Act (Northern Ireland) 1966 (c. 20) is amended as follows.

(2) In section 13 (criminal liability for complicity in another's suicide), for subsection (1) substitute—

"(1) A person ("D") commits an offence if—

(a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and

(b) D's act was intended to encourage or assist suicide or an attempt at suicide.

(1A) The person referred to in subsection (1)(a) need not be a specific person (or class of persons) known to, or identified by, D.

(1B) D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs.

(1C) An offence under this section is triable on indictment and a person convicted of such an offence is liable to imprisonment for a term not exceeding 14 years."

(3) In subsection (2) of that section, for "it" to the end substitute "of a person it is proved that the deceased person committed suicide, and the person charged committed an offence under subsection (1) in relation to that suicide, the jury may find the person charged guilty of the offence under subsection (1)."

(4) After that section insert—

**"13A Acts capable of encouraging or assisting**

(1) If D arranges for a person ("D2") to do an act that is capable of encouraging or assisting the suicide or attempted suicide of another person and D2 does that act, D is also to be treated for the purposes of section 13 as having done it.

(2) Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of section 13 and this section it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both).

(3) A reference in section 13 or this section to a person ("P") doing an act that is capable of encouraging the suicide or attempted suicide of another person includes a reference to P doing so by threatening

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another person or otherwise putting pressure on another person to commit or attempt suicide.

**13B Course of conduct**

A reference in section 13 or 13A to an act includes a reference to a course of conduct, and a reference to doing an act is to be read accordingly."

**61 Encouraging or assisting suicide: information society services**

Schedule 12 makes special provision in connection with the operation of section 2 of the Suicide Act 1961 (c. 60) and section 13 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) in relation to persons providing information society services within the meaning of that Schedule.

## CHAPTER 2

IMAGES OF CHILDREN

*Prohibited images*

**62 Possession of prohibited images of children**

(1) It is an offence for a person to be in possession of a prohibited image of a child.

(2) A prohibited image is an image which—
(a) is pornographic,
(b) falls within subsection (6), and
(c) is grossly offensive, disgusting or otherwise of an obscene character.

(3) An image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.

(4) Where (as found in the person's possession) an image forms part of a series of images, the question whether the image is of such a nature as is mentioned in subsection (3) is to be determined by reference to—
(a) the image itself, and
(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images.

(5) So, for example, where—
(a) an image forms an integral part of a narrative constituted by a series of images, and
(b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the image may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

(6) An image falls within this subsection if it—
(a) is an image which focuses solely or principally on a child's genitals or anal region, or

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(b) portrays any of the acts mentioned in subsection (7).

(7) Those acts are—

(a) the performance by a person of an act of intercourse or oral sex with or in the presence of a child;

(b) an act of masturbation by, of, involving or in the presence of a child;

(c) an act which involves penetration of the vagina or anus of a child with a part of a person's body or with anything else;

(d) an act of penetration, in the presence of a child, of the vagina or anus of a person with a part of a person's body or with anything else;

(e) the performance by a child of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary);

(f) the performance by a person of an act of intercourse or oral sex with an animal (whether dead or alive or imaginary) in the presence of a child.

(8) For the purposes of subsection (7), penetration is a continuing act from entry to withdrawal.

(9) Proceedings for an offence under subsection (1) may not be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

**63 Exclusion of classified film etc**

(1) Section 62(1) does not apply to excluded images.

(2) An "excluded image" is an image which forms part of a series of images contained in a recording of the whole or part of a classified work.

(3) But such an image is not an "excluded image" if—

(a) it is contained in a recording of an extract from a classified work, and

(b) it is of such a nature that it must reasonably be assumed to have been extracted (whether with or without other images) solely or principally for the purpose of sexual arousal.

(4) Where an extracted image is one of a series of images contained in the recording, the question whether the image is of such a nature as is mentioned in subsection (3)(b) is to be determined by reference to—

(a) the image itself, and

(b) (if the series of images is such as to be capable of providing a context for the image) the context in which it occurs in the series of images;

and section 62(5) applies in connection with determining that question as it applies in connection with determining whether an image is pornographic.

(5) In determining for the purposes of this section whether a recording is a recording of the whole or part of a classified work, any alteration attributable to—

(a) a defect caused for technical reasons or by inadvertence on the part of any person, or

(b) the inclusion in the recording of any extraneous material (such as advertisements),

is to be disregarded.

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(6) Nothing in this section is to be taken as affecting any duty of a designated authority to have regard to section 62 (along with other enactments creating criminal offences) in determining whether a video work is suitable for a classification certificate to be issued in respect of it.

(7) In this section—

"classified work" means (subject to subsection (8)) a video work in respect of which a classification certificate has been issued by a designated authority (whether before or after the commencement of this section);

"classification certificate" and "video work" have the same meaning as in the Video Recordings Act 1984 (c. 39);

"designated authority" means an authority which has been designated by the Secretary of State under section 4 of that Act;

"extract" includes an extract consisting of a single image;

"pornographic" has the same meaning as in section 62;

"recording" means any disc, tape or other device capable of storing data electronically and from which images may be produced (by any means).

(8) Section 22(3) of the Video Recordings Act 1984 (effect of alterations) applies for the purposes of this section as it applies for the purposes of that Act.

### 64 Defences

(1) Where a person is charged with an offence under section 62(1), it is a defence for the person to prove any of the following matters—

(a) that the person had a legitimate reason for being in possession of the image concerned;

(b) that the person had not seen the image concerned and did not know, nor had any cause to suspect, it to be a prohibited image of a child;

(c) that the person—

(i) was sent the image concerned without any prior request having been made by or on behalf of the person, and

(ii) did not keep it for an unreasonable time.

(2) In this section "prohibited image" has the same meaning as in section 62.

### 65 Meaning of "image" and "child"

(1) The following apply for the purposes of sections 62 to 64.

(2) "Image" includes—

(a) a moving or still image (produced by any means), or

(b) data (stored by any means) which is capable of conversion into an image within paragraph (a).

(3) "Image" does not include an indecent photograph, or indecent pseudo-photograph, of a child.

(4) In subsection (3) "indecent photograph" and "indecent pseudo-photograph" are to be construed—

(a) in relation to England and Wales, in accordance with the Protection of Children Act 1978 (c. 37), and

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(b) in relation to Northern Ireland, in accordance with the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)).

(5) "Child", subject to subsection (6), means a person under the age of 18.

(6) Where an image shows a person the image is to be treated as an image of a child if—

(a) the impression conveyed by the image is that the person shown is a child, or

(b) the predominant impression conveyed is that the person shown is a child despite the fact that some of the physical characteristics shown are not those of a child.

(7) References to an image of a person include references to an image of an imaginary person.

(8) References to an image of a child include references to an image of an imaginary child.

**66 Penalties**

(1) This section has effect where a person is guilty of an offence under section 62(1).

(2) The offender is liable—

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 3 years or a fine, or both.

(3) "The relevant period" means—

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

**67 Entry, search, seizure and forfeiture**

(1) The following provisions of the Protection of Children Act 1978 (c. 37) apply in relation to prohibited images of children as they apply in relation to indecent photographs of children (within the meaning of that Act)—

(a) section 4 (entry, search and seizure);

(b) the Schedule (forfeiture of photographs).

(2) The following provisions of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) apply in relation to prohibited images of children as they apply in relation to indecent photographs of children (within the meaning of that Order)—

(a) Article 4 (entry, search and seizure);

(b) the Schedule (forfeiture of photographs).

(3) In this section "prohibited image of a child" means a prohibited image of a child to which section 62(1) applies.

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### 68 Special rules relating to providers of information society services

Schedule 13 makes special provision in connection with the operation of section 62(1) in relation to persons providing information society services within the meaning of that Schedule.

*Indecent pseudo-photographs of children*

### 69 Indecent pseudo-photographs of children: marriage etc

(1) In section 1A of the Protection of Children Act 1978 (c. 37) (making of indecent photograph of child etc: marriage and other relationships), after "photograph", in each place it occurs, insert "or pseudo-photograph".

(2) In section 160A of the Criminal Justice Act 1988 (c. 33) (possession of indecent photograph of child etc: marriage and other relationships), after "photograph", in each place it occurs, insert "or pseudo-photograph".

(3) In Article 15A of the Criminal Justice (Evidence, etc) (Northern Ireland) Order 1988 (S.I. 1988/1847 (N.I. 17)) (marriage and other relationships), after "photograph", in each place it occurs, insert "or pseudo-photograph".

(4) In Article 3B of the Protection of Children (Northern Ireland) Order 1978 (S.I. 1978/1047 (N.I. 17)) (marriage and other relationships), after "photograph", in each place it occurs, insert "or pseudo-photograph".

## CHAPTER 3

OTHER OFFENCES

### 70 Genocide, crimes against humanity and war crimes

(1) The International Criminal Court Act 2001 (c. 17) is amended as follows.

(2) In sections 53 and 60 (trial and punishment of main offences), after subsection (6) add—

"(7) Subsections (5) and (6) are subject to section 65B (restriction of penalties in relation to retrospective application of certain offences)."

(3) After section 65 insert—

**"65A Retrospective application of certain offences**

(1) Sections 51 and 58 apply to acts committed on or after 1 January 1991.

(2) But those sections do not apply to a crime against humanity, or a war crime within article 8.2(b) or (e), committed by a person before 1 September 2001 unless, at the time the act constituting that crime was committed, the act amounted in the circumstances to a criminal offence under international law.

(3) Section 52 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of England and Wales but for this section.

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(4) Section 59 applies to conduct in which a person engaged on or after 1 January 1991, and in subsections (2) and (3) of that section references to an offence include an act or conduct which would not constitute an offence under the law of Northern Ireland but for this section.

(5) Any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence—

(a) applies to conduct in which a person engaged on or after 1 January 1991, and

(b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.

(6) But sections 52 and 59, and any enactment or rule of law relating to an offence ancillary to a relevant Part 5 offence, do not apply to—

(a) conduct in which the person engaged before 1 September 2001, or

(b) conduct in which the person engaged on or after that date which was ancillary to an act or conduct which—

(i) was committed or engaged in before that date, and

(ii) would not constitute a relevant Part 5 offence, or fall within section 52(2) or 59(2), but for this section,

unless, at the time the person engaged in the conduct, it amounted in the circumstances to a criminal offence under international law.

(7) Section 65, so far as it has effect in relation to relevant Part 5 offences—

(a) applies to failures to exercise control of the kind mentioned in section 65(2) or (3) which occurred on or after 1 January 1991, and

(b) applies even if the act or conduct constituting the relevant Part 5 offence would not constitute such an offence but for this section.

(8) But section 65, so far as it has effect in relation to relevant Part 5 offences, does not apply to a failure to exercise control of the kind mentioned in section 65(2) or (3) which occurred before 1 September 2001 unless, at the time the failure occurred, it amounted in the circumstances to a criminal offence under international law.

(9) In this section "relevant Part 5 offence" means an offence under section 51, 52, 58 or 59 or an offence ancillary to such an offence.

**65B Modification of penalties: provision supplemental to section 65A**

(1) In the case of a pre-existing E&W offence committed before 1 September 2001, in section 53(6) "30 years" is to be read as "14 years".

(2) In the case of an offence of the kind mentioned in section 55(1)(d) which is ancillary to a pre-existing E&W offence committed before 1 September 2001, nothing in section 53(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act 1967.

(3) In the case of a pre-existing NI offence committed before 1 September 2001, in section 60(6) "30 years" is to be read as "14 years".

(4) In the case of an offence of the kind mentioned in section 62(1)(d) which is ancillary to a pre-existing NI offence committed before 1 September

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2001, nothing in section 60(5) and (6) disapplies the penalties provided for in sections 4 and 5 of the Criminal Law Act (Northern Ireland) 1967.

(5) In this section—

"pre-existing E&W offence" means—

(a) an offence under section 51 on account of an act constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969;

(b) an offence under section 51 on account of an act constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of the Conventions);

(c) an offence of a kind mentioned in section 55(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above;

"pre-existing NI offence" means—

(a) an offence under section 58 on account of an act constituting genocide, if at the time the act was committed it also amounted to an offence under section 1 of the Genocide Act 1969;

(b) an offence under section 58 on account of an act constituting a war crime, if at the time the act was committed it also amounted to an offence under section 1 of the Geneva Conventions Act 1957 (grave breaches of the Conventions);

(c) an offence of a kind mentioned in section 62(1)(a) to (c) which is ancillary to an offence within paragraph (a) or (b) above."

(4) After section 67 insert—

**"67A Supplemental provision about UK residents**

(1) To the extent that it would not otherwise be the case, the following individuals are to be treated for the purposes of this Part as being resident in the United Kingdom—

(a) an individual who has indefinite leave to remain in the United Kingdom;

(b) any other individual who has made an application for such leave (whether or not it has been determined) and who is in the United Kingdom;

(c) an individual who has leave to enter or remain in the United Kingdom for the purposes of work or study and who is in the United Kingdom;

(d) an individual who has made an asylum claim, or a human rights claim, which has been granted;

(e) any other individual who has made an asylum claim or human rights claim (whether or not the claim has been determined) and who is in the United Kingdom;

(f) an individual named in an application for indefinite leave to remain, an asylum claim or a human rights claim as a

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dependant of the individual making the application or claim if—

(i) the application or claim has been granted, or

(ii) the named individual is in the United Kingdom (whether or not the application or claim has been determined);

(g) an individual who would be liable to removal or deportation from the United Kingdom but cannot be removed or deported because of section 6 of the Human Rights Act 1998 or for practical reasons;

(h) an individual—

(i) against whom a decision to make a deportation order under section 5(1) of the Immigration Act 1971 by virtue of section 3(5)(a) of that Act (deportation conducive to the public good) has been made,

(ii) who has appealed against the decision to make the order (whether or not the appeal has been determined), and

(iii) who is in the United Kingdom;

(i) an individual who is an illegal entrant within the meaning of section 33(1) of the Immigration Act 1971 or who is liable to removal under section 10 of the Immigration and Asylum Act 1999;

(j) an individual who is detained in lawful custody in the United Kingdom.

(2) When determining for the purposes of this Part whether any other individual is resident in the United Kingdom regard is to be had to all relevant considerations including—

(a) the periods during which the individual has been or intends to be in the United Kingdom,

(b) the purposes for which the individual is, has been or intends to be in the United Kingdom,

(c) whether the individual has family or other connections to the United Kingdom and the nature of those connections, and

(d) whether the individual has an interest in residential property located in the United Kingdom.

(3) In this section—

"asylum claim" means—

(a) a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention for the claimant to be removed from, or required to leave, the United Kingdom, or

(b) a claim that the claimant would face a real risk of serious harm if removed from the United Kingdom;

"Convention rights" means the rights identified as Convention rights by section 1 of the Human Rights Act 1998;

"detained in lawful custody" means—

(a) detained in pursuance of a sentence of imprisonment, detention or custody for life or a detention and training order,

(b) remanded in or committed to custody by an order of a court,

(c) detained pursuant to an order under section 2 of the Colonial Prisoners Removal Act 1884 or a warrant under section 1 or 4A of the Repatriation of Prisoners Act 1984,

(d) detained under Part 3 of the Mental Health Act 1983 or by virtue of an order under section 5 of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14 of the Criminal Appeal Act 1968 (hospital orders, etc),

(e) detained by virtue of an order under Part 6 of the Criminal Procedure (Scotland) Act 1995 (other than an order under section 60C) or a hospital direction under section 59A of that Act, and includes detention by virtue of the special restrictions set out in Part 10 of the Mental Health (Care and Treatment) (Scotland) Act 2003 to which a person is subject by virtue of an order under section 59 of the Criminal Procedure (Scotland) Act 1995, or

(f) detained under Part 3 of the Mental Health (Northern Ireland) Order 1986 or by virtue of an order under section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980;

"human rights claim" means a claim that to remove the claimant from, or to require the claimant to leave, the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Convention) as being incompatible with the person's Convention rights;

"the Refugee Convention" means the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention;

"serious harm" has the meaning given by article 15 of Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted;

and a reference to having leave to enter or remain in the United Kingdom is to be construed in accordance with the Immigration Act 1971.

(4) This section applies in relation to any offence under this Part (whether committed before or after the coming into force of this section)."

**71 Slavery, servitude and forced or compulsory labour**

(1) A person (D) commits an offence if—

(a) D holds another person in slavery or servitude and the circumstances are such that D knows or ought to know that the person is so held, or

(b) D requires another person to perform forced or compulsory labour and the circumstances are such that D knows or ought to know that the person is being required to perform such labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed

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in accordance with Article 4 of the Human Rights Convention (which prohibits a person from being held in slavery or servitude or being required to perform forced or compulsory labour).

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

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both.

(4) In this section—

"Human Rights Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4 November 1950;

"the relevant period" means—

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

**72 Conspiracy**

(1) In section 1A of the Criminal Law Act 1977 (c. 45) (conspiracy to commit offences outside the United Kingdom)—

(a) in the title and in subsection (2), for "the United Kingdom" substitute "England and Wales", and

(b) for subsection (14) substitute—

"(14) Nothing in this section applies to an agreement entered into before 4 September 1998.

(15) In relation to an agreement entered into during the period beginning with that date and ending with the commencement of section 72(1) of the Coroners and Justice Act 2009, this section applies as if in subsection (2) for "England and Wales" there were substituted "the United Kingdom".

(16) Nothing in this section imposes criminal liability on any person acting on behalf of, or holding office under, the Crown."

(2) In Article 9A of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I. 13)) (conspiracy to commit offences outside the United Kingdom)—

(a) in the title and in paragraph (2), for "the United Kingdom" substitute "Northern Ireland", and

(b) for paragraph (14) substitute—

"(14) Nothing in this Article applies to an agreement entered into before 4 September 1998.

(15) In relation to an agreement entered into during the period beginning with that date and ending with the commencement of section 72(2) of the Coroners and Justice Act 2009, this Article applies as if in paragraph (2) for "Northern Ireland" there were substituted "the United Kingdom".

(16) Nothing in this Article imposes criminal liability on any person acting on behalf of, or holding office under, the Crown."

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### 73 Abolition of common law libel offences etc

The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished—

(a) the offences of sedition and seditious libel;

(b) the offence of defamatory libel;

(c) the offence of obscene libel.

## PART 3

CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

## CHAPTER 1

ANONYMITY IN INVESTIGATIONS

### 74 Qualifying offences

(1) An offence is a qualifying offence for the purposes of this Chapter if—

(a) it is listed in subsection (2), and

(b) the condition in subsection (3) is satisfied in relation to it.

(2) The offences are—

(a) murder;

(b) manslaughter.

(3) The condition in this subsection is that the death was caused by one or both of the following—

(a) being shot with a firearm;

(b) being injured with a knife.

(4) The Secretary of State may by order amend this section—

(a) so as to add an offence to or omit an offence from the list in subsection (2), or

(b) so as to add, omit or modify a condition to be satisfied in relation to an offence.

(5) In this section—

"firearm", in relation to England and Wales, has the meaning given by section 57 of the Firearms Act 1968 (c. 27) and, in relation to Northern Ireland, has the meaning given by Article 2 of the Firearms (Northern Ireland) Order 2004 (S.I. 2004/702 (N.I. 3));

"knife" has the meaning given by section 10 of the Knives Act 1997 (c. 21).

### 75 Qualifying criminal investigations

(1) For the purposes of this Chapter a criminal investigation is a qualifying criminal investigation if it is conducted by an investigating authority wholly or in part with a view to ascertaining—

(a) whether a person should be charged with a qualifying offence, or

(b) whether a person charged with a qualifying offence is guilty of it.

(2) The following are investigating authorities—

(a) a police force in England and Wales;

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(b) the British Transport Police Force;
(c) the Serious Organised Crime Agency;
(d) the Police Service of Northern Ireland.

(3) The Secretary of State may by order amend subsection (2) so as to add or omit a body or other person.

(4) The provision which may be included in an order under subsection (3) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision of this Chapter.

**76 Investigation anonymity orders**

(1) In this Chapter an "investigation anonymity order" is an order made by a justice of the peace in relation to a specified person prohibiting the disclosure of information—
(a) that identifies the specified person as a person who is or was able or willing to assist a specified qualifying criminal investigation, or
(b) that might enable the specified person to be identified as such a person.

(2) The prohibition in an investigation anonymity order is subject to subsections (3) to (9).

(3) An investigation anonymity order is not contravened by disclosure of such information as regards the specified person as is described in subsection (1), if the person disclosing the information does not know and has no reason to suspect that such an order has been made in relation to the specified person in connection with the specified qualifying criminal investigation.

(4) An investigation anonymity order is not contravened by disclosure of such information as regards the specified person as is described in subsection (1)(b), if the person disclosing the information does not know and has no reason to suspect that the information disclosed is information that might enable the specified person to be identified as a person of the sort described in subsection (1)(a) in relation to the specified qualifying criminal investigation.

(5) A person ("A") who discloses to another person ("B") that an investigation anonymity order has been made in relation to a person in connection with the criminal investigation of a qualifying offence does not contravene the order if the condition in subsection (6) is satisfied.

(6) The condition is that A knows that B is aware that the person specified in the order is a person who is or was able or willing to assist a criminal investigation relating to the qualifying offence.

(7) A person who discloses information to which an investigation anonymity order relates does not contravene the order if—
(a) the disclosure is made to a person who is involved in the specified qualifying criminal investigation or in the prosecution of an offence to which the investigation relates, and
(b) the disclosure is made for the purposes of the investigation or the prosecution of an offence to which the investigation relates.

(8) An investigation anonymity order is not contravened by—
(a) disclosure in pursuance of a requirement imposed by any enactment or rule of law, or
(b) disclosure made in pursuance of an order of a court.

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(9) A person who discloses such information as regards another person as is described in subsection (1) may not rely on subsection (8) in a case where—

(a) it might have been determined that the person was required or permitted to withhold the information (whether on grounds of public interest immunity or on other grounds), but

(b) the person disclosed the information without there having been a determination as to whether the person was required or permitted to withhold the information.

Disclosure for the purposes of seeking such a determination is not a contravention of an investigation anonymity order.

(10) It is an offence for a person to disclose information in contravention of an investigation anonymity order.

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

(a) on summary conviction, to imprisonment for a term not exceeding the relevant period or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine, or both.

(12) "The relevant period" means—

(a) in relation to England and Wales, 12 months;

(b) in relation to Northern Ireland, 6 months.

(13) In this section "specified" means specified in the investigation anonymity order concerned.

### 77 Applications

(1) An application for an investigation anonymity order may be made to a justice of the peace by—

(a) in a case where a police force in England and Wales is conducting the qualifying criminal investigation, the chief officer of police of the police force;

(b) in a case where the British Transport Police Force is conducting the qualifying criminal investigation, the Chief Constable of the British Transport Police Force;

(c) in a case where the Serious Organised Crime Agency is conducting the qualifying criminal investigation, the Director General of the Serious Organised Crime Agency;

(d) in a case where the Police Service of Northern Ireland is conducting the qualifying criminal investigation, the Chief Constable of the Police Service of Northern Ireland;

(e) the Director of Public Prosecutions;

(f) the Director of Revenue and Customs Prosecutions;

(g) the Director of Public Prosecutions for Northern Ireland.

(2) An applicant for an investigation anonymity order is not required to give notice of the application to—

(a) a person who is suspected of having committed or who has been charged with an offence to which the qualifying criminal investigation relates, or

(b) such a person's legal representatives.

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(3) An applicant for an investigation anonymity order must (unless the justice of the peace directs otherwise) inform the justice of the identity of the person who would be specified in the order.

(4) A justice of the peace may determine the application without a hearing.

(5) If a justice of the peace determines an application for an investigation anonymity order without a hearing, the designated officer in relation to that justice must notify the applicant of the determination.

(6) In the application of this section to Northern Ireland, the reference to the designated officer in relation to a justice of the peace is to be read as a reference to the clerk of petty sessions for the petty sessions district in which the application for an investigation anonymity order is made.

(7) The Secretary of State may by order amend subsection (1).

(8) The provision which may be included in an order under subsection (7) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision of this Chapter.

**78 Conditions for making order**

(1) This section applies where an application is made for an investigation anonymity order to be made in relation to a person.

(2) The justice of the peace may make such an order if satisfied that there are reasonable grounds for believing that the conditions in subsections (3) to (8) are satisfied.

(3) The condition in this subsection is that a qualifying offence has been committed.

(4) The condition in this subsection is that the person likely to have committed the qualifying offence ("the relevant person") is a person who was aged at least 11 but under 30 at the time the offence was committed.

(5) The condition in this subsection is that the relevant person is likely to have been a member of a group falling within subsection (6) at the time the offence was committed.

(6) A group falls within this subsection if—

(a) it is possible to identify the group from the criminal activities that its members appear to engage in, and

(b) it appears that the majority of the persons in the group are aged at least 11 but under 30.

(7) The condition in this subsection is that the person who would be specified in the order has reasonable grounds for fearing intimidation or harm if identified as a person who is or was able or willing to assist the criminal investigation as it relates to the qualifying offence.

(8) The condition in this subsection is that the person who would be specified in the order—

(a) is able to provide information that would assist the criminal investigation as it relates to the qualifying offence, and

(b) is more likely than not, as a consequence of the making of the order, to provide such information.

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(9) If it is suspected that the qualifying offence was committed by 2 or more persons, it is sufficient for the purposes of subsection (2) that the justice is satisfied that there are reasonable grounds for believing that the conditions in subsections (3) to (8) are satisfied in relation to one person.

(10) The Secretary of State may by order modify or repeal any of subsections (4) to (6) and (9).

(11) The provision which may be included in an order under subsection (10) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision of this Chapter.

**79 Appeal against refusal of order**

(1) Where a justice of the peace refuses an application for an investigation anonymity order, the applicant may appeal to a judge of the Crown Court against that refusal.

(2) An applicant may not appeal under subsection (1) unless the applicant indicates—

(a) in the application for the order, or

(b) if there is a hearing of the application before the justice, at the hearing,

that the applicant intends to appeal a refusal.

(3) If an applicant has indicated an intention to appeal a refusal, a justice of the peace who refuses an application for an investigation anonymity order must make the order as requested by the applicant.

(4) An order made under subsection (3) has effect until the appeal is determined or otherwise disposed of.

(5) The judge to whom an appeal is made must consider afresh the application for an investigation anonymity order and section 77(3) to (5) applies accordingly to the determination of the application by the judge.

(6) In the application of section 77(5) by virtue of subsection (5), the reference in section 77(5) to the designated officer in relation to a justice of the peace is to be read—

(a) in the case of an appeal made in England and Wales, as a reference to the appropriate officer of the Crown Court;

(b) in the case of an appeal made in Northern Ireland, as a reference to the chief clerk of the county court division in which the appeal is made.

**80 Discharge of order**

(1) A justice of the peace may discharge an investigation anonymity order if it appears to the justice to be appropriate to do so.

(2) The justice may so discharge an investigation anonymity order on an application by—

(a) the person on whose application the order was made;

(b) the Director of Public Prosecutions;

(c) the Director of Revenue and Customs Prosecutions;

(d) the Director of Public Prosecutions for Northern Ireland;

(e) the person specified in the order.

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(3) An application may not be made under subsection (2) unless there has been a material change of circumstances since the relevant time.

(4) Any person eligible to apply for the discharge of the order is entitled to be party to the proceedings on the application in addition to the applicant.

(5) If an application to discharge an investigation anonymity order is made by a person other than the person specified in the order, the justice may not determine the application unless—

(a) the person specified in the order has had an opportunity to oppose the application, or

(b) the justice is satisfied that it is not reasonably practicable to communicate with the person.

(6) A party to the proceedings may appeal to a judge of the Crown Court against the justice's decision.

(7) If during the proceedings a party indicates an intention to appeal against a determination to discharge the investigation anonymity order, a justice of the peace who makes such a determination must provide for the discharge of the order not to have effect until the appeal is determined or otherwise disposed of.

(8) "The relevant time" means—

(a) the time when the order was made, or

(b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

**81 Delegation of functions**

(1) A chief officer of police of a police force in England and Wales may authorise a person to exercise the chief officer's functions under this Chapter.

(2) The Chief Constable of the British Transport Police Force may authorise a person to exercise the Chief Constable's functions under this Chapter.

(3) The Director General of the Serious Organised Crime Agency may authorise a person to exercise the Director General's functions under this Chapter.

(4) The Chief Constable of the Police Service of Northern Ireland may authorise a person to exercise the Chief Constable's functions under this Chapter.

(5) The Director of Public Prosecutions may authorise a person to exercise the Director's functions under this Chapter.

(6) The Director of Revenue and Customs Prosecutions may authorise a person to exercise the Director's functions under this Chapter.

(7) The Director of Public Prosecutions for Northern Ireland may authorise a person to exercise the Director's functions under this Chapter.

**82 Public interest immunity**

Nothing in this Chapter affects the common law rules as to the withholding of information on the grounds of public interest immunity.

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### 83 Review

(1) The Secretary of State must review the operation of this Chapter and prepare a report of that review.

(2) The Secretary of State must lay a copy of the report before Parliament before the end of the period of 2 years beginning with the day on which section 77 comes into force.

### 84 Application to armed forces

(1) Subject to subsection (2), nothing in this Chapter applies in relation to any investigation conducted with a view to its being ascertained whether a person should be charged with a service offence or whether a person charged with such an offence is guilty of it.

(2) The Secretary of State may by order make as regards any investigation mentioned in subsection (1) provision equivalent to the provisions contained in this Chapter, subject to such modifications as the Secretary of State considers appropriate.

(3) An order under this section may make provision in such way as the Secretary of State considers appropriate, and may in particular apply any of the provisions concerned, with or without modifications.

(4) In this section—

(a) "service offence" has the meaning given by section 50(2) of the Armed Forces Act 2006 (c. 52);

(b) references to charges are to charges brought under Part 5 of that Act.

### 85 Interpretation of this Chapter

(1) In this Chapter—

"enactment" means an enactment contained in or in an instrument made by virtue of—

(a) an Act of Parliament,

(b) a Measure or Act of the National Assembly for Wales, or

(c) Northern Ireland legislation;

"investigation anonymity order" has the meaning given by section 76;

"qualifying criminal investigation" has the meaning given by section 75;

"qualifying offence" has the meaning given by section 74.

(2) In the application of this Chapter to Northern Ireland—

(a) references to a justice of the peace are to be read as references to a district judge (magistrates' courts);

(b) references to a judge of the Crown Court are to be read as references to a county court judge.

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## CHAPTER 2

ANONYMITY OF WITNESSES

*Witness anonymity orders*

### 86 Witness anonymity orders

(1) In this Chapter a "witness anonymity order" is an order made by a court that requires such specified measures to be taken in relation to a witness in criminal proceedings as the court considers appropriate to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

(2) The kinds of measures that may be required to be taken in relation to a witness include measures for securing one or more of the following—

(a) that the witness's name and other identifying details may be—

(i) withheld;

(ii) removed from materials disclosed to any party to the proceedings;

(b) that the witness may use a pseudonym;

(c) that the witness is not asked questions of any specified description that might lead to the identification of the witness;

(d) that the witness is screened to any specified extent;

(e) that the witness's voice is subjected to modulation to any specified extent.

(3) Subsection (2) does not affect the generality of subsection (1).

(4) Nothing in this section authorises the court to require—

(a) the witness to be screened to such an extent that the witness cannot be seen by—

(i) the judge or other members of the court (if any), or

(ii) the jury (if there is one);

(b) the witness's voice to be modulated to such an extent that the witness's natural voice cannot be heard by any persons within paragraph (a)(i) or (ii).

(5) In this section "specified" means specified in the witness anonymity order concerned.

### 87 Applications

(1) An application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant.

(2) Where an application is made by the prosecutor, the prosecutor—

(a) must (unless the court directs otherwise) inform the court of the identity of the witness, but

(b) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other party to the proceedings or his or her legal representatives.

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(3) Where an application is made by the defendant, the defendant—

(a) must inform the court and the prosecutor of the identity of the witness, but

(b) (if there is more than one defendant) is not required to disclose in connection with the application—

(i) the identity of the witness, or

(ii) any information that might enable the witness to be identified,

to any other defendant or his or her legal representatives.

(4) Accordingly, where the prosecutor or the defendant proposes to make an application under this section in respect of a witness, any relevant material which is disclosed by or on behalf of that party before the determination of the application may be disclosed in such a way as to prevent—

(a) the identity of the witness, or

(b) any information that might enable the witness to be identified,

from being disclosed except as required by subsection (2)(a) or (3)(a).

(5) "Relevant material" means any document or other material which falls to be disclosed, or is sought to be relied on, by or on behalf of the party concerned in connection with the proceedings or proceedings preliminary to them.

(6) The court must give every party to the proceedings the opportunity to be heard on an application under this section.

(7) But subsection (6) does not prevent the court from hearing one or more parties in the absence of a defendant and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(8) Nothing in this section is to be taken as restricting any power to make rules of court.

**88 Conditions for making order**

(1) This section applies where an application is made for a witness anonymity order to be made in relation to a witness in criminal proceedings.

(2) The court may make such an order only if it is satisfied that Conditions A to C below are met.

(3) Condition A is that the proposed order is necessary—

(a) in order to protect the safety of the witness or another person or to prevent any serious damage to property, or

(b) in order to prevent real harm to the public interest (whether affecting the carrying on of any activities in the public interest or the safety of a person involved in carrying on such activities, or otherwise).

(4) Condition B is that, having regard to all the circumstances, the effect of the proposed order would be consistent with the defendant receiving a fair trial.

(5) Condition C is that the importance of the witness's testimony is such that in the interests of justice the witness ought to testify and—

(a) the witness would not testify if the proposed order were not made, or

(b) there would be real harm to the public interest if the witness were to testify without the proposed order being made.

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(6) In determining whether the proposed order is necessary for the purpose mentioned in subsection (3)(a), the court must have regard (in particular) to any reasonable fear on the part of the witness—

(a) that the witness or another person would suffer death or injury, or

(b) that there would be serious damage to property,

if the witness were to be identified.

**89 Relevant considerations**

(1) When deciding whether Conditions A to C in section 88 are met in the case of an application for a witness anonymity order, the court must have regard to—

(a) the considerations mentioned in subsection (2) below, and

(b) such other matters as the court considers relevant.

(2) The considerations are—

(a) the general right of a defendant in criminal proceedings to know the identity of a witness in the proceedings;

(b) the extent to which the credibility of the witness concerned would be a relevant factor when the weight of his or her evidence comes to be assessed;

(c) whether evidence given by the witness might be the sole or decisive evidence implicating the defendant;

(d) whether the witness's evidence could be properly tested (whether on grounds of credibility or otherwise) without his or her identity being disclosed;

(e) whether there is any reason to believe that the witness—

(i) has a tendency to be dishonest, or

(ii) has any motive to be dishonest in the circumstances of the case,

having regard (in particular) to any previous convictions of the witness and to any relationship between the witness and the defendant or any associates of the defendant;

(f) whether it would be reasonably practicable to protect the witness by any means other than by making a witness anonymity order specifying the measures that are under consideration by the court.

**90 Warning to jury**

(1) Subsection (2) applies where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness.

(2) The judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

*Discharge and variation*

**91 Discharge or variation of order**

(1) A court that has made a witness anonymity order in relation to any criminal proceedings may in those proceedings subsequently discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in

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view of the provisions of sections 88 and 89 that apply to the making of an order.

(2) The court may do so—

(a) on an application made by a party to the proceedings if there has been a material change of circumstances since the relevant time, or

(b) on its own initiative.

(3) The court must give every party to the proceedings the opportunity to be heard—

(a) before determining an application made to it under subsection (2);

(b) before discharging or varying the order on its own initiative.

(4) But subsection (3) does not prevent the court hearing one or more of the parties to the proceedings in the absence of a defendant in the proceedings and his or her legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) "The relevant time" means—

(a) the time when the order was made, or

(b) if a previous application has been made under subsection (2), the time when the application (or the last application) was made.

**92 Discharge or variation after proceedings**

(1) This section applies if—

(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings ("the old proceedings"), and

(b) the old proceedings have come to an end.

(2) The court that made the order may discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—

(a) the provisions of sections 88 and 89 that apply to the making of a witness anonymity order, and

(b) such other matters as the court considers relevant.

(3) The court may do so—

(a) on an application made by a party to the old proceedings if there has been a material change of circumstances since the relevant time, or

(b) on an application made by the witness if there has been a material change of circumstances since the relevant time.

(4) The court may not determine an application made to it under subsection (3) unless in the case of each of the parties to the old proceedings and the witness—

(a) it has given the person the opportunity to be heard, or

(b) it is satisfied that it is not reasonably practicable to communicate with the person.

(5) Subsection (4) does not prevent the court hearing one or more of the persons mentioned in that subsection in the absence of a person who was a defendant in the old proceedings and that person's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(6) "The relevant time" means—

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(a) the time when the old proceedings came to an end, or
(b) if a previous application has been made under subsection (3), the time when the application (or the last application) was made.

### 93 Discharge or variation by appeal court

(1) This section applies if—
(a) a court has made a witness anonymity order in relation to a witness in criminal proceedings ("the trial proceedings"), and
(b) a defendant in the trial proceedings has in those proceedings—
(i) been convicted,
(ii) been found not guilty by reason of insanity, or
(iii) been found to be under a disability and to have done the act charged in respect of an offence.

(2) The appeal court may in proceedings on or in connection with an appeal by the defendant from the trial proceedings discharge or vary (or further vary) the order if it appears to the court to be appropriate to do so in view of—
(a) the provisions of sections 88 and 89 that apply to the making of a witness anonymity order, and
(b) such other matters as the court considers relevant.

(3) The appeal court may not discharge or vary the order unless in the case of each party to the trial proceedings—
(a) it has given the person the opportunity to be heard, or
(b) it is satisfied that it is not reasonably practicable to communicate with the person.

(4) But subsection (3) does not prevent the appeal court hearing one or more of the parties to the trial proceedings in the absence of a person who was a defendant in the trial proceedings and that person's legal representatives, if it appears to the court to be appropriate to do so in the circumstances of the case.

(5) In this section a reference to the doing of an act includes a reference to a failure to act.

(6) "Appeal court" means—
(a) the Court of Appeal,
(b) the Court of Appeal in Northern Ireland, or
(c) the Court Martial Appeal Court.

*Service courts*

### 94 Special provisions for service courts

(1) Subsections (2) and (3) apply in relation to a service court consisting of a judge advocate and other members.

(2) Any decision falling to be made by the court under sections 86 to 92 is to be made by the judge advocate alone.

(3) If any evidence is given by a witness in criminal proceedings before the court at a time when a witness anonymity order applies to the witness, the judge advocate must give the other members such warning as the judge advocate

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considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant.

*Public interest immunity*

**95 Public interest immunity**

Nothing in this Chapter affects the common law rules as to the withholding of information on the grounds of public interest immunity.

*The Criminal Evidence (Witness Anonymity) Act 2008*

**96 Power to make orders under the 2008 Act**

Sections 1 to 9 and 14 of the Criminal Evidence (Witness Anonymity) Act 2008 (c. 15) cease to have effect.

*Interpretation*

**97 Interpretation of this Chapter**

(1) In this Chapter—

"court" means—

(a) in relation to England and Wales, a magistrates' court, the Crown Court or the criminal division of the Court of Appeal,

(b) in relation to Northern Ireland, a magistrates' court, the Crown Court, a county court exercising its criminal jurisdiction, the High Court or the Court of Appeal in Northern Ireland, or

(c) a service court;

"criminal proceedings" means—

(a) in relation to a court within paragraph (a) or (b) above (other than the High Court in Northern Ireland), criminal proceedings consisting of a trial or other hearing at which evidence falls to be given;

(b) in relation to the High Court in Northern Ireland, proceedings relating to bail in respect of a person charged with or convicted of an offence where the proceedings consist of a hearing at which evidence falls to be given;

(c) in relation to a service court, proceedings in respect of a service offence consisting of a trial or other hearing at which evidence falls to be given;

"the defendant", in relation to any criminal proceedings, means any person charged with an offence to which the proceedings relate (whether or not convicted);

"prosecutor" means any person acting as prosecutor, whether an individual or body;

"service court" means—

(a) the Court Martial established by the Armed Forces Act 2006 (c. 52),

(b) the Summary Appeal Court established by that Act,

(c) the Service Civilian Court established by that Act, or

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(d) the Court Martial Appeal Court;

"service offence" has the meaning given by section 50(2) of the Armed Forces Act 2006 (c. 52);

"witness", in relation to any criminal proceedings, means any person called, or proposed to be called, to give evidence at the trial or hearing in question;

"witness anonymity order" has the meaning given by section 86.

(2) In the case of a witness anonymity order made by a magistrates' court in England and Wales or Northern Ireland, a thing authorised or required by section 91 or 92 to be done by the court by which the order was made may be done by any magistrates' court acting in the same local justice area, or for the same petty sessions district, as that court.

## CHAPTER 3

VULNERABLE AND INTIMIDATED WITNESSES

*Special measures for vulnerable and intimidated witnesses*

### 98 Eligibility for special measures: age of child witnesses

(1) The Youth Justice and Criminal Evidence Act 1999 (c. 23) is amended as follows.

(2) In section 16(1)(a) (witnesses eligible because under 17), for "17" substitute "18".

(3) In section 21 (special provisions relating to child witnesses)—
(a) in subsection (8), for "17" substitute "18", and
(b) in subsection (9)(b), for "17" substitute "18".

(4) In section 22 (extension of section 21 to certain witnesses)—
(a) in the title, for "17" substitute "18", and
(b) in subsection (1)(a)(ii), for "17" substitute "18".

### 99 Eligibility for special measures: offences involving weapons

(1) The Youth Justice and Criminal Evidence Act 1999 is amended as follows.

(2) In section 17 (witnesses eligible for assistance on grounds of fear or distress about testifying), after subsection (4) add—

"(5) A witness in proceedings relating to a relevant offence (or to a relevant offence and any other offences) is eligible for assistance in relation to those proceedings by virtue of this subsection unless the witness has informed the court of the witness's wish not to be so eligible by virtue of this subsection.

(6) For the purposes of subsection (5) an offence is a relevant offence if it is an offence described in Schedule 1A.

(7) The Secretary of State may by order amend Schedule 1A."

(3) In section 64(3) (orders subject to affirmative resolution procedure), in paragraph (a) after "section" insert "17(7),".

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(4) Before Schedule 2 insert the Schedule 1A set out in Schedule 14 to this Act.

**100 Special measures directions for child witnesses**

(1) Section 21 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (special provisions relating to child witnesses) is amended in accordance with subsections (2) to (7).

(2) In subsection (1) (definitions), omit paragraph (b) (child witnesses in need of special protection) (but not the "and" following it).

(3) In subsection (2) (determining contents of direction), for "(7)" substitute "(4C)".

(4) In subsection (4) (limitations on primary rule)—

(a) omit the "and" at the end of paragraph (b), and

(b) after paragraph (b) insert—

"(ba) if the witness informs the court of the witness's wish that the rule should not apply or should apply only in part, the rule does not apply to the extent that the court is satisfied that not complying with the rule would not diminish the quality of the witness's evidence; and".

(5) After subsection (4) insert—

"(4A) Where as a consequence of all or part of the primary rule being disapplied under subsection (4)(ba) a witness's evidence or any part of it would fall to be given as testimony in court, the court must give a special measures direction making such provision as is described in section 23 for the evidence or that part of it.

(4B) The requirement in subsection (4A) is subject to the following limitations—

(a) if the witness informs the court of the witness's wish that the requirement in subsection (4A) should not apply, the requirement does not apply to the extent that the court is satisfied that not complying with it would not diminish the quality of the witness's evidence; and

(b) the requirement does not apply to the extent that the court is satisfied that making such a provision would not be likely to maximise the quality of the witness's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the witness would have that result or for any other reason)."

(6) After subsection (4B) (inserted by subsection (5)) insert—

"(4C) In making a decision under subsection (4)(ba) or (4B)(a), the court must take into account the following factors (and any others it considers relevant)—

(a) the age and maturity of the witness;

(b) the ability of the witness to understand the consequences of giving evidence otherwise than in accordance with the requirements in subsection (3) or (as the case may be) in accordance with the requirement in subsection (4A);

(c) the relationship (if any) between the witness and the accused;

(d) the witness's social and cultural background and ethnic origins;

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(e) the nature and alleged circumstances of the offence to which the proceedings relate."

(7) Omit subsections (5) to (7).

(8) In section 22 of that Act (extension of provisions of section 21)—

(a) in subsection (1), omit paragraph (b) (but not the "and" following it), and

(b) for subsection (2) substitute—

"(2) Subsections (2) to (4) and (4C) of section 21, so far as relating to the giving of a direction complying with the requirement contained in section 21(3)(a), apply to a qualifying witness in respect of the relevant recording as they apply to a child witness (within the meaning of that section)."

**101 Special provisions relating to sexual offences**

After section 22 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) insert—

**"22A Special provisions relating to sexual offences**

(1) This section applies where in criminal proceedings relating to a sexual offence (or to a sexual offence and other offences) the complainant in respect of that offence is a witness in the proceedings.

(2) This section does not apply if the place of trial is a magistrates' court.

(3) This section does not apply if the complainant is an eligible witness by reason of section 16(1)(a) (whether or not the complainant is an eligible witness by reason of any other provision of section 16 or 17).

(4) If a party to the proceedings makes an application under section 19(1)(a) for a special measures direction in relation to the complainant, the party may request that the direction provide for any relevant recording to be admitted under section 27 (video recorded evidence in chief).

(5) Subsection (6) applies if—

(a) a party to the proceedings makes a request under subsection (4) with respect to the complainant, and

(b) the court determines for the purposes of section 19(2) that the complainant is eligible for assistance by virtue of section 16(1)(b) or 17.

(6) The court must—

(a) first have regard to subsections (7) to (9); and

(b) then have regard to section 19(2);

and for the purposes of section 19(2), as it then applies to the complainant, any special measure required to be applied in relation to the complainant by virtue of this section is to be treated as if it were a measure determined by the court, pursuant to section 19(2)(a) and (b)(i), to be one that (whether on its own or with any other special measures) would be likely to maximise, so far as practicable, the quality of the complainant's evidence.

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(7) The court must give a special measures direction in relation to the complainant that provides for any relevant recording to be admitted under section 27.

(8) The requirement in subsection (7) has effect subject to section 27(2).

(9) The requirement in subsection (7) does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the complainant's evidence so far as practicable (whether because the application to that evidence of one or more other special measures available in relation to the complainant would have that result or for any other reason).

(10) In this section "relevant recording", in relation to a complainant, is a video recording of an interview of the complainant made with a view to its admission as the evidence in chief of the complainant."

**102 Evidence by live link: presence of supporter**

(1) In section 24 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (evidence by live link), after subsection (1) insert—

"(1A) Such a direction may also provide for a specified person to accompany the witness while the witness is giving evidence by live link.

(1B) In determining who may accompany the witness, the court must have regard to the wishes of the witness."

(2) In section 27 of that Act (video recorded evidence in chief), after subsection (9) insert—

"(9A) If the court directs under subsection (9) that evidence is to be given by live link, it may also make such provision in that direction as it could make under section 24(1A) in a special measures direction."

**103 Video recorded evidence in chief: supplementary testimony**

(1) Section 27 of the Youth Justice and Criminal Evidence Act 1999 (video recorded evidence in chief) is amended as follows.

(2) In subsection (5) (consequences of admitting video recording), for paragraph (b) substitute—

"(b) the witness may not without the permission of the court give evidence in chief otherwise than by means of the recording as to any matter which, in the opinion of the court, is dealt with in the witness's recorded testimony."

(3) In subsection (7) (giving permission for additional testimony)—

(a) for "subsection (5)(b)(ii)" substitute "subsection (5)(b)", and

(b) in paragraph (a) (requirement of a material change of circumstances since the relevant time), omit from "if there" to "relevant time,".

(4) Omit subsection (8) (definition of "the relevant time").

(5) In subsection (9) (supplementary testimony by live link), for "subsection (5)(b)(ii)" substitute "subsection (5)(b)".

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*Evidence of certain accused persons*

**104 Examination of accused through intermediary**

(1) After section 33B of the Youth Justice and Criminal Evidence Act 1999 (c. 23) insert—

**"33BA Examination of accused through intermediary**

(1) This section applies to any proceedings (whether in a magistrates' court or before the Crown Court) against a person for an offence.

(2) The court may, on the application of the accused, give a direction under subsection (3) if it is satisfied—

(a) that the condition in subsection (5) is or, as the case may be, the conditions in subsection (6) are met in relation to the accused, and

(b) that making the direction is necessary in order to ensure that the accused receives a fair trial.

(3) A direction under this subsection is a direction that provides for any examination of the accused to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(4) The function of an intermediary is to communicate—

(a) to the accused, questions put to the accused, and

(b) to any person asking such questions, the answers given by the accused in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the accused or the person in question.

(5) Where the accused is aged under 18 when the application is made the condition is that the accused's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning.

(6) Where the accused has attained the age of 18 when the application is made the conditions are that—

(a) the accused suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social function, and

(b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

(7) Any examination of the accused in pursuance of a direction under subsection (3) must take place in the presence of such persons as Criminal Procedure Rules or the direction may provide and in circumstances in which—

(a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the accused and to communicate with the intermediary,

(b) the jury (if there is one) are able to see and hear the examination of the accused, and

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(c) where there are two or more accused in the proceedings, each of the other accused is able to see and hear the examination of the accused.

For the purposes of this subsection any impairment of eyesight or hearing is to be disregarded.

(8) Where two or more legal representatives are acting for a party to the proceedings, subsection (7)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(9) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by Criminal Procedure Rules, that the person will faithfully perform the function of an intermediary.

(10) Section 1 of the Perjury Act 1911 (perjury) applies in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding.

**33BB Further provision as to directions under section 33BA(3)**

(1) The court may discharge a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that the direction is no longer necessary in order to ensure that the accused receives a fair trial (but this does not affect the power to give a further direction under section 33BA(3) in relation to the accused).

(2) The court may vary (or further vary) a direction given under section 33BA(3) at any time before or during the proceedings to which it applies if it appears to the court that it is necessary for the direction to be varied in order to ensure that the accused receives a fair trial.

(3) The court may exercise the power in subsection (1) or (2) of its own motion or on an application by a party.

(4) The court must state in open court its reasons for—

(a) giving, varying or discharging a direction under section 33BA(3), or

(b) refusing an application for, or for the variation or discharge of, a direction under section 33BA(3),

and, if it is a magistrates' court, it must cause those reasons to be entered in the register of its proceedings."

(2) In the heading of Chapter 1A of Part 2 of that Act, after "LIVE LINK" insert "AND INTERMEDIARY".

*Witnesses protected from cross-examination by accused in person*

**105 Age of child complainant**

In section 35 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) (child complainants and other child witnesses), in subsection (4)(a) for "17" substitute "18".

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## CHAPTER 4

LIVE LINKS

### 106 Directions to attend through live link

(1) The Crime and Disorder Act 1998 (c. 37) is amended as follows.

(2) In section 57B (use of live link at preliminary hearings where accused is in custody), after subsection (6) add—

"(7) The following functions of a magistrates' court under this section may be discharged by a single justice—

(a) giving a live link direction under this section;

(b) rescinding a live link direction before a preliminary hearing begins; and

(c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b)."

(3) In section 57C (use of live link at preliminary hearings where accused is at police station)—

(a) after subsection (6) insert—

"(6A) A live link direction under this section may not be given unless the court is satisfied that it is not contrary to the interests of justice to give the direction.",

(b) omit subsection (7) (no live link direction unless accused consents),

(c) in subsection (8) (power to rescind live link direction before or during hearing), omit "before or", and

(d) in subsection (9) (representations about use of live link), omit paragraph (a) (and the "and" following it).

(4) In section 57D (continued use of live link for sentencing hearing following a preliminary hearing)—

(a) in subsection (2) (conditions for use of live link)—

(i) omit paragraph (b) (but not the "and" following it), and

(ii) in paragraph (c), for "it" to the end substitute "the accused continuing to attend through the live link is not contrary to the interests of justice.", and

(b) in subsection (3) (conditions for giving oral evidence by live link), omit paragraph (a) (and the "and" following it).

(5) In section 57E (use of live link in sentencing hearings)—

(a) in subsection (5) (conditions for giving live link direction), omit paragraph (a) (and the "and" following it), and

(b) in subsection (7) (conditions for giving oral evidence by live link), omit paragraph (a) (and the "and" following it).

### 107 Answering to live link bail

(1) The Police and Criminal Evidence Act 1984 (c. 60) is amended as follows.

(2) In section 46ZA (persons granted live link bail)—

(a) in subsection (3) (accused persons who answer to live link bail and are treated as in police detention)—

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(i) omit paragraph (a) (persons not intending to consent to live link direction),

(ii) in paragraph (b), for "at any such time," substitute "at any time before the beginning of proceedings in relation to a live link direction under section 57C of the Crime and Disorder Act 1998 in relation to the accused person,",

(iii) omit paragraph (c) (persons not giving consent during proceedings in relation to a live link direction) (but not the "or" following it), and

(iv) in paragraph (d), for "any other reason" substitute "any reason", and

(b) in subsection (4) (effect of subsection (3) applying to a person), for "any of paragraphs (a) to (d) of subsection (3) apply" substitute "paragraph (b) or (d) of subsection (3) applies".

(3) In section 46A (power of arrest for failure to answer police bail), in subsection (1ZA) (such failure includes leaving police station without informing a constable that intend not to consent to live link direction), in paragraph (b) omit from ", without informing" to the end.

**108 Searches of persons answering to live link bail**

(1) After section 54A of the Police and Criminal Evidence Act 1984 (c. 60) insert—

**"54B Searches of persons answering to live link bail**

(1) A constable may search at any time—

(a) any person who is at a police station to answer to live link bail; and

(b) any article in the possession of such a person.

(2) If the constable reasonably believes a thing in the possession of the person ought to be seized on any of the grounds mentioned in subsection (3), the constable may seize and retain it or cause it to be seized and retained.

(3) The grounds are that the thing—

(a) may jeopardise the maintenance of order in the police station;

(b) may put the safety of any person in the police station at risk; or

(c) may be evidence of, or in relation to, an offence.

(4) The constable may record or cause to be recorded all or any of the things seized and retained pursuant to subsection (2).

(5) An intimate search may not be carried out under this section.

(6) The constable carrying out a search under subsection (1) must be of the same sex as the person being searched.

(7) In this section "live link bail" means bail granted under Part 4 of this Act subject to the duty mentioned in section 47(3)(b).

**54C Power to retain articles seized**

(1) Except as provided by subsections (2) and (3), a constable may retain a thing seized under section 54B until the time when the person from whom it was seized leaves the police station.

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(2) A constable may retain a thing seized under section 54B in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

(3) If a thing seized under section 54B may be evidence of, or in relation to, an offence, a constable may retain it—

(a) for use as evidence at a trial for an offence; or

(b) for forensic examination or for investigation in connection with an offence.

(4) Nothing may be retained for either of the purposes mentioned in subsection (3) if a photograph or copy would be sufficient for that purpose.

(5) Nothing in this section affects any power of a court to make an order under section 1 of the Police (Property) Act 1897.

(6) The references in this section to anything seized under section 54B include anything seized by a person to whom paragraph 27A of Schedule 4 to the Police Reform Act 2002 applies."

(2) In section 46A of that Act (power of arrest for failure to answer to police bail), after subsection (1ZA) insert—

"(1ZB) The reference in subsection (1) to a person who fails to attend at a police station at the time appointed for the person to do so includes a reference to a person who—

(a) attends at a police station to answer to bail granted subject to the duty mentioned in section 47(3)(b), but

(b) refuses to be searched under section 54B."

(3) In Part 3 of Schedule 4 to the Police Reform Act 2002 (c. 30) (powers exercisable by detention officers), after paragraph 27 insert—

*"Searches of persons answering to live link bail*

27A (1) Where a designation applies this paragraph to any person, that person has the powers of a constable under section 54B of the 1984 Act (searches of persons answering to live link bail)—

(a) to carry out a search of any person attending a police station in the relevant police area; and

(b) to seize or retain articles found on such a search.

(2) Anything seized by a person under the power conferred by sub-paragraph (1) must be delivered to a constable as soon as practicable and in any case before the person from whom the thing was seized leaves the police station."

**109 Use of live link in certain enforcement hearings**

(1) After section 57E of the Crime and Disorder Act 1998 (c. 37) insert—

**"57F Use of live link in certain enforcement hearings**

(1) This section applies where—

(a) a confiscation order is made against a person; and

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(b) the amount required to be paid under the order is not paid when it is required to be paid.

(2) If it appears to the court before which an enforcement hearing relating to the confiscation order is to take place that it is likely that the person will be held in custody at the time of the hearing, the court may give a live link direction under this section in relation to that hearing.

(3) A live link direction under this section is a direction requiring the person, if the person is being held in custody at the time of the hearing, to attend it through a live link from the place at which the person is being held.

(4) Such a direction—

(a) may be given by the court of its own motion or on an application by a party; and

(b) may be given in relation to all subsequent enforcement hearings before the court or to such hearing or hearings as may be specified or described in the direction.

(5) The court may rescind a live link direction under this section at any time before or during a hearing to which it relates.

(6) The court may not give or rescind a live link direction under this section (whether at a hearing or otherwise) unless the parties to the proceedings have been given the opportunity to make representations.

(7) If a hearing takes place in relation to the giving or rescinding of such a direction, the court may require or permit any party to the proceedings who wishes to make representations in relation to the giving or rescission of a live link direction under this section to do so through a live link.

(8) The person may not give oral evidence while attending a hearing through a live link by virtue of this section unless the court is satisfied that it is not contrary to the interests of justice for the person to give it that way.

(9) If in a case where it has power to do so a court decides not to give a live link direction under this section, it must—

(a) state in open court its reasons for not doing so; and

(b) cause those reasons to be entered in the register of its proceedings.

(10) The following functions of a magistrates' court under this section may be discharged by a single justice—

(a) giving a live link direction under this section;

(b) rescinding a live link direction before a preliminary hearing begins; and

(c) requiring or permitting a person to attend by live link a hearing about a matter within paragraph (a) or (b)."

(2) In section 57A of that Act (introductory)—

(a) in subsection (1)—

(i) in paragraph (a), after "an offence" insert "and enforcement hearings relating to confiscation orders", and

(ii) in paragraph (b), for "and 57E" substitute ", 57E and 57F", and

(b) in subsection (3), at the appropriate place insert—

""confiscation order" means an order made under—

(a) section 71 of the Criminal Justice Act 1988;

(b) section 2 of the Drug Trafficking Act 1994; or

(c) section 6 of the Proceeds of Crime Act 2002;", and

""enforcement hearing" means a hearing under section 82 of the Magistrates' Courts Act 1980 to consider the issuing of a warrant of committal or to inquire into a person's means;".

(3) In the title of Part 3A of that Act, for "AND SENTENCING" substitute ", SENTENCING AND OTHER".

### 110 Direction of registrar for appeal hearing by live link

In section 31A of the Criminal Appeal Act 1968 (c. 19) (powers of the Court of Appeal under Part 1 of that Act that are exercisable by the registrar), in subsection (2), after paragraph (a) insert—

"(aa) to give a live link direction under section 22(4);".

## CHAPTER 5

MISCELLANEOUS

*Evidence by video recording*

### 111 Effect of admission of video recording

In section 138 of the Criminal Justice Act 2003 (c. 44) (video evidence: further provisions), omit subsection (1) (no evidence in chief on matter dealt with adequately in recorded account).

*Evidence of previous complaints*

### 112 Admissibility of evidence of previous complaints

In section 120(7) of the Criminal Justice Act 2003 (third condition for admitting previous statement of witness as evidence of matter stated of which oral evidence of witness would be admitted), omit paragraph (d) (requirement that complaint be made as soon as could reasonably be expected after the alleged conduct).

*Immunity etc*

### 113 Powers in respect of offenders who assist investigations and prosecutions

(1) Chapter 2 of Part 2 of the Serious Organised Crime and Police Act 2005 (c. 15) is amended as follows.

(2) In section 71 (assistance by offender: immunity from prosecution), in subsection (1) (immunity notice)—

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(a) for "any offence" substitute "an indictable offence or an offence triable either way", and

(b) after "prosecution", in second place it occurs, insert "for any offence".

(3) In subsection (4) of that section (specified prosecutors)—

(a) after paragraph (d) insert—

"(da) the Financial Services Authority;

(db) the Secretary of State for Business, Innovation and Skills, acting personally;", and

(b) in paragraph (e) for "(d)" substitute "(db)".

(4) After subsection (6) of that section insert—

"(6A) In exercising the power to designate a prosecutor under subsection (4)(e), the Financial Services Authority and the Secretary of State for Business, Innovation and Skills may each designate only—

(a) one prosecutor (a "chief prosecutor") to act at any one time, and

(b) an alternative prosecutor (a "deputy prosecutor") to act as a specified prosecutor—

(i) when the chief prosecutor is unavailable, or

(ii) during any period when no chief prosecutor is designated.

(6B) Paragraph 5(1) of Schedule 1 to the Financial Services and Markets Act 2000 (arrangements for discharging functions of the Authority) does not apply to the exercise of the powers conferred on the Financial Services Authority under this Chapter.

(6C) An immunity notice may be given by the Financial Services Authority, the Secretary of State for Business, Innovation and Skills or a prosecutor designated by either of them under subsection (4)(e), only with the consent of the Attorney General."

(5) In section 72 (assistance by offender: undertakings as to use of evidence), in subsection (1) (restricted use undertaking) for "any offence" substitute "an indictable offence or an offence triable either way".

(6) In subsection (2)(a) of that section, at the beginning insert "any".

(7) After section 75A insert—

**"75B Guidance about use of powers under sections 71 to 74**

(1) The Attorney General may issue guidance to specified prosecutors about the exercise by them of any of their powers under sections 71 to 74.

(2) The Attorney General may from time to time revise any guidance issued under this section.

(3) In this section "specified prosecutor" is to be construed in accordance with section 71."

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*Bail*

**114 Bail: risk of committing an offence causing injury**

(1) Part 1 of Schedule 1 to the Bail Act 1976 (c. 63) (defendants accused or convicted of imprisonable offences) is amended as follows.

(2) After paragraph 6 insert—

"6ZA If the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant."

(3) In paragraph 9 (matters to which court is to have regard when taking decisions about granting bail)—

(a) after "6A" insert "or of the opinion mentioned in paragraph 6ZA", and

(b) after paragraph (d) insert—

"(e) if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not), would commit an offence while on bail, the risk that the defendant may do so by engaging in conduct that would, or would be likely to, cause physical or mental injury to any person other than the defendant,".

**115 Bail decisions in murder cases to be made by Crown Court judge**

(1) A person charged with murder may not be granted bail except by order of a judge of the Crown Court.

(2) Subsections (3) and (4) apply where a person appears or is brought before a magistrates' court charged with murder.

(3) A judge of the Crown Court must make a decision about bail in respect of the person as soon as reasonably practicable and, in any event, within the period of 48 hours beginning with the day after the day on which the person appears or is brought before the magistrates' court.

(4) The magistrates' court must, if necessary for the purposes of subsection (3), commit the person to custody to be brought before a judge of the Crown Court.

(5) For the purposes of subsections (3) and (4), it is immaterial whether the magistrates' court—

(a) sends the person to the Crown Court for trial, or

(b) adjourns proceedings under section 52(5) of the Crime and Disorder Act 1998 (c. 37) and remands the person.

(6) In this section a reference to a person charged with murder includes a person charged with murder and one or more other offences.

(7) For the purposes of subsection (3), when calculating the period of 48 hours Saturdays, Sundays, Christmas Day, Good Friday and bank holidays are to be excluded.

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*Unsigned indictments*

**116 Indictment of offenders**

(1) In the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36)—

(a) in section 2 (procedure for indictment of offenders), in subsection (1) omit—

(i) from ", and where" to "the bill,", and

(ii) from "Provided" to the end,

(b) in subsection (3) of that section—

(i) after "indictment", in first place it occurs, insert "has been", and

(ii) omit "has been signed by the proper officer of the court",

(c) after subsection (6) of that section, insert—

"(6ZA) Where a bill of indictment is preferred in accordance with subsections (1) and (2), no objection to the indictment may be taken after the commencement of the trial by reason of any failure to observe any rules under subsection (6).

(6ZB) For the purposes of subsection (6ZA) the trial commences at the time when a jury is sworn to consider the issue of guilt or whether the accused did the act or made the omission charged, or, if the court accepts a plea of guilty before the time when a jury is sworn, when that plea is accepted.

(6ZC) The references in subsection (6ZB) to the time when a jury is sworn include the time when that jury would be sworn but for the making of an order under Part 7 of the Criminal Justice Act 2003.", and

(d) in paragraph 1 of Schedule 2 (consequential adaptations of enactments)—

(i) for "respectively references" substitute "reference", and

(ii) omit "and signing".

(2) In section 82 of the Supreme Court Act 1981 (c. 54) (duties of officers of Crown Court), in subsection (1) omit "the signing of indictments,".

*Detention of terrorist suspects*

**117 Detention of persons under section 41 of the Terrorism Act 2000**

(1) Section 36 of the Terrorism Act 2006 (c. 11) (review of terrorism legislation) is amended in accordance with subsections (2) and (3).

(2) After subsection (2) insert—

"(2A) A review under subsection (2) may, in particular, consider whether—

(a) the requirements imposed by or under Part 1 or 2, or paragraph 37, of Schedule 8 to the Terrorism Act 2000 (detention of suspected terrorists), and

(b) the requirements imposed by any relevant code of practice under section 66 of the Police and Criminal Evidence Act 1984 or Article 65 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)),

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have been complied with in relation to persons detained under section 41 of the Terrorism Act 2000 pursuant to a warrant of further detention issued under Part 3 of Schedule 8 to that Act."

(3) In subsection (3) for "That person" substitute "The person appointed under subsection (1)".

(4) Section 51 of the Police Reform Act 2002 (c. 30) (independent custody visitors for places of detention) is amended in accordance with subsections (5) to (8).

(5) After subsection (1) insert—

"(1A) Every police authority must ensure—

(a) that the arrangements made by it require independent custody visitors to prepare and submit to it a report of any visit made under the arrangements to a suspected terrorist detainee, and

(b) that a copy of any report submitted under paragraph (a) is given to the person appointed under section 36(1) of the Terrorism Act 2006 (independent reviewer of terrorism legislation)."

(6) In subsection (3), after paragraph (b) insert—

"(ba) in relation to suspected terrorist detainees, to listen to the audio recordings and view the video recordings (with or without sound) of interviews with those detainees which have taken place during their detention there and which were conducted by a constable;".

(7) After that subsection insert—

"(3A) The arrangements may include provision for access to the whole or part of an audio or video recording of an interview of the kind mentioned in subsection (3)(ba) to be denied to independent custody visitors if—

(a) it appears to an officer of or above the rank of inspector that there are grounds for denying access at the time it is requested;

(b) the grounds are grounds specified for the purposes of paragraph (a) in the arrangements; and

(c) the procedural requirements imposed by the arrangements in relation to a denial of access to such recordings are complied with.

(3B) Grounds are not to be specified in any arrangements for the purposes of subsection (3A)(a) unless they are grounds for the time being set out for the purposes of this subsection in the code of practice issued by the Secretary of State under subsection (6)."

(8) For subsection (10) substitute—

"(10) In this section—

"detainee", in relation to arrangements made under this section, means a person detained in a police station in the police area of the police authority;

"suspected terrorist detainee" means a detainee detained under section 41 of the Terrorism Act 2000."

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# PART 4

## SENTENCING

## CHAPTER 1

## SENTENCING COUNCIL FOR ENGLAND AND WALES

### *Sentencing Council for England and Wales*

### 118 Sentencing Council for England and Wales

(1) There is to be a Sentencing Council for England and Wales.

(2) Schedule 15 makes provision about the Council.

### 119 Annual report

(1) The Council must, as soon as practicable after the end of each financial year, make to the Lord Chancellor a report on the exercise of the Council's functions during the year.

(2) The Lord Chancellor must lay a copy of the report before Parliament.

(3) The Council must publish the report once a copy has been so laid.

(4) Sections 128(3), 130 and 131 make further provision about the content of reports under this section.

(5) If section 118 comes into force after the beginning of a financial year, the first report may relate to a period beginning with the day on which that section comes into force and ending with the end of the next financial year.

### *Guidelines*

### 120 Sentencing guidelines

(1) In this Chapter "sentencing guidelines" means guidelines relating to the sentencing of offenders.

(2) A sentencing guideline may be general in nature or limited to a particular offence, particular category of offence or particular category of offender.

(3) The Council must prepare—

(a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas), and

(b) sentencing guidelines about the application of any rule of law as to the totality of sentences.

(4) The Council may prepare sentencing guidelines about any other matter.

(5) Where the Council has prepared guidelines under subsection (3) or (4), it must publish them as draft guidelines.

(6) The Council must consult the following persons about the draft guidelines—

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(a) the Lord Chancellor;
(b) such persons as the Lord Chancellor may direct;
(c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);
(d) such other persons as the Council considers appropriate.

(7) In the case of guidelines within subsection (3), the Council must, after making any amendments of the guidelines which it considers appropriate, issue them as definitive guidelines.

(8) In any other case, the Council may, after making such amendments, issue them as definitive guidelines.

(9) The Council may, from time to time, review the sentencing guidelines issued under this section, and may revise them.

(10) Subsections (5), (6) and (8) apply to a revision of the guidelines as they apply to their preparation (and subsection (8) applies even if the guidelines being revised are within subsection (3)).

(11) When exercising functions under this section, the Council must have regard to the following matters—
(a) the sentences imposed by courts in England and Wales for offences;
(b) the need to promote consistency in sentencing;
(c) the impact of sentencing decisions on victims of offences;
(d) the need to promote public confidence in the criminal justice system;
(e) the cost of different sentences and their relative effectiveness in preventing re-offending;
(f) the results of the monitoring carried out under section 128.

**121 Sentencing ranges**

(1) When exercising functions under section 120, the Council is to have regard to the desirability of sentencing guidelines which relate to a particular offence being structured in the way described in subsections (2) to (9).

(2) The guidelines should, if reasonably practicable given the nature of the offence, describe, by reference to one or more of the factors mentioned in subsection (3), different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may be committed.

(3) Those factors are—
(a) the offender's culpability in committing the offence;
(b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;
(c) such other factors as the Council considers to be particularly relevant to the seriousness of the offence in question.

(4) The guidelines should—
(a) specify the range of sentences ("the offence range") which, in the opinion of the Council, it may be appropriate for a court to impose on an offender convicted of that offence, and

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(b) if the guidelines describe different categories of case in accordance with subsection (2), specify for each category the range of sentences ("the category range") within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category.

(5) The guidelines should also—

(a) specify the sentencing starting point in the offence range, or

(b) if the guidelines describe different categories of case in accordance with subsection (2), specify the sentencing starting point in the offence range for each of those categories.

(6) The guidelines should—

(a) (to the extent not already taken into account by categories of case described in accordance with subsection (2)) list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the court is required to take into account when considering the seriousness of the offence and any other aggravating or mitigating factors which the Council considers are relevant to such a consideration,

(b) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence, and

(c) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within paragraph (a) or (b) as the Council considers to be of particular significance in relation to the offence or the offender.

(7) For the purposes of subsection (6)(b) the following are to be disregarded—

(a) the requirements of section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas);

(b) sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence;

(c) any rule of law as to the totality of sentences.

(8) The provision made in accordance with subsection (6)(c) should be framed in such manner as the Council considers most appropriate for the purpose of assisting the court, when sentencing an offender for the offence, to determine the appropriate sentence within the offence range.

(9) The provision made in accordance with subsections (2) to (8) may be different for different circumstances or cases involving the offence.

(10) The sentencing starting point in the offence range—

(a) for a category of case described in the guidelines in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for cases within that category—

(i) before taking account of the factors mentioned in subsection (6), and

(ii) assuming the offender has pleaded not guilty, and

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(b) where the guidelines do not describe categories of case in accordance with subsection (2), is the sentence within that range which the Council considers to be the appropriate starting point for the offence—

(i) before taking account of the factors mentioned in subsection (6), and

(ii) assuming the offender has pleaded not guilty.

### 122 Allocation guidelines

(1) In this Chapter "allocation guidelines" means guidelines relating to decisions by a magistrates' court under section 19 of the Magistrates' Courts Act 1980 (c. 43), or the Crown Court under paragraph 7(7) or 8(2)(d) of Schedule 3 to the Crime and Disorder Act 1998 (c. 37), as to whether an offence is more suitable for summary trial or trial on indictment.

(2) The Council may prepare allocation guidelines.

(3) Where the Council has prepared guidelines under subsection (2), it must publish them as draft guidelines.

(4) The Council must consult the following persons about the draft guidelines—

(a) the Lord Chancellor;

(b) such persons as the Lord Chancellor may direct;

(c) the Justice Select Committee of the House of Commons (or, if there ceases to be a committee of that name, such committee of the House of Commons as the Lord Chancellor directs);

(d) such other persons as the Council considers appropriate.

(5) The Council may, after making any amendment of the draft guidelines which it considers appropriate, issue the guidelines as definitive guidelines.

(6) The Council may, from time to time, review the allocation guidelines issued under this section, and may revise them.

(7) Subsections (3) to (5) apply to a revision of the guidelines as they apply to their preparation.

(8) When exercising functions under this section, the Council must have regard to—

(a) the need to promote consistency in decisions of the kind mentioned in subsection (1), and

(b) the results of the monitoring carried out under section 128.

### 123 Preparation or revision of guidelines in urgent cases

(1) This section applies where the Council—

(a) decides to prepare or revise sentencing guidelines or allocation guidelines, and

(b) is of the opinion that the urgency of the case makes it impractical to comply with the procedural requirements of section 120 or (as the case may be) section 122.

(2) The Council may prepare or revise the guidelines without complying with—

(a) in the case of sentencing guidelines, section 120(5), and

(b) in the case of allocation guidelines, section 122(3).

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(3) The Council may—

(a) in the case of sentencing guidelines, amend and issue the guidelines under section 120(7) or (8) without having complied with the requirements of section 120(6)(b) to (d), and

(b) in the case of allocation guidelines, amend and issue the guidelines under section 122(5) without having complied with the requirements of section 122(4)(b) to (d).

(4) The guidelines or revised guidelines must—

(a) state that the Council was of the opinion mentioned in subsection (1)(b), and

(b) give the Council's reasons for that opinion.

### 124 Proposals by Lord Chancellor or Court of Appeal

(1) The Lord Chancellor may propose to the Council—

(a) that sentencing guidelines be prepared or revised by the Council under section 120—

(i) in relation to a particular offence, particular category of offence or particular category of offenders, or

(ii) in relation to a particular matter affecting sentencing;

(b) that allocation guidelines be prepared or revised by the Council under section 122.

(2) Subsection (3) applies where the criminal division of the Court of Appeal ("the appeal court") is seised of an appeal against, or a reference under section 36 of the Criminal Justice Act 1988 (c. 33) (reviews of sentencing) with respect to, the sentence passed for an offence ("the relevant offence").

(3) The appeal court may propose to the Council that sentencing guidelines be prepared or revised by the Council under section 120—

(a) in relation to the relevant offence, or

(b) in relation to a category of offences within which the relevant offence falls.

(4) A proposal under subsection (3) may be included in the appeal court's judgment in the appeal.

(5) If the Council receives a proposal under subsection (1) or (3) to prepare or revise any guidelines, it must consider whether to do so.

(6) For the purposes of this section, the appeal court is seised of an appeal against a sentence if—

(a) the court or a single judge has granted leave to appeal against the sentence under section 9 or 10 of the Criminal Appeal Act 1968 (c. 19) (appeals against sentence), or

(b) in a case where the judge who passed the sentence granted a certificate of fitness for appeal under section 9 or 10 of that Act, notice of appeal has been given,

and the appeal has not been abandoned or disposed of.

(7) For the purposes of this section, the appeal court is seised of a reference under section 36 of the Criminal Justice Act 1988 (reviews of sentencing) if it has given leave under subsection (1) of that section and the reference has not been disposed of.

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(8) This section is without prejudice to any power of the appeal court to provide guidance relating to the sentencing of offenders in a judgment of the court.

*Duties of the court*

**125 Sentencing guidelines: duty of court**

(1) Every court—

(a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.

(2) Subsections (3) and (4) apply where—

(a) a court is deciding what sentence to impose on a person ("P") who is guilty of an offence, and

(b) sentencing guidelines have been issued in relation to that offence which are structured in the way described in section 121(2) to (5) ("the offence-specific guidelines").

(3) The duty imposed on a court by subsection (1)(a) to follow any sentencing guidelines which are relevant to the offender's case includes—

(a) in all cases, a duty to impose on P, in accordance with the offence-specific guidelines, a sentence which is within the offence range, and

(b) where the offence-specific guidelines describe categories of case in accordance with section 121(2), a duty to decide which of the categories most resembles P's case in order to identify the sentencing starting point in the offence range;

but nothing in this section imposes on the court a separate duty, in a case within paragraph (b), to impose a sentence which is within the category range.

(4) Subsection (3)(b) does not apply if the court is of the opinion that, for the purpose of identifying the sentence within the offence range which is the appropriate starting point, none of the categories sufficiently resembles P's case.

(5) Subsection (3)(a) is subject to—

(a) section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentences for guilty pleas),

(b) sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (c. 15) (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered to be given) by the offender to the prosecutor or investigator of an offence, and

(c) any rule of law as to the totality of sentences.

(6) The duty imposed by subsection (1) is subject to the following provisions—

(a) section 148(1) and (2) of the Criminal Justice Act 2003 (restrictions on imposing community sentences);

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(b) section 152 of that Act (restrictions on imposing discretionary custodial sentences);

(c) section 153 of that Act (custodial sentence must be for shortest term commensurate with seriousness of offence);

(d) section 164(2) of that Act (fine must reflect seriousness of offence);

(e) section 269 of and Schedule 21 to that Act (determination of minimum term in relation to mandatory life sentence);

(f) section 51A of the Firearms Act 1968 (c. 27) (minimum sentence for certain offences under section 5 etc);

(g) sections 110(2) and 111(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (minimum sentences for certain drug trafficking and burglary offences);

(h) section 29(4) and (6) of the Violent Crime Reduction Act 2006 (c. 38) (minimum sentences for certain offences involving firearms).

(7) Nothing in this section or section 126 is to be taken as restricting any power (whether under the Mental Health Act 1983 (c. 20) or otherwise) which enables a court to deal with a mentally disordered offender in the manner it considers to be most appropriate in all the circumstances.

(8) In this section—

"mentally disordered", in relation to a person, means suffering from a mental disorder within the meaning of the Mental Health Act 1983;

"sentencing guidelines" means definitive sentencing guidelines.

**126 Determination of tariffs etc**

(1) Section 125(3) (except as applied by virtue of subsection (3) below) is subject to any power a court has to impose—

(a) a sentence of imprisonment for public protection by virtue of section 225(3) of the Criminal Justice Act 2003 (c. 44);

(b) a sentence of detention for public protection by virtue of section 226(3) of that Act;

(c) an extended sentence of imprisonment by virtue of section 227 of that Act;

(d) an extended sentence of detention by virtue of section 228 of that Act.

(2) Subsection (3) applies where a court determines the notional determinate term for the purpose of determining in any case—

(a) the order to be made under section 82A of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence: determination of tariffs),

(b) the notional minimum term for the purposes of section 225(3C) or 226(3A) of the Criminal Justice Act 2003 (imprisonment or detention for public protection for serious offences),

(c) the appropriate custodial term for the purposes of section 227(3) of that Act (extended sentence for certain violent or sexual offences: persons 18 or over), or

(d) the appropriate term for the purposes of section 228(3) of that Act (extended sentence for certain violent or sexual offences: persons under 18).

(3) Subsections (2) to (5) of section 125 apply for the purposes of determining the notional determinate term in relation to an offence as they apply for the purposes of determining the sentence for an offence.

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(4) In this section references to the notional determinate term are to the determinate sentence that would have been passed in the case if the need to protect the public and the potential danger of the offender had not required the court to impose a life sentence (in circumstances where the sentence is not fixed by law) or, as the case may be, an extended sentence of imprisonment or detention.

(5) In subsection (4) "life sentence" has the same meaning as in Chapter 2 of Part 2 of the Crime (Sentences) Act 1997 (c. 43).

*Other functions of the Council*

**127 Resource implications of guidelines**

(1) This section applies where the Council—
  (a) publishes draft guidelines under section 120 or 122, or
  (b) issues guidelines as definitive guidelines under either of those sections.

(2) The Council must publish a resource assessment in respect of the guidelines.

(3) A resource assessment in respect of any guidelines is an assessment by the Council of the likely effect of the guidelines on—
  (a) the resources required for the provision of prison places,
  (b) the resources required for probation provision, and
  (c) the resources required for the provision of youth justice services.

(4) The resources assessment must be published—
  (a) in a case within subsection (1)(a), at the time of publication of the draft guidelines;
  (b) in a case within subsection (1)(b), at the time the guidelines are issued or, where the guidelines are issued by virtue of section 123, as soon as reasonably practicable after the guidelines are issued.

(5) The Council must keep under review any resource assessment published under this section, and, if the assessment is found to be inaccurate in a material respect, publish a revised resource assessment.

**128 Monitoring**

(1) The Council must—
  (a) monitor the operation and effect of its sentencing guidelines, and
  (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a).

(2) The Council must, in particular, discharge its duty under subsection (1)(a) with a view to drawing conclusions about—
  (a) the frequency with which, and extent to which, courts depart from sentencing guidelines;
  (b) the factors which influence the sentences imposed by courts;
  (c) the effect of the guidelines on the promotion of consistency in sentencing;
  (d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.

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(3) When reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include—

(a) a summary of the information obtained under subsection (1)(a), and

(b) a report of any conclusions drawn by the Council under subsection (1)(b).

**129 Promoting awareness**

(1) The Council must publish, at such intervals as it considers appropriate—

(a) in relation to each local justice area, information regarding the sentencing practice of the magistrates' courts acting in that area, and

(b) in relation to each location at which the Crown Court sits, information regarding the sentencing practice of the Crown Court when it sits at that location.

(2) The Council may promote awareness of matters relating to the sentencing of offenders by courts in England and Wales, including, in particular—

(a) the sentences imposed by courts in England and Wales;

(b) the cost of different sentences and their relative effectiveness in preventing re-offending;

(c) the operation and effect of guidelines under this Chapter.

(3) For the purposes of subsection (2), the Council may, in particular, publish any information obtained or produced by it in connection with its functions under section 128(1).

**130 Resources: effect of sentencing practice**

(1) The annual report for a financial year must contain a sentencing factors report.

(2) A sentencing factors report is an assessment made by the Council, using the information available to it, of the effect which any changes in the sentencing practice of courts are having or are likely to have on each of the following—

(a) the resources required for the provision of prison places;

(b) the resources required for probation provision;

(c) the resources required for the provision of youth justice services.

**131 Resources: effect of factors not related to sentencing**

(1) The annual report for a financial year must contain a non-sentencing factors report.

(2) The Council may, at any other time, provide the Lord Chancellor with a non-sentencing factors report, and may publish that report.

(3) A non-sentencing factors report is a report by the Council of any significant quantitative effect (or any significant change in quantitative effect) which non-sentencing factors are having or are likely to have on the resources needed or available for giving effect to sentences imposed by courts in England and Wales.

(4) Non-sentencing factors are factors which do not relate to the sentencing practice of the courts, and include—

(a) the recalling of persons to prison;

(b) breaches of orders within subsection (5);

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(c) patterns of re-offending;
(d) decisions or recommendations for release made by the Parole Board;
(e) the early release under discretionary powers of persons detained in prison;
(f) the remanding of persons in custody.

(5) The orders within this subsection are—
(a) community orders (within the meaning of section 177 of the Criminal Justice Act 2003 (c. 44)),
(b) suspended sentence orders (within the meaning of section 189(7) of that Act), and
(c) youth rehabilitation orders (within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008 (c. 4)).

**132 Duty to assess impact of policy and legislative proposals**

(1) This section applies where the Lord Chancellor refers to the Council any government policy proposal, or government proposal for legislation, which the Lord Chancellor considers may have a significant effect on one or more of the following—
(a) the resources required for the provision of prison places;
(b) the resources required for probation provision;
(c) the resources required for the provision of youth justice services.

(2) For the purposes of subsection (1)—
"government policy proposal" includes a policy proposal of the Welsh Ministers;
"government proposal for legislation" includes a proposal of the Welsh Ministers for legislation.

(3) The Council must assess the likely effect of the proposal on the matters mentioned in paragraphs (a) to (c) of subsection (1).

(4) The Council must prepare a report of the assessment and send the report—
(a) to the Lord Chancellor, and
(b) if the report relates to a proposal of the Welsh Ministers, to the Welsh Ministers.

(5) A single report may be prepared of the assessments relating to 2 or more proposals.

(6) If the Lord Chancellor receives a report under subsection (4) the Lord Chancellor must, unless it relates only to a proposal of the Welsh Ministers, lay a copy of it before each House of Parliament.

(7) If the Welsh Ministers receive a report under subsection (4) they must lay a copy of it before the National Assembly for Wales.

(8) The Council must publish a report which has been laid in accordance with subsections (6) and (7).

(9) In this section "legislation" means—
(a) an Act of Parliament if, or to the extent that, it extends to England and Wales;

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(b) subordinate legislation made under an Act of Parliament if, or to the extent that, the subordinate legislation extends to England and Wales;

(c) a Measure or Act of the National Assembly for Wales or subordinate legislation made under such a Measure or Act.

*Lord Chancellor's functions*

**133 Assistance by the Lord Chancellor**

The Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions.

**134 Entrenchment of Lord Chancellor's functions**

In Schedule 7 to the Constitutional Reform Act 2005 (c. 4) (protected functions of the Lord Chancellor), in Part A of paragraph 4—

(a) for the entry for the Criminal Justice Act 2003 (c. 44) substitute—

"*Criminal Justice Act 2003 (c. 44)*
Section 174(4)
Section 269(6) and (7)", and

(b) after the entry for the Tribunals, Courts and Enforcement Act 2007 (c. 15) insert—

"*Coroners and Justice Act 2009 (c. 25)*
Section 119(1) and (2)
Section 120(6)
Section 122(4)
Section 124(1)
Section 131(2)
Section 132(1), (4) and (6)
Section 133
Schedule 15".

*Miscellaneous and general*

**135 Abolition of existing sentencing bodies**

The following are abolished—

(a) the Sentencing Guidelines Council;

(b) the Sentencing Advisory Panel.

**136 Interpretation of this Chapter**

In this Chapter, except where the context otherwise requires—

"allocation guidelines" has the meaning given by section 122;

"annual report" means a report made under section 119;

"the category range" has the meaning given by section 121(4)(b);

"the Council" means the Sentencing Council for England and Wales;

"definitive sentencing guidelines" means sentencing guidelines issued by the Council under section 120 as definitive guidelines, as revised by any subsequent guidelines so issued;

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"financial year" means a period of 12 months ending with 31 March;

"the offence range" has the meaning given by section 121(4)(a);

"prison"—

(a) includes any youth detention accommodation within the meaning of section 107(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (detention and training orders), but

(b) does not include any naval, military or air force prison;

"probation provision" has the meaning given by section 2 of the Offender Management Act 2007 (c. 21);

"sentence", in relation to an offence, includes any order made by a court when dealing with the offender in respect of the offender's offence, and "sentencing" is to be construed accordingly;

"sentencing guidelines" has the meaning given by section 120;

"the sentencing starting point", in relation to the offence range, has the meaning given by section 121(10);

"youth justice services" has the meaning given by section 38(4) of the Crime and Disorder Act 1998 (c. 37).

## CHAPTER 2

OTHER PROVISIONS RELATING TO SENTENCING

*Driving disqualification*

### 137 Extension of driving disqualification

Schedule 16 makes provision about the extension of disqualification for holding or obtaining a driving licence in certain circumstances.

*Dangerous offenders*

### 138 Dangerous offenders: terrorism offences (England and Wales)

(1) Part 1 of Schedule 15 to the Criminal Justice Act 2003 (c. 44) (specified violent offences for the purposes of Chapter 5 of Part 12 of that Act) is amended as follows.

(2) After paragraph 59 insert—

"59A An offence under section 54 of the Terrorism Act 2000 (weapons training).

59B An offence under section 56 of that Act (directing terrorist organisation).

59C An offence under section 57 of that Act (possession of article for terrorist purposes).

59D An offence under section 59 of that Act (inciting terrorism overseas)."

(3) After paragraph 60 insert—

"60A An offence under section 47 of the Anti-terrorism, Crime and Security Act 2001 (use etc of nuclear weapons).

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60B An offence under section 50 of that Act (assisting or inducing certain weapons-related acts overseas).

60C An offence under section 113 of that Act (use of noxious substance or thing to cause harm or intimidate)."

(4) After paragraph 63A insert—

"63B An offence under section 5 of the Terrorism Act 2006 (preparation of terrorist acts).

63C An offence under section 6 of that Act (training for terrorism).

63D An offence under section 9 of that Act (making or possession of radioactive device or material).

63E An offence under section 10 of that Act (use of radioactive device or material for terrorist purposes etc).

63F An offence under section 11 of that Act (terrorist threats relating to radioactive devices etc)."

**139 Dangerous offenders: terrorism offences (Northern Ireland)**

(1) Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (serious offences for purposes of Chapter 3 of Part 2 of that Order) is amended in accordance with subsections (2) to (4).

(2) After paragraph 25 insert—

*"The Terrorism Act 2000 (c. 11)*

25A An offence under—
section 54 (weapons training),
section 56 (directing terrorist organisation),
section 57 (possession of article for terrorist purposes), or
section 59 (inciting terrorism overseas)."

(3) After paragraph 26 insert—

*"The Anti-terrorism, Crime and Security Act 2001 (c. 24)*

26A An offence under—
section 47 (use etc of nuclear weapons),
section 50 (assisting or inducing certain weapons-related acts overseas), or
section 113 (use of noxious substance or thing to cause harm or intimidate)."

(4) After paragraph 31 insert—

*"The Terrorism Act 2006 (c. 11)*

31ZA An offence under—
section 5 (preparation of terrorist acts),
section 6 (training for terrorism),

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section 9 (making or possession of radioactive device or material),
section 10 (use of radioactive device or material for terrorist purposes etc), or
section 11 (terrorist threats relating to radioactive devices etc)."

(5) Part 1 of Schedule 2 to that Order (specified violent offences) is amended in accordance with subsections (6) to (8).

(6) After paragraph 27 insert—

*"The Terrorism Act 2000 (c. 11)*

27A An offence under—
section 54 (weapons training),
section 56 (directing terrorist organisation),
section 57 (possession of article for terrorist purposes), or
section 59 (inciting terrorism overseas)."

(7) After paragraph 28 insert—

*"The Anti-terrorism, Crime and Security Act 2001 (c. 24)*

28A An offence under—
section 47 (use etc of nuclear weapons),
section 50 (assisting or inducing certain weapons-related acts overseas), or
section 113 (use of noxious substance or thing to cause harm or intimidate)."

(8) After paragraph 31 insert—

*"The Terrorism Act 2006 (c. 11)*

31A An offence under—
section 5 (preparation of terrorist acts),
section 6 (training for terrorism),
section 9 (making or possession of radioactive device or material),
section 10 (use of radioactive device or material for terrorist purposes etc), or
section 11 (terrorist threats relating to radioactive devices etc)."

*Confiscation orders*

**140 Appeals against certain confiscation orders (England and Wales)**

(1) The Criminal Appeal Act 1968 (c. 19) is amended in accordance with subsections (2) and (3).

(2) In section 11 (supplementary provisions as to appeal against sentence), after

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subsection (3) insert—

"(3A) Where the Court of Appeal exercise their power under paragraph (a) of subsection (3) to quash a confiscation order, the Court may, instead of proceeding under paragraph (b) of that subsection, direct the Crown Court to proceed afresh under the relevant enactment.

(3B) When proceeding afresh pursuant to subsection (3A), the Crown Court shall comply with any directions the Court of Appeal may make.

(3C) The Court of Appeal shall exercise the power to give such directions so as to ensure that any confiscation order made in respect of the appellant by the Crown Court does not deal more severely with the appellant than the order quashed under subsection (3)(a).

(3D) For the purposes of this section—

"confiscation order" means a confiscation order made under—

(a) section 1 of the Drug Trafficking Offences Act 1986,

(b) section 71 of the Criminal Justice Act 1988,

(c) section 2 of the Drug Trafficking Act 1994, or

(d) section 6 of the Proceeds of Crime Act 2002;

"relevant enactment", in relation to a confiscation order quashed under subsection (3)(a), means the enactment under which the order was made."

(3) After that section insert—

**"11A Quashing of certain confiscation orders: supplementary**

(1) This section applies where the Court of Appeal—

(a) quash a confiscation order under section 11(3)(a) ("the quashed order"), and

(b) under section 11(3A), direct the Crown Court to proceed afresh under the relevant enactment.

(2) Nothing in this section prevents any sum paid by the appellant pursuant to the quashed order being a sum which is recoverable from the Secretary of State as a debt owing to the appellant, but the Court of Appeal may direct that any such sum is not to be repaid until such time as the Crown Court makes a confiscation order, or decides not to make such an order, when proceeding afresh pursuant to section 11(3A).

(3) Nothing in this section prevents an amount which would otherwise fall to be repaid as a result of the order being quashed being set against an amount which the appellant is required to pay by virtue of a confiscation order made by the Crown Court in those proceedings.

(4) In this section "confiscation order" and "relevant enactment" have the same meaning as in section 11(3D)."

**141 Appeals against certain confiscation orders (Northern Ireland)**

(1) The Criminal Appeal (Northern Ireland) Act 1980 (c. 47) is amended in accordance with subsections (2) and (3).

(2) In section 10 (supplementary provisions as to appeals against sentence), after subsection (3) insert—

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"(3A) Where the Court of Appeal exercises its power under subsection (3) to quash a confiscation order, the Court may, instead of passing a sentence in substitution for that order, direct the Crown Court to proceed afresh under the relevant enactment.

(3B) When proceeding afresh pursuant to subsection (3A), the Crown Court shall comply with any directions the Court of Appeal may make.

(3C) For the purposes of this section—

"confiscation order" means a confiscation order made under—

(a) Article 4 or 5 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990,

(b) Article 8 of the Proceeds of Crime (Northern Ireland) Order 1996, or

(c) section 156 of the Proceeds of Crime Act 2002;

"relevant enactment", in relation to a confiscation order quashed under subsection (3), means the enactment under which the order was made."

(3) After that section insert—

**"10A Quashing of certain confiscation orders: supplementary**

(1) This section applies where the Court of Appeal—

(a) quashes a confiscation order under section 10(3) ("the quashed order"), and

(b) under section 10(3A), directs the Crown Court to proceed afresh under the relevant enactment.

(2) Nothing in this section prevents any sum paid by the appellant pursuant to the quashed order being a sum which is recoverable from the Secretary of State as a debt owing to the appellant, but the Court of Appeal may direct that any sum is not to be repaid until such time as the Crown Court makes a confiscation order, or decides not to make such an order, when proceeding afresh pursuant to section 10(3A).

(3) Nothing in this section prevents an amount which would otherwise fall to be repaid as a result of the order being quashed being set against an amount which the appellant is required to pay by virtue of a confiscation order made by the Crown Court in those proceedings.

(4) In this section "confiscation order" and "relevant enactment" have the same meaning as in section 10(3C)."

## PART 5

MISCELLANEOUS CRIMINAL JUSTICE PROVISIONS

### 142 Commissioner for Victims and Witnesses

(1) Part 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) (victims etc) is amended as follows.

(2) In section 48 (the Commissioner for Victims and Witnesses)—

(a) omit subsections (3) to (5) (establishment of corporation sole, no Crown status etc), and

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(b) for subsection (6) substitute—

"(6) The Secretary of State may pay to, or in respect of, the Commissioner amounts—

(a) by way of remuneration, pensions, allowances or gratuities, or

(b) by way of provision for any such benefits.

(7) The Secretary of State may pay sums in respect of the expenses of the Commissioner."

(3) In section 49 (general functions of Commissioner)—

(a) omit subsection (2)(d) (carrying out of research),

(b) omit subsection (3)(b) (laying of reports before Parliament), and

(c) at the end add—

"(4) The Commissioner must prepare in respect of each calendar year a report on the carrying out of the functions of the Commissioner during the year.

(5) The Commissioner must send a copy of each report prepared under subsection (4) to—

(a) the Secretary of State for Justice,

(b) the Attorney General, and

(c) the Secretary of State for the Home Department.

(6) Reports under subsection (2)(b) or (4) must be published by the Commissioner.

(7) If section 48 comes into force after the beginning of a calendar year, the first report under subsection (4) may relate to a period beginning with the day on which that section comes into force and ending with the end of the next calendar year."

(4) Omit section 50(2) (advice to authorities within Commissioner's remit).

(5) In section 55 (Victims' Advisory Panel)—

(a) after subsection (1) insert—

"(1A) The persons appointed under subsection (1) must include the Commissioner.

(1B) The Commissioner is to chair the Panel.",

(b) in subsection (2), in paragraph (a) for "a" substitute "any other", and

(c) in paragraph (b) of that subsection for "a" substitute "such a".

(6) Omit Schedule 8 (supplementary provision about the Commissioner for Victims and Witnesses).

### 143 Implementation of E-Commerce and Services directives: penalties

(1) Paragraph 1(1)(d) of Schedule 2 to the European Communities Act 1972 (c. 68) (limitation on penalty which can be imposed for a criminal offence) does not apply in relation to the exercise of the powers conferred by section 2(2) of that Act (implementation of EU obligations etc) for the purpose of implementing—

(a) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services in

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particular electronic commerce in the Internal Market (Directive on electronic commerce), or

(b) Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market.

(2) Where a statutory instrument includes provision by virtue of subsection (1)—

(a) if paragraph 2 of Schedule 2 to the European Communities Act 1972 (c. 68) applies to the instrument, sub-paragraph (2) of that paragraph has effect as if it required a draft of the instrument to be approved by resolution of each House of Parliament or, in the case of an instrument made by the Scottish Ministers, of the Scottish Parliament;

(b) if section 59(3) of the Government of Wales Act 2006 (c. 32) applies to the instrument, that provision has effect as if it required a draft of the instrument to be approved by resolution of the National Assembly for Wales.

(3) Where a statutory rule to which paragraph 3 of Schedule 2 to the European Communities Act 1972 applies includes provision by virtue of subsection (1), that paragraph has effect as if it required a draft of the rule to be approved by resolution of the Northern Ireland Assembly.

### 144 Treatment of convictions in other member States etc

Schedule 17 contains—

(a) amendments relating to the treatment of criminal convictions imposed by courts outside England and Wales, and

(b) amendments relating to the treatment of criminal convictions imposed by courts outside Northern Ireland.

### 145 Transfer to Parole Board of functions under the Criminal Justice Act 1991

(1) Part 2 of the Criminal Justice Act 1991 (c. 53) (as it continues to apply to persons sentenced for offences committed before 4 April 2005) is amended as follows.

(2) In section 35 (power to release long-term prisoners), for subsection (1) substitute—

"(1) After a long-term prisoner has served one-half of his sentence, the Secretary of State shall, if recommended to do so by the Board, release him on licence."

(3) In section 37 (duration and conditions of licences)—

(a) omit subsection (5),

(b) after that subsection insert—

"(5A) The Secretary of State shall not include on release, or subsequently insert, a condition in the licence of a long-term prisoner to whom section 35(1) applies, or vary or cancel any such condition, except in accordance with recommendations of the Board.", and

(c) omit subsection (6).

(4) The reference in subsection (2) above to section 35(1) and the reference in subsection (3)(a) above to section 37(5) each includes a reference to that provision as modified (for certain long-term prisoners) by the Parole Board (Transfer of Functions) Order 1998 (S.I. 1998/3218).

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**146 Retention of knives surrendered or seized (England and Wales)**

(1) The Courts Act 2003 (c. 39) is amended as follows.

(2) In section 55 (powers to retain articles surrendered or seized), after subsection (3) add—

"(4) This section is subject to section 55A."

(3) After section 55 insert—

**"55A Retention of knives surrendered or seized**

(1) This section applies where a knife is surrendered to a court security officer in response to a request under section 54(1) or seized by a court security officer under section 54(2).

(2) Section 55 does not apply.

(3) The knife must be retained in accordance with regulations under subsection (5), unless returned or disposed of in accordance with those regulations or regulations made under section 56.

(4) If a court security officer reasonably believes that a retained knife may be evidence of, or in relation to, an offence, nothing in subsection (3) prevents the officer retaining the knife for so long as necessary to enable the court security officer to draw it to the attention of a constable.

(5) Without prejudice to the generality of section 56, the Lord Chancellor must by regulations make provision as to—

(a) the procedure to be followed when a knife is retained under this section;

(b) the making of requests by eligible persons for the return of knives so retained;

(c) the procedure to be followed when returning a knife pursuant to a request made in accordance with the regulations.

(6) For the purposes of this section—

"eligible person", in relation to a knife retained under this section, means—

(a) the person who has surrendered the knife under section 54(1) or from whom the knife has been seized under section 54(2), or

(b) any other person specified in regulations made under subsection (5);

"knife" includes—

(a) a knife-blade, and

(b) any other article which—

(i) has a blade or is sharply pointed, and

(ii) is made or adapted for use for causing injury to the person."

(4) In section 56(2)(a), after "section 55" insert "or section 55A".

**147 Retention of knives surrendered or seized (Northern Ireland)**

(1) Schedule 3 to the Justice (Northern Ireland) Act 2004 (c. 4) (court security) is

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amended in accordance with subsections (2) to (4).

(2) In paragraph 5 (power to retain articles surrendered or seized), after sub-paragraph (3) add—

"(4) This paragraph is subject to paragraph 5A."

(3) After paragraph 5 insert—

**"5A Retention of knives surrendered or seized**

(1) This paragraph applies where a knife is surrendered to a court security officer in response to a request under paragraph 4(1) or seized by a court security officer under paragraph 4(2).

(2) Paragraph 5 does not apply.

(3) The knife must be retained in accordance with regulations under sub-paragraph (5), unless returned or disposed of in accordance with those regulations or regulations made under paragraph 6.

(4) If a court security officer reasonably believes that a retained knife may be evidence of, or in relation to, an offence, nothing in sub-paragraph (3) prevents the officer retaining the knife for so long as necessary to enable the court security officer to draw it to the attention of a constable.

(5) Without prejudice to the generality of paragraph 6, the Lord Chancellor must by regulations make provision as to—

(a) the procedure to be followed when a knife is retained under this paragraph;

(b) the making of requests by eligible persons for the return of knives so retained;

(c) the procedure to be followed when returning a knife pursuant to a request made in accordance with the regulations.

(6) For the purposes of this paragraph—

"eligible person", in relation to a knife retained under this paragraph, means—

(a) the person who has surrendered the knife under paragraph 4(1) or from whom the knife has been seized under paragraph 4(2), or

(b) any other person specified in regulations made under sub-paragraph (5);

"knife" includes—

(a) a knife-blade, and

(b) any other article which—

(i) has a blade or which is sharply pointed, and

(ii) is made or adapted for use for causing injury to the person."

(4) In paragraph 6(2)(a), after "paragraph 5" insert "or paragraph 5A".

(5) In section 21(3) of the Justice (Northern Ireland) Act 2004 (c. 4) (orders and regulations subject to annulment in pursuance of resolution of either House of Parliament) after "1(4)" insert ", 5A(5)".

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### 148 Security in tribunal buildings

(1) The Lord Chancellor may, by order—

(a) authorise or require the Lord Chancellor, or such other person as may be specified, to designate persons as security officers in relation to a specified description of tribunal buildings;

(b) provide that Part 4 (other than section 51(1)) of the Courts Act 2003 (c. 39) (provisions relating to court security) applies in relation to a specified description of tribunal buildings and security officers designated in relation to tribunal buildings of that description as it applies to court buildings and court security officers, subject to such modifications as may be specified.

(2) The provision which may be included in an order under subsection (1) by virtue of section 176 (power to make consequential provision etc) includes provision modifying any provision made by or under an Act (whenever passed or made).

(3) In this section—

"court building" has the meaning given by section 52(3) of the Courts Act 2003;

"modify" includes amend, add to, repeal or revoke (and modification is to be construed accordingly);

"specified" means specified by an order under subsection (1);

"tribunal buildings" means any building, or part of a building, to which the public have access (other than a court building)—

(a) where the business of any tribunal mentioned in section 39(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15) is carried on, or

(b) where the business of any other tribunal designated by the Lord Chancellor, by order, is carried on.

## PART 6

LEGAL AID AND OTHER PAYMENTS FOR LEGAL SERVICES

*Community Legal Service*

### 149 Community Legal Service: pilot schemes

(1) The Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 6 (services which may be funded), after subsection (8) insert—

"(8A) The circumstances specified in a direction or authorisation under subsection (8) may be circumstances described by reference to—

(a) one or more areas or localities;

(b) one or more descriptions of court or tribunal.

(8B) A direction or authorisation under subsection (8) may provide that it requires or authorises the Commission to fund the provision of services only for—

(a) one or more specified classes of person;

(b) persons selected—

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(i) by reference to specified criteria; or
(ii) on a sampling basis."

(3) After section 8 insert—

**"8A Funding code: pilot provisions**

(1) The code may contain provisions ("pilot provisions") which are to have effect for a specified period not exceeding 3 years.

(2) Pilot provisions may be expressed so as to apply only in relation to—
(a) one or more specified areas or localities;
(b) one or more specified descriptions of court or tribunal;
(c) one or more specified descriptions of service that may be provided as part of the Community Legal Service;
(d) one or more specified classes of person;
(e) persons selected—
(i) by reference to specified criteria; or
(ii) on a sampling basis.

(3) Pilot provisions may disapply any other provision of the code in relation to any of the matters mentioned in paragraphs (a) to (e) of subsection (2).

(4) The period for the time being specified in relation to pilot provisions may be revised—
(a) if the period is one of less than 3 years, so that it becomes a longer period not exceeding 3 years;
(b) so that it becomes a period which exceeds 3 years by such amount as the Commission thinks necessary for the purpose of securing that the pilot provisions remain in operation until the coming into force of a revised code that contains similar provisions that will have effect—
(i) generally, or
(ii) for purposes wider than those for which the pilot provisions have effect.

(5) If the code contains pilot provisions, the code may also contain consequential or transitional provision with respect to the cessation of the pilot provisions on the expiry of the specified period (or that period as revised under subsection (4))."

(4) In section 9(5) (procedure relating to funding code) after "code", in the second place it occurs, insert "or changes made in pursuance of section 8A".

(5) After section 11 insert—

**"11A Pilot schemes**

(1) This section applies to the following instruments—
(a) any order under section 6(4) or 8(9),
(b) any regulations under section 6(7), 7, 10 or 11, and
(c) any regulations under section 22(5) having effect in relation to the Community Legal Service.

(2) Any instrument to which this section applies may be made so as to have effect for a specified period not exceeding 3 years.

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(3) In the following provisions of this section—

(a) "pilot scheme" means any instrument which, in accordance with subsection (2), is made so as to have effect for a limited period;

(b) "connected instrument", in relation to a pilot scheme, means an instrument made under the same provision as the pilot scheme.

(4) A pilot scheme may provide that its provisions, or the provisions of a connected instrument, are to apply only in relation to—

(a) one or more specified areas or localities;

(b) one or more specified descriptions of court or tribunal;

(c) one or more specified descriptions of service that may be provided as part of the Community Legal Service;

(d) one or more specified classes of person;

(e) persons selected—

(i) by reference to specified criteria; or

(ii) on a sampling basis.

(5) The period for the time being specified in a pilot scheme may be varied—

(a) if the period is one of less than 3 years, so that it becomes a longer period not exceeding 3 years;

(b) so that it becomes a period which exceeds 3 years by such amount as the Lord Chancellor thinks necessary for the purpose of securing that the pilot scheme remains in operation until the coming into force of a connected instrument that will have effect—

(i) generally, or

(ii) for purposes wider than those for which the pilot scheme has effect.

(6) A pilot scheme may make consequential or transitional provision with respect to the cessation of the scheme on the expiry of the specified period (or that period as varied under subsection (5))."

(6) In section 25 (orders and regulations), after subsection (9A) insert—

"(9AA) No instrument (other than an order under section 6(4)) may be made in pursuance of section 11A unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament."

**150 Excluded services: help in connection with business matters**

(1) Schedule 2 to the Access to Justice Act 1999 (c. 22) (services excluded from the Community Legal Service) is amended as follows.

(2) In paragraph 1, omit paragraph (h) (matters arising out of the carrying on of a business) (but not the "or" following it).

(3) After paragraph 1 insert—

"1A Services consisting of the provision of help to an individual in relation to matters arising out of or in connection with—

(a) a proposal by that individual to establish a business;

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(b) the carrying on of a business by that individual (whether or not the business is being carried on at the time the services are provided);

(c) the termination or transfer of a business that was being carried on by that individual."

*Criminal Defence Service*

**151 Criminal Defence Service: information requests**

(1) In section 17A of the Access to Justice Act 1999 (c. 22) (contribution orders) before subsection (6) insert—

"(5A) In paragraphs 6(1) and 7(1) of Schedule 3 (information requests) the reference to regulations under paragraph 3B(3) is to be read as including a reference to regulations under this section."

(2) Schedule 3 to that Act (criminal defence service: right to representation) is amended in accordance with subsections (3) to (8).

(3) In sub-paragraph (1) of paragraph 6—

(a) for "the application of" substitute "how", and

(b) after "paragraph 3B(3)," insert "apply (or at any time applied)".

(4) In sub-paragraph (2) of that paragraph—

(a) in paragraph (a) after "name" insert "(and any previous names)",

(b) in paragraph (b) after "address" insert "(and any previous addresses)", and

(c) in paragraph (e) after "status" insert "at any time specified in the request".

(5) In sub-paragraph (3) of that paragraph—

(a) in paragraph (a) after "is" insert ", or at any time specified in the request was,",

(b) in paragraph (b) after "is" insert ", or at that time was,",

(c) after that paragraph insert—

"(ba) whether or not the individual is, or at any time specified in the request was, carrying on any business, trade or profession (and, if so, any name under which it is or was carried on and the address of any premises used for the purpose of carrying it on);", and

(d) after paragraph (c) insert—

"(ca) the individual's benefit status at any time specified in the request;".

(6) In sub-paragraph (4) of that paragraph—

(a) for "subsection" substitute "sub-paragraph (2)(f) and",

(b) after "relating to" insert "(a)", and

(c) at the end add—

"(b) the individual's assets (as defined in the regulations)."

(7) In sub-paragraph (1) of paragraph 7—

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(a) for "the application of" substitute "how", and
(b) after "paragraph 3B(3)," insert "apply (or at any time applied)".

(8) In paragraph 8—
(a) after sub-paragraph (4) insert—

"(4A) An office-holder is to be treated as employed by the person under whom the office is held.", and

(b) omit sub-paragraph (5).

**152 Criminal Defence Service: enforcement of order to pay cost of representation**

(1) The Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 17 (terms of provision of funded services)—
(a) in subsection (3)(g) omit the words from "(including" to the end, and
(b) at the end add—

"(4) Regulations under subsection (3)(g) may in particular—
(a) make provision for costs incurred in connection with the enforcement of an order under subsection (2) to be recovered from the individual against whom the order is made;
(b) provide that any overdue sums are—
(i) recoverable summarily as a civil debt;
(ii) recoverable, if the High Court or a county court so orders on the application of the person or body to which the sums are due, as if they were payable under an order of the court in question.

(5) In this section "overdue sum" means—
(a) a sum which is unpaid after the time when it is required by an order under subsection (2) to be paid;
(b) a sum which is required to be paid under regulations made by virtue of subsection (4)(a)."

(3) In section 17A (contribution orders)—
(a) in subsection (2)—
(i) in paragraph (d)(ii), after "order" insert ", or regulations made by virtue of subsection (2A)(a),", and
(ii) in paragraph (e) omit ", including" to the end,
(b) after that subsection insert—

"(2A) Enforcement regulations may in particular—
(a) make provision for costs incurred in connection with the enforcement of a contribution order to be recovered from the individual against whom the order is made;
(b) provide for the withdrawal of an individual's right to representation in certain circumstances;
(c) provide that any overdue sums are—
(i) recoverable summarily as a civil debt;
(ii) recoverable, if the High Court or a county court so orders on the application of the person or

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body to which the sums are due, as if they were payable under an order of the court in question;

(d) authorise a court to make motor vehicle orders in respect of an individual for the purpose of enabling any overdue sum required to be paid by that individual to be recovered by the person or body to which the sum is due.

(2B) In subsection (2A)(d)—

"court" means the High Court, a county court or a magistrates' court;

"motor vehicle order" means—

(a) a clamping order;

(b) a vehicle sale order.

(2C) A clamping order is an order—

(a) that a motor vehicle be fitted with an immobilisation device ("clamped"), and

(b) which complies with any requirements that are imposed by enforcement regulations with respect to the making of clamping orders.

(2D) A vehicle sale order is an order that—

(a) a motor vehicle which is the subject of a clamping order is to be sold or otherwise disposed of in accordance with any provision made by enforcement regulations, and

(b) any proceeds are to be applied, in accordance with enforcement regulations, in discharging the individual's liability in respect of the overdue sum.

(2E) Schedule 3A makes provision about the content of enforcement regulations if provision of the kind mentioned in subsection (2A)(d) is made.", and

(c) for subsection (6) of that section substitute—

"(6) In this section—

"contribution order" means an order made under regulations under subsection (1);

"enforcement regulations" means regulations made by virtue of subsection (2)(e);

"immobilisation device" has the meaning given by paragraph 8 of Schedule 3A;

"motor vehicle" has the meaning given by that paragraph;

"overdue sum" means—

(a) a sum which is unpaid after the time when it is required by a contribution order to be paid;

(b) any interest which is required to be paid by regulations made by virtue of subsection (2)(d);

(c) a sum which is required to be paid under regulations made by virtue of subsection (2A)(a)."

(4) After Schedule 3 insert the Schedule 3A set out in Schedule 18 to this Act.

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*General*

**153 Statutory instruments relating to the Legal Services Commission**

(1) The Access to Justice Act 1999 (c. 22) is amended as follows.

(2) In section 2 (power to replace Commission with two bodies), omit subsection (2).

(3) In section 25 (orders and regulations), after subsection (8) insert—

"(8A) Any power to make an order or regulations under this Part includes power to make such consequential, incidental, supplementary, transitional, transitory or saving provision as appears to the Lord Chancellor to be appropriate."

*Regulation of certain agreements*

**154 Damages-based agreements relating to employment matters**

(1) The Courts and Legal Services Act 1990 (c. 41) is amended as follows.

(2) After section 58A insert—

**"58AA Damages-based agreements relating to employment matters**

(1) A damages-based agreement which relates to an employment matter and satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.

(2) But a damages-based agreement which relates to an employment matter and does not satisfy those conditions is unenforceable.

(3) For the purposes of this section—

(a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—

(i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in connection with the matter in relation to which the services are provided, and

(ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained;

(b) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.

(4) The agreement—

(a) must be in writing;

(b) must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;

(c) must comply with such other requirements as to its terms and conditions as are prescribed; and

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(d) must be made only after the person providing services under the agreement has provided prescribed information.

(5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.

(6) Before making regulations under subsection (4) the Lord Chancellor must consult—

(a) the designated judges,
(b) the General Council of the Bar,
(c) the Law Society, and
(d) such other bodies as the Lord Chancellor considers appropriate.

(7) In this section—

"payment" includes a transfer of assets and any other transfer of money's worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly);

"claims management services" has the same meaning as in Part 2 of the Compensation Act 2006 (see section 4(2) of that Act).

(8) Nothing in this section applies to an agreement entered into before the coming into force of the first regulations made under subsection (4)."

(3) In section 120(4) (regulations and orders) after "58(4)," insert "58AA".

## PART 7

CRIMINAL MEMOIRS ETC

*Exploitation proceeds orders*

### 155 Exploitation proceeds orders

(1) A court may make an exploitation proceeds order in respect of a person if it is satisfied, on the balance of probabilities, that the person—

(a) is a qualifying offender, and
(b) has obtained exploitation proceeds from a relevant offence.

(2) An exploitation proceeds order is an order which requires the respondent to pay an amount ("the recoverable amount") in respect of exploitation proceeds obtained by the respondent from a relevant offence to the enforcement authority which applied for the order.

(3) A person obtains exploitation proceeds from a relevant offence if the person derives a benefit from—

(a) the exploitation of any material pertaining to the relevant offence, or
(b) any steps taken or to be taken with a view to such exploitation.

(4) An exploitation proceeds order must—

(a) specify the recoverable amount, and
(b) identify the benefits derived by the respondent in respect of which it is made.

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(5) The power conferred by subsection (1) is subject to sections 161 and 163.

(6) If the recoverable amount required to be paid by the respondent under an exploitation proceeds order (or any part of that amount) is not paid when it is required to be paid, the respondent must pay interest at the appropriate rate on the recoverable amount (or part) for the period for which it remains unpaid.

(7) Any sum received by an enforcement authority pursuant to an exploitation proceeds order (including any interest under subsection (6)) must be paid—

(a) if the authority is the Scottish Ministers, into the Scottish Consolidated Fund;

(b) in any other case, into the Consolidated Fund.

(8) In this section—

"appropriate rate" means—

(a) in the case of an exploitation proceeds order made by the High Court, the rate for the time being specified in section 17 of the Judgments Act 1838 (c. 110) (interest on civil judgment debts), or

(b) in the case of an exploitation proceeds order made by the Court of Session, the rate payable under a decree of the Court of Session;

"court" means—

(a) in relation to England and Wales, the High Court in England and Wales;

(b) in relation to Scotland, the Court of Session;

(c) in relation to Northern Ireland, the High Court in Northern Ireland;

"the respondent", in relation to an exploitation proceeds order or an application for such an order, means the person against whom the order is made or sought.

### 156 Qualifying offenders

(1) In this Part "qualifying offender" means a person who is within subsection (2) or (3) (or both).

(2) A person is within this subsection if (whether before or after the commencement of this Part) the person—

(a) has been convicted by a court in the United Kingdom of an offence,

(b) has been found not guilty by such a court of an offence by reason of insanity, or

(c) has been found by such a court to be under a disability and to have done the act charged in respect of an offence.

(3) A person is within this subsection if—

(a) under the law in force in a country outside the United Kingdom (and whether before or after the commencement of this Part)—

(i) the person has been convicted of a foreign offence,

(ii) a court exercising jurisdiction under that law has made, in respect of a foreign offence, a finding equivalent to a finding that the person was not guilty by reason of insanity, or

(iii) such a court has made, in respect of a foreign offence, a finding equivalent to a finding that the person was under a disability and did the act charged in respect of the offence, and

(b) the person—

(i) is a United Kingdom national,

(ii) is resident in the United Kingdom, or

(iii) was resident in the United Kingdom at the time the act which constituted the offence was done.

(4) In subsection (3)—

"foreign offence" means an act which—

(a) constituted an offence under the law in force in the country concerned,

(b) at the time it was done, would have constituted an offence if it had been done in any part of the United Kingdom, and

(c) would constitute an offence if it were done in any part of the United Kingdom at the time the application for an exploitation proceeds order is made in respect of it;

"United Kingdom national" means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 (c. 61) is a British subject, or

(c) a British protected person within the meaning of that Act.

(5) For the purposes of subsection (4), conduct punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law however it is described in that law.

(6) In this section a reference to the doing of an act includes a reference to a failure to act.

**157 Qualifying offenders: service offences**

(1) In subsection (2) of section 156—

(a) a reference to a person who has been convicted by a court in the United Kingdom of an offence includes a reference to a person who has been convicted of a UK service offence;

(b) a reference to a finding by a court in the United Kingdom in relation to an offence includes a reference to a finding by a UK service court (wherever situated) in relation to a UK service offence.

(2) In subsection (3) of that section—

(a) a reference to a foreign offence includes a foreign service offence;

(b) a reference to a person who has been convicted of a foreign offence includes a reference to a person who has been found guilty of a foreign service offence in respect of any act done which was the subject of proceedings under the service law of a country outside the United Kingdom;

(c) a reference to a finding of a court exercising jurisdiction under the law in force in a country outside the United Kingdom includes a reference to a finding of—

(i) a court established under the service law of that country, or

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(ii) an authority of the country who under the law of the country is empowered to review the proceedings of such a court or to try or investigate charges brought against persons subject to the service law of that country.

(3) For the purposes of subsection (1) the reference to a person who has been convicted of a UK service offence includes a person in respect of whom there has been—

(a) under the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19), the recording of a finding that a charge in respect of the offence has been proved;

(b) under the Naval Discipline Act 1957 (c. 53), a determination that a charge in respect of the offence has been proved, and the recording of a finding of guilt;

(c) under the Armed Forces Act 2006 (c. 52), the recording of a finding that a charge in respect of the offence has been proved;

(d) a substitution, by the Summary Appeal Court established under any of the Acts mentioned in paragraphs (a) to (c), of a finding that a charge in respect of the offence has been proved;

(e) a substitution by the Courts-Martial Appeal Court or the Court Martial Appeal Court of a finding of guilty of the offence.

(4) In this section—

"foreign service offence" means an act which—

(a) was the subject of proceedings under the service law of a country outside the United Kingdom,

(b) at the time it was done, would have constituted an offence, or a UK service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces, and

(c) would constitute an offence or a UK service offence if it were done in any part of the United Kingdom by a member of Her Majesty's forces at the time the application for an exploitation proceeds order is made in respect of it;

"Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

"service law", in relation to a country outside the United Kingdom, means the law governing all or any of the naval, military or air forces of that country;

"UK service offence" means an offence triable by a UK service court;

and a reference to the doing of an act includes a reference to a failure to act.

### 158 Qualifying offenders: supplementary

(1) In section 7 of the Rehabilitation of Offenders Act 1974 (c. 53) (limitations on rehabilitation under the 1974 Act, etc), in subsection (2), at the end add "or

(h) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc)."

(2) In Article 8 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (S.I. 1978/1908 (N.I. 27)) (limitations on rehabilitation under the 1978 Order etc), in paragraph (2), at the end add "or

(g) in any proceedings brought under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc)."

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(3) For the purposes of this Part, the following provisions do not apply to a conviction for an offence in respect of which an order for an absolute or conditional discharge is made—

(a) section 14(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conviction with absolute or conditional discharge deemed not to be a conviction);

(b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (N.I. 24)) (conviction with absolute or conditional discharge deemed not to be a conviction);

(c) section 247(1) and (2) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (effect of probation and absolute discharge);

(d) section 187(1) of the Armed Forces Act 2006 (c. 52) (conviction with absolute or conditional discharge deemed not to be a conviction);

(e) paragraph 5(1) of Schedule 5A to the Army Act 1955 (3 & 4 Eliz. 2 c. 18) or the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Schedule 4A to the Naval Discipline Act 1957 (c. 53) (conviction with absolute or conditional discharge or community suspension order deemed not to be a conviction).

**159 Relevant offences**

(1) In this Part "relevant offence", in relation to a person ("P"), means—

(a) a serious offence by reason of which P is a qualifying offender,

(b) a serious offence which was taken into consideration by a court in determining the sentence imposed on P for an offence by reason of which P is a qualifying offender, or

(c) a serious offence committed by another person which is associated with—

(i) an offence by reason of which P is a qualifying offender, or

(ii) an offence which was taken into consideration by a court in determining the sentence imposed on P for such an offence.

(2) For this purpose an offence is "serious" if—

(a) in the case of an offence under the law of England and Wales, it is an offence which, if committed by an adult, is triable only on indictment,

(b) in the case of an offence under the law of Scotland, it is an offence triable only on indictment,

(c) in the case of an offence under the law of Northern Ireland, it is an offence which, if committed by an adult, is triable only on indictment,

(d) in the case of a foreign offence, the act constituting the offence—

(i) at the time it was done, would have constituted an offence within paragraph (a), (b) or (c) if it had been done in any part of the United Kingdom, and

(ii) would also constitute such an offence if it were done in any part of the United Kingdom at the time the application for an exploitation proceeds order is made in respect of it.

(3) Two offences are associated with one another if—

(a) they were committed in the context of the same joint criminal venture, or

(b) subsection (4) applies.

(4) This subsection applies if one of the offences is—

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(a) an offence of inciting the commission of the other offence;
(b) an offence of conspiring to commit the other offence;
(c) an offence under section 44, 45 or 46 of the Serious Crime Act 2007 (c. 27) (offences relating to encouraging or assisting an offence) in relation to the other offence;
(d) an offence of soliciting (however expressed) the commission of the other offence;
(e) an offence under section 4 of the Criminal Law Act 1967 (c. 58) (assisting the evasion of arrest and concealment) in relation to the other offence;
(f) an offence of perverting the course of justice in connection with the other offence;
(g) an offence under section 51 of the Criminal Justice and Public Order Act 1994 (c. 33) (intimidation of witnesses and jurors etc) in connection with the other offence.

(5) In subsection (1)—
(a) a reference to an offence includes a reference to a UK service offence and a foreign service offence, and
(b) the reference to a court includes a reference to a UK service court or a court or authority of the kind mentioned in section 157(2)(c)(i) or (ii).

(6) Subsection (2) does not apply in relation to a UK service offence or a foreign service offence, and for the purposes of subsection (1) such an offence is "serious" if—
(a) in the case of a UK service offence—
(i) the act constituting the offence is a serious offence within subsection (2)(a),
(ii) the act constituting the offence, if done in England and Wales, would be a serious offence within subsection (2)(a), or
(iii) the offence is within subsection (7);
(b) in the case of a foreign service offence, the act constituting the offence—
(i) at the time it was done, would have constituted a serious offence within subsection (2) or an offence within subsection (7) if it had been done in any part of the United Kingdom by a member of Her Majesty's forces, and
(ii) would also constitute such an offence if it were done in any part of the United Kingdom by a member of Her Majesty's forces at the time the application for an exploitation proceeds order is made in respect of it.

(7) An offence is within this subsection if it is an offence under—
(a) section 24(1) of the AA 1955 or of the AFA 1955, section 2(1) of the NDA 1957 or section 2(1) of the AFA 2006 (misconduct on operations),
(b) section 25 of the AA 1955 or of the AFA 1955, section 3 of the NDA 1957 or section 1 of the AFA 2006 (assisting an enemy),
(c) section 26(1) of the AA 1955 or of the AFA 1955, section 4(1) of the NDA 1957 or section 3 of the AFA 2006 (obstructing operations),
(d) section 30(a) or (b) of the AA 1955 or of the AFA 1955, section 5(a) or (b) of the NDA 1957 or section 4(1) or (2) of the AFA 2006 (looting),
(e) section 31 of the AA 1955 or of the AFA 1955, section 9 of the NDA 1957 or section 6 of the AFA 2006 (mutiny), or

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(f) section 32 of the AA 1955 or of the AFA 1955, section 10 of the NDA 1957 or section 7 of the AFA 2006 (failure to suppress mutiny).

(8) In subsection (4), the offences listed in paragraphs (a) to (g) include—

(a) any corresponding offence triable by a court exercising jurisdiction in a country outside the United Kingdom,

(b) the corresponding offences triable by a UK service court, and

(c) any corresponding offence triable by any court or authority of the kind mentioned in section 157(2)(c)(i) or (ii).

(9) In this section—

"AA 1955" means the Army Act 1955 (3 & 4 Eliz. 2 c. 18);

"act" includes a failure to act (and references to the doing of an act are to be read accordingly);

"AFA 1955" means the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);

"AFA 2006" means the Armed Forces Act 2006 (c. 52);

"foreign offence" has the same meaning as in section 156;

"foreign service offence", "Her Majesty's services" and "UK service offence" have the same meaning as in section 157;

"NDA 1957" means the Naval Discipline Act 1957 (c. 53).

**160 Deriving a benefit**

(1) This section applies for the purposes of section 155(3).

(2) The exploitation may be by any means, including—

(a) the publication of any material in written or electronic form;

(b) the use of any media from which visual images, words or sounds can be produced;

(c) live entertainment, representation or interview.

(3) A person ("A") is to be regarded as having derived a benefit if A secures the benefit for another person ("B") (whether or not A had any legal right to ensure the benefit was so secured or B had any legal entitlement to the benefit).

(4) It does not matter whether the benefit is derived, or whether the exploitation (or any step taken or to be taken with a view to exploitation) takes place,—

(a) within or outside the United Kingdom, or

(b) before or after the person who committed the relevant offence is convicted of that offence.

(5) But—

(a) the benefit must be derived after the coming into force of section 155, and

(b) where the relevant offence is an offence within section 159(1)(c), the associated offence committed by the respondent must have been committed before the benefit was derived.

(6) In subsection (4)(b), the reference to conviction of the relevant offence includes a reference to a finding mentioned in section 156(2)(b) or (c) or (3)(a)(ii) or (iii) or 157(2)(b) or (3) in relation to the offence.

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### 161 Applications

(1) A court may not make an exploitation proceeds order except on the application of an enforcement authority.

(2) "Enforcement authority" means—

(a) in relation to an application to the High Court in England and Wales or to the High Court in Northern Ireland—

(i) the Serious Organised Crime Agency, or

(ii) a person prescribed or of a description prescribed by order made by the Secretary of State;

(b) in relation to an application to the Court of Session, the Scottish Ministers.

(3) An enforcement authority (other than the Scottish Ministers) may make such an application only with the consent of—

(a) in the case of an application to the High Court in England and Wales, the Attorney General;

(b) in the case of an application to the High Court in Northern Ireland, the Advocate General for Northern Ireland.

(4) The Secretary of State may by order make such modifications of any provision made by or under Part 8 of the Proceeds of Crime Act 2002 (c. 29) or any other enactment (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made by an order under subsection (2)(a)(ii).

(5) In subsection (4) "modification" includes an amendment, addition, revocation or repeal.

*Exercise of power to make orders*

### 162 Determination of applications

(1) This section applies where the court to which an application for an exploitation proceeds order is made is satisfied as mentioned in section 155(1).

(2) When determining whether to make an exploitation proceeds order in respect of any benefit, or the recoverable amount to be specified in such an order, the court—

(a) must take account of the matters mentioned in subsection (3), and

(b) may take account of such other matters as it considers relevant.

(3) Those matters are—

(a) the nature and purpose of the exploitation from which (or intended exploitation in connection with which) the respondent derived the benefit;

(b) the degree to which the relevant material was (or was intended to be) integral to the activity or product and whether it was (or was intended to be) of central importance to the activity or product;

(c) the extent to which the carrying out of the activity or supplying of the product is in the public interest;

(d) the social, cultural or educational value of the activity or product;

(e) the seriousness of the relevant offence to which the activity or product relates;

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(f) the extent to which any victim of the offence or the family of the victim is offended by the respondent obtaining exploitation proceeds from the relevant offence.

(4) In subsection (3) references to "activity" or "product" are to the activity or product which constituted (or was intended to constitute) the exploitation from which, or in connection with which, the respondent derived the benefit.

(5) "Relevant material" means the material—

(a) which pertains to the relevant offence in relation to the respondent, and

(b) by reason of the exploitation of which (or steps taken or to be taken with a view to the exploitation of which) the respondent has derived the benefit.

**163 Limits on recoverable amount**

(1) The recoverable amount specified in an order must not exceed whichever is the lesser of—

(a) the total value of the benefits identified in the order under section 155(4)(b), and

(b) the available amount.

(2) The recoverable amount may be a nominal amount.

(3) The benefits identified in the order—

(a) may include any benefit derived by the respondent up to the time the court makes its determination;

(b) must not include any benefit identified in a previous exploitation proceeds order made against the respondent;

(c) must not include any benefit in respect of which an enforcement authority has no cause of action under this Part by virtue of section 27C of the Limitation Act 1980 (c. 58), Article 72C of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) or section 19D of the Prescription and Limitation (Scotland) Act 1973 (c. 52) (limitation period for exploitation proceeds orders).

(4) The value of a benefit in kind derived by a person is the amount which, at the time that benefit was received, it would have cost that person to obtain the benefit in the open market less the total value of any consideration for that benefit provided by that person or, where that benefit was secured for another person, by that other person.

(5) If a benefit in kind cannot be obtained in the open market, the court is to determine a value to attribute to that benefit that is just and reasonable, taking into account any similar benefits available in the open market.

(6) Where a benefit derives only partly from the matters mentioned in section 155(3)(a) or (b), the value of the benefit derived from those matters is such proportion of the value of the benefit as the court considers it is just and reasonable to regard as attributable to those matters.

(7) In this section "the court" means the court making the exploitation proceeds order.

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**164 The available amount**

(1) The available amount is the total of—

(a) the value of the respondent's relevant assets,

(b) to the extent that any benefits identified in the order are benefits secured for a person other than the respondent, the value of those benefits, and

(c) the value (at the time the exploitation proceeds order is made) of such relevant gifts (if any) as the court considering making the exploitation proceeds order considers it just and reasonable to take account of in determining the available amount.

(2) The value of the respondent's relevant assets is the total of the values (at the time the exploitation proceeds order is made) of all the free property then held by the respondent, reduced by the total amount payable in pursuance of obligations which then have priority.

(3) Property is free unless an order or notice (as the case may be) is in force in respect of it under any of these provisions—

(a) section 27 of the Misuse of Drugs Act 1971 (c. 38) (forfeiture orders);

(b) Article 11 of the Criminal Justice (Northern Ireland) Order 1994 (S.I. 1994/2795 (N.I. 15)) (deprivation orders);

(c) Part 2 of the Proceeds of Crime (Scotland) Act 1995 (c. 43) (forfeiture of property used in crime);

(d) section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (deprivation orders);

(e) section 23, 23A or 111 of the Terrorism Act 2000 (c. 11) (forfeiture orders);

(f) section 245A, 246, 255A, 256, 266, 295(2) or 298(2) of the Proceeds of Crime Act 2002 (c. 29) (freezing, interim receiving, prohibitory, interim administration, recovery, detention and forfeiture orders);

(g) section 297A of the Proceeds of Crime Act 2002 (c. 29) (forfeiture notices).

(4) An obligation has priority if it is an obligation of the respondent—

(a) to pay an amount due in respect of a fine or other order of a court which was imposed or made on conviction of an offence and at any time before the time the exploitation proceeds order is made, or

(b) to pay a sum which would be included among the preferential debts (or preferred debts) if the respondent's bankruptcy (or sequestration) had commenced on the date of the exploitation proceeds order or the respondent's winding up had been ordered on that date.

(5) If the respondent transfers property to another person for a consideration the value of which is significantly less than the value of the property at the time of the transfer, the respondent is to be treated as making a gift of the difference in value between the value of the property transferred and the consideration given in respect of it.

(6) In this section—

"preferential debts" has the meaning given by section 386 of the Insolvency Act 1986 (c. 45);

"preferred debts" has the meaning given by section 51(2) of the Bankruptcy (Scotland) Act 1985 (c. 66);

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"relevant gift", in relation to an exploitation proceeds order, means a gift made by the respondent on or after the day on which the respondent first derived any of the benefits identified in the order under section 155(4)(b).

### 165 Property

(1) This section applies for the purposes of this Part.

(2) Property is all property wherever situated and includes—

(a) money;

(b) all forms of real, corporeal or personal property;

(c) things in action and other intangible or incorporeal property.

(3) The following rules apply in relation to property—

(a) property is held by a person if the person holds an interest in it;

(b) property is transferred by one person to another if the first one transfers or grants an interest in it to the second;

(c) references to property held by a person include references to property vested in the person's trustee in bankruptcy, permanent or interim trustee (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)) or liquidator;

(d) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(e) references to an interest, in relation to land in Scotland, are to any interest, servitude or other right in or over land, including a heritable security;

(f) references to an interest, in relation to property other than land, include references to a right (including a right in possession).

(4) Where property is held jointly the court considering making the exploitation proceeds order must determine such value as it considers just and reasonable to attribute to the person's interest in that property for the purposes of section 164.

*Additional powers*

### 166 Effect of conviction being quashed etc

(1) Where an exploitation proceeds order has been made in respect of exploitation proceeds obtained by the respondent from a relevant offence, the order ceases to have effect if—

(a) the relevant offence is within paragraph (a) of section 159(1) and the respondent's conviction for it is subsequently quashed, or

(b) the relevant offence is within paragraph (b) or (c) of that section and the respondent's conviction for the offence (or, if more than one, all of the offences) by virtue of which the relevant offence is within either of those paragraphs is (or are) subsequently quashed.

(2) Where an exploitation proceeds order has been made in respect of exploitation proceeds obtained by the respondent from 2 or more relevant offences, the order ceases to have effect if paragraph (a) or (b) of subsection (1) applies in relation to each of those offences.

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(3) Where an exploitation proceeds order ceases to have effect under subsection (1) or (2), the court must, on the application of the respondent (or the respondent's personal representative), order the Secretary of State to repay to the respondent (or the personal representative) the recovered amount.

(4) Subsection (5) applies where an exploitation proceeds order has been made if—

(a) where the order was made in respect of exploitation proceeds obtained by the respondent from 2 or more relevant offences, paragraph (a) or (b) of subsection (1) applies in relation to one or more, but not all, of those offences, or

(b) where the order was made in respect of exploitation proceeds obtained by the respondent from a relevant offence within section 159(1)(c) (whether alone or together with other relevant offences), another person has been convicted of that offence and that conviction is subsequently quashed.

(5) On the application of the respondent (or the respondent's personal representative), the court may—

(a) determine that the exploitation proceeds order is to cease to have effect, or

(b) reduce the recoverable amount by such amount (if any) as it considers just and reasonable.

(6) Where the exploitation proceeds order ceases to have effect under subsection (5)(a), the court must order the Secretary of State to repay to the respondent (or the respondent's personal representative) the recovered amount.

(7) Where the court reduces the recoverable amount under subsection (5)(b), if the recovered amount exceeds the reduced recoverable amount, the court must order the Secretary of State to repay to the respondent (or the respondent's personal representative) that excess.

(8) An order under subsection (3), (6) or (7) for the repayment of a sum must also order the Secretary of State to pay to the recipient interest on that sum, at a rate determined by the court, for the period which—

(a) begins with the day on which the respondent made the payment in accordance with the exploitation proceeds order, and

(b) ends with the day before the day on which that sum is repaid to the respondent or the respondent's personal representative.

(9) In the case of an exploitation proceeds order made on the application of the Scottish Ministers—

(a) references in this section to the Secretary of State are to be read as references to the Scottish Ministers, and

(b) the reference in subsection (8) to a rate determined by the court is to read as a reference to a rate set by rules of court.

(10) In this section—

(a) any reference to a conviction for an offence includes a reference to a finding, in relation to the offence, of the kind mentioned in section 156(2)(b) or (c) or (3)(a)(ii) or (iii) or section 157(2)(b) or (3), and

(b) any reference to a conviction for an offence being quashed includes a reference to—

(i) the reversal or setting aside of a conviction;

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(ii) the substitution of a verdict of acquittal in relation to a finding of the kind mentioned in section 156(2)(b) or (c);

(iii) a finding of the kind mentioned in section 156(3)(a)(ii) or (iii) being quashed;

(iv) a finding of the kind mentioned in section 157(2)(b) or (3) being quashed, set aside, reversed or replaced with a verdict of acquittal.

(11) In this section—

"the court" means the court which made the exploitation proceeds order;

"personal representative" means—

(a) in relation to England and Wales, a person who is a personal representative within the meaning of section 55(1) of the Administration of Estates Act 1925 (c. 23),

(b) in relation to Scotland, an executor confirmed to the estate of the respondent,

(c) in relation to Northern Ireland, a person who is one of the personal representatives within the meaning of the Administration of Estates Act (Northern Ireland) 1955 (c. 24), or

(d) any person having, in relation to the respondent, under the law of another country any functions corresponding to the functions of a person falling within paragraph (a), (b) or (c);

"the recovered amount", in relation to an exploitation proceeds order, means the amount (if any) paid by the respondent to an enforcement authority in accordance with the order, reduced by any amount already repaid under subsection (7) and disregarding any interest paid under section 155(6).

### 167 Powers of court on repeat applications

(1) This section applies if—

(a) a court makes an exploitation proceeds order ("the earlier order") in respect of a person, and

(b) an application ("the later application") is then made to the court for another exploitation proceeds order in respect of the same person.

(2) The court may, for the purposes of the later application, adopt any finding of fact made by the court in connection with the earlier order.

(3) Subsection (4) applies where, on the later application, the court is satisfied as mentioned in section 155(1).

(4) If, or to the extent that, the earlier order was in respect of benefits derived from the same source as the benefits to which the later application relates, the court must when making a determination under section 162 in relation to the later application, have regard to any determination made by it under that section in connection with the earlier order.

(5) For the purposes of subsection (4) benefits are from the same source if they consist of benefits derived by the respondent from (or from steps taken or to be taken with a view to) the same exploitation of material related to the same relevant offence.

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### 168 Additional proceeds reporting orders

(1) A court making an exploitation proceeds order may also make an additional proceeds reporting order in respect of the respondent.

(2) But it may do so only if it is satisfied that the likelihood of the respondent obtaining further exploitation proceeds from a relevant offence is sufficiently high to justify the making of an additional proceeds reporting order.

(3) An additional proceeds reporting order—

(a) comes into force when it is made, and

(b) has effect for the period specified in the order, beginning with the date on which it is made.

(4) The period specified under subsection (3) must not exceed 20 years.

(5) Sections 79, 80(1) and (2) and 81 of the Serious Organised Crime and Police Act 2005 (c. 15) apply in relation to an additional proceeds reporting order under this section as they apply in relation to a financial reporting order under section 76, 77 or 78 of that Act.

(6) The person to whom reports are made under an additional proceeds reporting order may disclose a report to an enforcement authority for the purposes of—

(a) an exploitation proceeds investigation (within the meaning of section 341(5) of the Proceeds of Crime Act 2002 (c. 29)), or

(b) the making or pursuing of an application for, or the enforcement of, an exploitation proceeds order or an additional proceeds reporting order.

*Investigations*

### 169 Exploitation proceeds investigations

Part 8 of the Proceeds of Crime Act 2002 (c. 29) (investigations) is amended in accordance with Schedule 19.

### 170 Functions of Serious Organised Crime Agency

(1) In section 2A of the Serious Organised Crime and Police Act 2005 (functions of SOCA as to the recovery of assets), the reference to the Proceeds of Crime Act 2002 is a reference to that Act as amended by section 169 of and Schedule 19 to this Act (investigation powers of SOCA in relation to exploitation proceeds orders).

(2) In section 3 of the Serious Organised Crime and Police Act 2005 (functions of SOCA as to information relating to crime)—

(a) at the end of subsection (1) add "; or

(c) exploitation proceeds investigations (within the meaning of section 341(5) of the Proceeds of Crime Act 2002) or exploitation proceeds orders within the meaning of Part 7 of the Coroners and Justice Act 2009 (or applications for such orders).", and

(b) in subsection (2)(d) for "(1)(a) or (b)" substitute "(1)(a), (b) or (c)".

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*Limitation*

**171 Limitation**

(1) After section 27B of the Limitation Act 1980 (c. 58) insert—

**"27C Actions for exploitation proceeds orders**

(1) None of the time limits given in the preceding provisions of this Act applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.

(2) Proceedings under that Part for such an order are not to be brought after the expiration of 6 years from the date on which the enforcement authority's cause of action accrued.

(3) Proceedings under that Part for such an order are brought when an application is made for the order.

(4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's cause of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.

(5) Expressions used in this section and that Part have the same meaning in this section as in that Part."

(2) After Article 72B of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) insert—

**"72C Actions for exploitation proceeds orders**

(1) None of the time limits given in the preceding provisions of this Order applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.

(2) Proceedings under that Part for such an order are not to be brought after the expiration of 6 years from the date on which the enforcement authority's cause of action accrued.

(3) Proceedings under that Part for such an order are brought when an application is made for the order.

(4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's cause of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.

(5) Expressions used in this Article and that Part have the same meaning in this Article as in that Part."

(3) After section 19C of the Prescription and Limitation (Scotland) Act 1973 (c. 52) insert—

**"19D Actions for exploitation proceeds orders**

(1) None of the time limits given in the preceding provisions of this Act applies to proceedings under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) for an exploitation proceeds order.

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(2) Proceedings under that Part for such an order are not to be brought after the expiration of 5 years from the date on which the enforcement authority's right of action accrued.

(3) Proceedings under that Part for such an order are brought when an application is made for the order.

(4) Where exploitation proceeds have been obtained by a person from a relevant offence, an enforcement authority's right of action under that Part in respect of those proceeds accrues when the enforcement authority has actual knowledge that the proceeds have been obtained.

(5) Expressions used in this section and that Part have the same meaning in this section as in that Part."

*Interpretation*

**172 Interpretation of this Part**

In this Part—

"benefit" means a direct or indirect benefit of any nature (pecuniary or non-pecuniary);

"enactment" includes an enactment contained in, or an instrument made under, Northern Ireland legislation;

"enforcement authority" has the meaning given by section 161(2);

"material" means any information, opinion, image or other thing;

"qualifying offender" has the meaning given by section 156;

"recoverable amount" has the meaning given by section 155;

"relevant offence" has the meaning given by section 159;

"the respondent" has the meaning given by section 155;

"UK service court" means—

(a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53) or the Court Martial established by the Armed Forces Act 2006 (c. 52);

(b) a Standing Civilian Court established under the Armed Forces Act 1976 (c. 52) or the Service Civilian Court established by the Armed Forces Act 2006;

(c) the Courts-Martial Appeal Court or the Court Martial Appeal Court.

## PART 8

DATA PROTECTION ACT 1998

**173 Assessment notices**

After section 41 of the Data Protection Act 1998 (c. 29) insert—

**"41A Assessment notices**

(1) The Commissioner may serve a data controller within subsection (2) with a notice (in this Act referred to as an "assessment notice") for the purpose of enabling the Commissioner to determine whether the data

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controller has complied or is complying with the data protection principles.

(2) A data controller is within this subsection if the data controller is—

(a) a government department,

(b) a public authority designated for the purposes of this section by an order made by the Secretary of State, or

(c) a person of a description designated for the purposes of this section by such an order.

(3) An assessment notice is a notice which requires the data controller to do all or any of the following—

(a) permit the Commissioner to enter any specified premises;

(b) direct the Commissioner to any documents on the premises that are of a specified description;

(c) assist the Commissioner to view any information of a specified description that is capable of being viewed using equipment on the premises;

(d) comply with any request from the Commissioner for—

(i) a copy of any of the documents to which the Commissioner is directed;

(ii) a copy (in such form as may be requested) of any of the information which the Commissioner is assisted to view;

(e) direct the Commissioner to any equipment or other material on the premises which is of a specified description;

(f) permit the Commissioner to inspect or examine any of the documents, information, equipment or material to which the Commissioner is directed or which the Commissioner is assisted to view;

(g) permit the Commissioner to observe the processing of any personal data that takes place on the premises;

(h) make available for interview by the Commissioner a specified number of persons of a specified description who process personal data on behalf of the data controller (or such number as are willing to be interviewed).

(4) In subsection (3) references to the Commissioner include references to the Commissioner's officers and staff.

(5) An assessment notice must, in relation to each requirement imposed by the notice, specify—

(a) the time at which the requirement is to be complied with, or

(b) the period during which the requirement is to be complied with.

(6) An assessment notice must also contain particulars of the rights of appeal conferred by section 48.

(7) The Commissioner may cancel an assessment notice by written notice to the data controller on whom it was served.

(8) Where a public authority has been designated by an order under subsection (2)(b) the Secretary of State must reconsider, at intervals of

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no greater than 5 years, whether it continues to be appropriate for the authority to be designated.

(9) The Secretary of State may not make an order under subsection (2)(c) which designates a description of persons unless—

(a) the Commissioner has made a recommendation that the description be designated, and

(b) the Secretary of State has consulted—

(i) such persons as appear to the Secretary of State to represent the interests of those that meet the description;

(ii) such other persons as the Secretary of State considers appropriate.

(10) The Secretary of State may not make an order under subsection (2)(c), and the Commissioner may not make a recommendation under subsection (9)(a), unless the Secretary of State or (as the case may be) the Commissioner is satisfied that it is necessary for the description of persons in question to be designated having regard to—

(a) the nature and quantity of data under the control of such persons, and

(b) any damage or distress which may be caused by a contravention by such persons of the data protection principles.

(11) Where a description of persons has been designated by an order under subsection (2)(c) the Secretary of State must reconsider, at intervals of no greater than 5 years, whether it continues to be necessary for the description to be designated having regard to the matters mentioned in subsection (10).

(12) In this section—

"public authority" includes any body, office-holder or other person in respect of which—

(a) an order may be made under section 4 or 5 of the Freedom of Information Act 2000, or

(b) an order may be made under section 4 or 5 of the Freedom of Information (Scotland) Act 2002;

"specified" means specified in an assessment notice.

**41B Assessment notices: limitations**

(1) A time specified in an assessment notice under section 41A(5) in relation to a requirement must not fall, and a period so specified must not begin, before the end of the period within which an appeal can be brought against the notice, and if such an appeal is brought the requirement need not be complied with pending the determination or withdrawal of the appeal.

(2) If by reason of special circumstances the Commissioner considers that it is necessary for the data controller to comply with a requirement in an assessment notice as a matter of urgency, the Commissioner may include in the notice a statement to that effect and a statement of the reasons for that conclusion; and in that event subsection (1) applies in relation to the requirement as if for the words from "within" to the end there were substituted "of 7 days beginning with the day on which the notice is served".

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(3) A requirement imposed by an assessment notice does not have effect in so far as compliance with it would result in the disclosure of—

(a) any communication between a professional legal adviser and the adviser's client in connection with the giving of legal advice with respect to the client's obligations, liabilities or rights under this Act, or

(b) any communication between a professional legal adviser and the adviser's client, or between such an adviser or the adviser's client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.

(4) In subsection (3) references to the client of a professional legal adviser include references to any person representing such a client.

(5) Nothing in section 41A authorises the Commissioner to serve an assessment notice on—

(a) a judge,

(b) a body specified in section 23(3) of the Freedom of Information Act 2000 (bodies dealing with security matters), or

(c) the Office for Standards in Education, Children's Services and Skills in so far as it is a data controller in respect of information processed for the purposes of functions exercisable by Her Majesty's Chief Inspector of Eduction, Children's Services and Skills by virtue of section 5(1)(a) of the Care Standards Act 2000.

(6) In this section "judge" includes —

(a) a justice of the peace (or, in Northern Ireland, a lay magistrate),

(b) a member of a tribunal, and

(c) a clerk or other officer entitled to exercise the jurisdiction of a court or tribunal;

and in this subsection "tribunal" means any tribunal in which legal proceedings may be brought.

**41C Code of practice about assessment notices**

(1) The Commissioner must prepare and issue a code of practice as to the manner in which the Commissioner's functions under and in connection with section 41A are to be exercised.

(2) The code must in particular—

(a) specify factors to be considered in determining whether to serve an assessment notice on a data controller;

(b) specify descriptions of documents and information that—

(i) are not to be examined or inspected in pursuance of an assessment notice, or

(ii) are to be so examined or inspected only by persons of a description specified in the code;

(c) deal with the nature of inspections and examinations carried out in pursuance of an assessment notice;

(d) deal with the nature of interviews carried out in pursuance of an assessment notice;

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(e) deal with the preparation, issuing and publication by the Commissioner of assessment reports in respect of data controllers that have been served with assessment notices.

(3) The provisions of the code made by virtue of subsection (2)(b) must, in particular, include provisions that relate to—

(a) documents and information concerning an individual's physical or mental health;

(b) documents and information concerning the provision of social care for an individual.

(4) An assessment report is a report which contains—

(a) a determination as to whether a data controller has complied or is complying with the data protection principles,

(b) recommendations as to any steps which the data controller ought to take, or refrain from taking, to ensure compliance with any of those principles, and

(c) such other matters as are specified in the code.

(5) The Commissioner may alter or replace the code.

(6) If the code is altered or replaced, the Commissioner must issue the altered or replacement code.

(7) The Commissioner may not issue the code (or an altered or replacement code) without the approval of the Secretary of State.

(8) The Commissioner must arrange for the publication of the code (and any altered or replacement code) issued under this section in such form and manner as the Commissioner considers appropriate.

(9) In this section "social care" has the same meaning as in Part 1 of the Health and Social Care Act 2008 (see section 9(3) of that Act)."

**174 Data-sharing code of practice**

(1) After section 52 of the Data Protection Act 1998 (c. 29) insert—

**"52A Data-sharing code**

(1) The Commissioner must prepare a code of practice which contains—

(a) practical guidance in relation to the sharing of personal data in accordance with the requirements of this Act, and

(b) such other guidance as the Commissioner considers appropriate to promote good practice in the sharing of personal data.

(2) For this purpose "good practice" means such practice in the sharing of personal data as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, and includes (but is not limited to) compliance with the requirements of this Act.

(3) Before a code is prepared under this section, the Commissioner must consult such of the following as the Commissioner considers appropriate—

(a) trade associations (within the meaning of section 51);

(b) data subjects;

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(c) persons who appear to the Commissioner to represent the interests of data subjects.

(4) In this section a reference to the sharing of personal data is to the disclosure of the data by transmission, dissemination or otherwise making it available.

**52B Data-sharing code: procedure**

(1) When a code is prepared under section 52A, it must be submitted to the Secretary of State for approval.

(2) Approval may be withheld only if it appears to the Secretary of State that the terms of the code could result in the United Kingdom being in breach of any of its Community obligations or any other international obligation.

(3) The Secretary of State must—

(a) if approval is withheld, publish details of the reasons for withholding it;

(b) if approval is granted, lay the code before Parliament.

(4) If, within the 40-day period, either House of Parliament resolves not to approve the code, the code is not to be issued by the Commissioner.

(5) If no such resolution is made within that period, the Commissioner must issue the code.

(6) Where—

(a) the Secretary of State withholds approval, or

(b) such a resolution is passed,

the Commissioner must prepare another code of practice under section 52A.

(7) Subsection (4) does not prevent a new code being laid before Parliament.

(8) A code comes into force at the end of the period of 21 days beginning with the day on which it is issued.

(9) A code may include transitional provision or savings.

(10) In this section "the 40-day period" means the period of 40 days beginning with the day on which the code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

(11) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

**52C Alteration or replacement of data-sharing code**

(1) The Commissioner—

(a) must keep the data-sharing code under review, and

(b) may prepare an alteration to that code or a replacement code.

(2) Where, by virtue of a review under subsection (1)(a) or otherwise, the Commissioner becomes aware that the terms of the code could result in

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the United Kingdom being in breach of any of its Community obligations or any other international obligation, the Commissioner must exercise the power under subsection (1)(b) with a view to remedying the situation.

(3) Before an alteration or replacement code is prepared under subsection (1), the Commissioner must consult such of the following as the Commissioner considers appropriate—

(a) trade associations (within the meaning of section 51);

(b) data subjects;

(c) persons who appear to the Commissioner to represent the interests of data subjects.

(4) Section 52B (other than subsection (6)) applies to an alteration or replacement code prepared under this section as it applies to the code as first prepared under section 52A.

(5) In this section "the data-sharing code" means the code issued under section 52B(5) (as altered or replaced from time to time).

**52D Publication of data-sharing code**

(1) The Commissioner must publish the code (and any replacement code) issued under section 52B(5).

(2) Where an alteration is so issued, the Commissioner must publish either—

(a) the alteration, or

(b) the code or replacement code as altered by it.

**52E Effect of data-sharing code**

(1) A failure on the part of any person to act in accordance with any provision of the data-sharing code does not of itself render that person liable to any legal proceedings in any court or tribunal.

(2) The data-sharing code is admissible in evidence in any legal proceedings.

(3) If any provision of the data-sharing code appears to—

(a) the Tribunal or a court conducting any proceedings under this Act,

(b) a court or tribunal conducting any other legal proceedings, or

(c) the Commissioner carrying out any function under this Act,

to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to any time when it was in force, that provision of the code must be taken into account in determining that question.

(4) In this section "the data-sharing code" means the code issued under section 52B(5) (as altered or replaced from time to time)."

(2) In section 51 of the Data Protection Act 1998 (c. 29) (general duties of Commissioner), after subsection (5) insert—

"(5A) In determining the action required to discharge the duties imposed by subsections (1) to (4), the Commissioner may take account of any action

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taken to discharge the duty imposed by section 52A (data-sharing code)."

### 175 Further amendments of the Data Protection Act 1998 (c. 29)

Schedule 20 contains further amendments of the Data Protection Act 1998 (c. 29).

## PART 9

## GENERAL

### 176 Orders, regulations and rules

(1) Orders or regulations made by the Secretary of State, the Lord Chancellor, the Welsh Ministers or the Chief Coroner under this Act are to be made by statutory instrument.

(2) The Statutory Instruments Act 1946 (c. 36) applies in relation to the power of the Chief Coroner under section 37 to make regulations as if the Chief Coroner were a Minister of the Crown.

(3) Any power conferred by this Act to make orders, regulations or rules includes power—

(a) to make provision generally or only for specified purposes, cases, circumstances or areas;

(b) to make different provision for different purposes, cases, circumstances or areas;

(c) to make incidental, supplementary, consequential, transitional, transitory or saving provision.

(4) A statutory instrument containing an order or regulations under this Act is subject to negative resolution procedure unless it is—

(a) an instrument within subsection (5), or

(b) an instrument containing an order under section 182 only.

(5) A statutory instrument containing (whether alone or with other provision)—

(a) regulations under section 20(5) setting a fee for the first time or increasing the fee by more than is necessary to reflect changes in the value of money,

(b) an order under section 40(6),

(c) an order under section 74, 75, 77 or 78,

(d) an order under section 148(1) or (3),

(e) an order under section 161(2)(a)(ii) or (4),

(f) an order under section 177 which contains provision amending or repealing any provision of an Act, or

(g) an order under paragraph 34 or 35 of Schedule 22.

is subject to affirmative resolution procedure.

(6) In this section—

"affirmative resolution procedure" means—

(a) in relation to any statutory instrument made by the Secretary of State or the Lord Chancellor, a requirement that a draft of the

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instrument be laid before, and approved by a resolution of, each House of Parliament;

(b) in relation to any statutory instrument made by the Welsh Ministers, a requirement that a draft of the instrument be laid before, and approved by a resolution of, the National Assembly for Wales;

"negative resolution procedure" means—

(a) in relation to any statutory instrument made by the Secretary of State, Lord Chancellor or Chief Coroner, annulment in pursuance of a resolution of either House of Parliament;

(b) in relation to any statutory instrument made by the Welsh Ministers, annulment in pursuance of a resolution of the National Assembly for Wales.

### 177 Consequential etc amendments and transitional and saving provisions

(1) Schedule 21 contains minor and consequential amendments.

(2) Schedule 22 contains transitional, transitory and saving provisions.

(3) An appropriate minister may by order make—

(a) such supplementary, incidental or consequential provision, or

(b) such transitory, transitional or saving provision,

as the appropriate minister considers appropriate for the general purposes, or any particular purposes, of this Act, or in consequence of, or for giving full effect to, any provision made by this Act.

(4) An order under subsection (3) may, in particular—

(a) provide for any amendment or other provision made by this Act which comes into force before any other provision (whether made by this or any other Act or by any subordinate legislation) has come into force to have effect, until that other provision has come into force, with specified modifications, and

(b) modify any provision of—

(i) any Act (including this Act and any Act passed in the same session as this Act);

(ii) subordinate legislation made before the passing of this Act;

(iii) Northern Ireland legislation passed, or made, before the passing of this Act;

(iv) any instrument made, before the passing of this Act, under Northern Ireland legislation.

(5) Nothing in this section limits the power, by virtue of section 176(3), to include incidental, supplementary, consequential, transitional, transitory or saving provision in an order under section 182 (commencement).

(6) The modifications that may be made by virtue of subsection (4)(b) are in addition to those made by, or which may be made under, any other provision of this Act.

(7) Her Majesty may by Order in Council extend any provision made by virtue of subsection (4)(b), with such modifications as may appear to Her Majesty to be appropriate, to the Isle of Man or any British overseas territory.

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(8) The power under subsection (7) includes power to make supplementary, incidental, consequential, transitory, transitional or saving provision.

(9) Subsection (7) does not apply in relation to amendments of the Armed Forces Act 2006 (c. 52).

(10) In this section—

"appropriate minister" means the Secretary of State or the Lord Chancellor;

"modify" includes amend, repeal and revoke, and modification is to be construed accordingly;

"subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30).

**178 Repeals**

Schedule 23 contains repeals (including repeals of spent provisions).

**179 Financial provision**

The following are to be paid out of money provided by Parliament—

(a) any expenditure incurred by a Minister of the Crown under or by virtue of this Act;

(b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.

**180 Effect of amendments to provisions applied for purposes of service law**

(1) In this section "relevant criminal justice provisions" means provisions of, or made under, an Act which—

(a) relate to criminal justice, and

(b) are applied (with or without modifications) for any purposes of service law by any provision of, or made under, any Act.

(2) Unless the contrary intention appears, any amendment by this Act of relevant criminal justice provisions also amends those provisions as so applied.

(3) In this section "service law" means—

(a) the system of service law established by the Armed Forces Act 2006, or

(b) any of the systems of service law superseded by that Act (namely, military law, air force law and the Naval Discipline Act 1957 (c. 53)).

**181 Extent**

(1) Subject to the following provisions of this section and any other provision of this Act, this Act extends to England and Wales only.

(2) The following provisions extend to England and Wales, Scotland and Northern Ireland—

(a) section 84;

(b) the service courts provisions of Chapter 2 of Part 3;

(c) section 143;

(d) Part 7 (except sections 158(1) and (2), 170(2) and 171 and Schedule 19);

(e) sections 176 to 183;

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(f) paragraph 4 of Schedule 1;
(g) paragraphs 8, 15, 29, 42 and 45 of Schedule 22.

(3) The following provisions extend to England and Wales and Northern Ireland—
(a) sections 54, 55 and 56(1);
(b) section 61 and Schedule 12;
(c) sections 62 to 66;
(d) section 67(3);
(e) section 68 and Schedule 13;
(f) section 71;
(g) section 73;
(h) Chapter 1 of Part 3 (except section 84);
(i) Chapter 2 of that Part, and paragraphs 16 and 17 of Schedule 22, (subject to subsection (2)(b));
(j) paragraphs 7, 12(2), 39, 40 and 41 of Schedule 22.

(4) The following provisions extend to Northern Ireland only—
(a) section 49 and Schedule 11;
(b) section 67(2);
(c) paragraphs 11, 38 and 44(2) of Schedule 22.

(5) Paragraphs 34 and 35 of Schedule 22 extend to England and Wales and Scotland, and paragraph 36 of that Schedule extends to Scotland only.

(6) Except as otherwise provided by this Act, an amendment, repeal or revocation of any enactment by any provision of this Act extends to the part or parts of the United Kingdom to which the enactment extends.

(7) In section 338(1) of the Criminal Justice Act 2003 (c. 44) (power to extend the provisions of that Act to the Channel Islands etc) the reference to that Act includes a reference to that Act as amended by any provision of this Act.

(8) In section 384 of the Armed Forces Act 2006 (c. 52) (extent to Channel Islands, Isle of Man etc) any reference to that Act includes a reference to—
(a) that Act as amended by or under any provision of this Act;
(b) section 84;
(c) the service courts provisions of Chapter 2 of Part 3;
(d) section 180.

(9) In section 79(3) of the International Criminal Court Act 2001 (c. 17) (power to extend provisions of that Act to Channel Islands, Isle of Man etc) the reference to that Act includes a reference to that Act as amended by section 70.

(10) In this section "the service courts provisions of Chapter 2 of Part 3" means the provisions of Chapter 2 of Part 3, and paragraph 70 of Schedule 21 and paragraphs 16 to 22 of Schedule 22, so far as having effect in relation to service courts.

### 182 Commencement

(1) The following provisions come into force on the day on which this Act is passed—
(a) sections 47 and 48;

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(b) section 116;
(c) section 143;
(d) sections 151 and 152;
(e) section 154;
(f) this section and sections 176, 177(3) to (10), 179, 181 and 183;
(g) Schedule 18;
(h) paragraphs 62(3) and 94 to 98 of Schedule 21 (and section 177(1) so far as relating to those provisions);
(i) Part 1 and paragraphs 26 and 47 of Schedule 22 (and section 177(2) so far as relating to those provisions);
(j) in Schedule 23—
(i) in Part 3, the repeals relating to the Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) and the Supreme Court Act 1981 (c. 54),
(ii) in Part 4, the repeals in the Criminal Justice and Immigration Act 2008 (c. 4),
(iii) in Part 5, the repeal of section 8(6) of the Animal Welfare Act 2006 (c. 45),
(iv) in Part 6, the repeals in sections 17 and 17A of, and Schedule 3 to, the Access to Justice Act 1999 (c. 22), and
(v) Part 9,
and section 178 so far as relating to those repeals.

(2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
(a) section 73;
(b) section 138;
(c) Part 4 of Schedule 21 (and section 177(1) so far as relating to that Part);
(d) paragraph 37 of Schedule 22 (and section 177(2) so far as relating to that provision);
(e) in Part 2 of Schedule 23, the repeals relating to the following Acts—
(i) Libel Act 1792 (c. 60),
(ii) Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8),
(iii) Libel Act 1843 (c. 96),
(iv) Newspaper Libel and Registration Act 1881 (c. 60),
(v) Law of Libel Amendment Act 1888 (c. 64),
(vi) Defamation Act 1952 (c. 66),
(vii) Theatres Act 1968 (c. 54),
(viii) Broadcasting Act 1990 (c. 42),
(ix) Criminal Procedure and Investigations Act 1996 (c. 25),
(x) Defamation Act 1996 (c. 31), and
(xi) Legal Deposit Libraries Act 2003 (c. 28),
and section 178 so far as relating to those repeals.

(3) The following provisions come into force on 1 January 2010—
(a) Chapter 2 of Part 3;
(b) paragraphs 69 to 71 of Schedule 21 (and section 177(1) so far as relating to those provisions);
(c) paragraphs 16 to 22 of Schedule 22 (and section 177(2) so far as relating to those provisions);

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(d) in Part 3 of Schedule 23, the repeals relating to the Criminal Evidence (Witness Anonymity) Act 2008 (c. 15) (and section 178 so far as relating to those repeals).

(4) The following provisions come into force on such day as the Lord Chancellor may by order appoint—

(a) Part 1 (other than sections 19, 20, 21, 47 and 48);

(b) Chapter 1 of Part 4;

(c) sections 146 to 148;

(d) sections 149, 150 and 153;

(e) Parts 1 and 8 of Schedule 21 (and section 177(1) so far as relating to those provisions);

(f) paragraphs 27, 28 and 44 of Schedule 22 (and section 177(2) so far as relating to those provisions);

(g) in Schedule 23—

(i) the repeals in Part 1,

(ii) the repeals in Part 4 (other than those relating to the Criminal Procedure (Scotland) Act 1995 (c. 46) and the Criminal Justice and Immigration Act 2008 (c. 4)), and

(iii) in Part 6, the repeals of section 2(2) of, and paragraph 1(h) of Schedule 2 to, the Access to Justice Act 1999 (c. 22),

and section 178 so far as relating to those repeals.

(5) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.

**183 Short title**

This Act may be cited as the Coroners and Justice Act 2009.

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# SCHEDULES

## SCHEDULE 1

Section 11

### DUTY OR POWER TO SUSPEND OR RESUME INVESTIGATIONS

### PART 1

### SUSPENSION OF INVESTIGATIONS

*Suspension where certain criminal charges may be brought*

1 (1) A senior coroner must suspend an investigation under this Part of this Act into a person's death in the following cases.

(2) The first case is where a prosecuting authority requests the coroner to suspend the investigation on the ground that a person may be charged with—

(a) a homicide offence involving the death of the deceased, or

(b) an offence (other than a service offence) that is alleged to be a related offence.

(3) The second case is where a Provost Marshal or the Director of Service Prosecutions requests the coroner to suspend the investigation on the ground that a person may be charged with—

(a) the service equivalent of a homicide offence involving the death of the deceased, or

(b) a service offence that is alleged to be a related offence.

(4) Subject to paragraphs 2 and 3, a suspension of an investigation under this paragraph must be for—

(a) a period of 28 days beginning with the day on which the suspension first takes effect, or

(b) whatever longer period (beginning with that day) the coroner specifies.

(5) The period referred to in sub-paragraph (4) may be extended or further extended—

(a) in the first case, at the request of the authority by which the suspension was originally requested;

(b) in the second case, at the request of—

(i) the Provost Marshal by whom the suspension was originally requested, or

(ii) the Director of Service Prosecutions.

(6) In this Act—

"homicide offence" means—

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(a) murder, manslaughter, corporate manslaughter or infanticide;

(b) an offence under any of the following provisions of the Road Traffic Act 1988 (c. 52)—

(i) section 1 (causing death by dangerous driving);

(ii) section 2B (causing death by careless, or inconsiderate, driving);

(iii) section 3ZB (causing death by driving: unlicensed, disqualified or uninsured drivers);

(iv) section 3A (causing death by careless driving when under the influence of drink or drugs);

(c) an offence under section 2(1) of the Suicide Act 1961 (c. 60) (encouraging or assisting suicide);

(d) an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 (c. 28) (causing or allowing the death of a child or vulnerable adult);

"related offence" means an offence (including a service offence) that—

(a) involves the death of the deceased, but is not a homicide offence or the service equivalent of a homicide offence, or

(b) involves the death of a person other than the deceased (whether or not it is a homicide offence or the service equivalent of a homicide offence) and is committed in circumstances connected with the death of the deceased;

"the service equivalent of a homicide offence" means an offence under section 42 of the Armed Forces Act 2006 (c. 52) (or section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 42 of the Naval Discipline Act 1957 (c. 53)) corresponding to a homicide offence.

*Suspension where certain criminal proceedings are brought*

2 (1) Subject to sub-paragraph (6), a senior coroner must suspend an investigation under this Part of this Act into a person's death in the following cases.

(2) The first case is where the coroner—

(a) becomes aware that a person has appeared or been brought before a magistrates' court charged with a homicide offence involving the death of the deceased, or

(b) becomes aware that a person has been charged on an indictment with such an offence without having appeared or been brought before a magistrates' court charged with it.

(3) The second case is where the coroner becomes aware that a person has been charged with the service equivalent of a homicide offence involving the death of the deceased.

(4) The third case is where a prosecuting authority informs the coroner that a person—

(a) has appeared or been brought before a magistrates' court charged with an offence (other than a service offence) that is alleged to be a related offence, or

(b) has been charged on an indictment with such an offence without having been sent for trial for it,

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and the prosecuting authority requests the coroner to suspend the investigation.

(5) The fourth case is where the Director of Service Prosecutions informs the coroner that a person has been charged with a service offence that is alleged to be a related offence, and the Director requests the coroner to suspend the investigation.

(6) The coroner need not suspend the investigation—

(a) in the first case, if a prosecuting authority informs the coroner that it has no objection to the investigation continuing;

(b) in the second case, if the Director of Service Prosecutions informs the coroner that he or she has no objection to the investigation continuing;

(c) in any case, if the coroner thinks that there is an exceptional reason for not suspending the investigation.

(7) In the case of an investigation that is already suspended under paragraph 1—

(a) a suspension imposed by virtue of sub-paragraph (2) of that paragraph comes to an end if, in reliance of sub-paragraph (6)(a) above, the coroner decides not to suspend the investigation;

(b) a suspension imposed by virtue of sub-paragraph (3) of that paragraph comes to an end if, in reliance on sub-paragraph (6)(b) above, the coroner decides not to suspend the investigation;

(c) a reference above in this paragraph to suspending an investigation is to be read as a reference to continuing the suspension of an investigation;

(d) if the suspension of the investigation is continued under this paragraph, the investigation is to be treated for the purposes of paragraphs 1(4), 7 and 8 of this Schedule as suspended under this paragraph (and not as suspended under paragraph 1).

*Suspension pending inquiry under Inquiries Act 2005*

3 (1) Subject to sub-paragraph (2), a senior coroner must suspend an investigation under this Part of this Act into a person's death if—

(a) the Lord Chancellor requests the coroner to do so on the ground that the cause of death is likely to be adequately investigated by an inquiry under the Inquiries Act 2005 (c. 12) that is being or is to be held,

(b) a senior judge has been appointed under that Act as chairman of the inquiry, and

(c) the Lord Chief Justice has indicated approval to the Lord Chancellor, for the purposes of this paragraph, of the appointment of that judge.

In paragraph (b) "senior judge" means a judge of the High Court or the Court of Appeal or a Justice of the Supreme Court.

(2) The coroner need not suspend the investigation if there appears to be an exceptional reason for not doing so.

(3) In the case of an investigation that is already suspended under paragraph 1—

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(a) a reference above in this paragraph to suspending the investigation is to be read as a reference to continuing the suspension of the investigation;

(b) if the suspension of the investigation is continued under this paragraph, the investigation is to be treated for the purposes of paragraphs 1(4), 7 and 9 of this Schedule as suspended under this paragraph (and not as suspended under paragraph 1).

4 (1) This paragraph applies where an investigation is suspended under paragraph 3 on the basis that the cause of death is likely to be adequately investigated by an inquiry under the Inquiries Act 2005 (c. 12).

(2) The terms of reference of the inquiry must be such that it has as its purpose, or among its purposes, the purpose set out in section 5(1) above (read with section 5(2) where applicable); and section 5 of the Inquiries Act 2005 has effect accordingly.

*General power to suspend*

5 A senior coroner may suspend an investigation under this Part of this Act into a person's death in any case if it appears to the coroner that it would be appropriate to do so.

*Effect of suspension*

6 (1) Where an investigation is suspended under this Schedule, the senior coroner must adjourn any inquest that is being held as part of the investigation.

(2) Where an inquest held with a jury is adjourned under this paragraph, the senior coroner may discharge the jury.

## PART 2

## RESUMPTION OF INVESTIGATIONS

*Resumption of investigation suspended under paragraph 1*

7 An investigation that is suspended under paragraph 1 must be resumed once the period under sub-paragraph (4) of that paragraph, or as the case may be the extended period under sub-paragraph (5) of that paragraph, has ended.

(But see paragraphs 2(7)(d) and 3(3)(b).)

*Resumption of investigation suspended under paragraph 2*

8 (1) An investigation that is suspended under paragraph 2 may not be resumed unless, but must be resumed if, the senior coroner thinks that there is sufficient reason for resuming it.

(2) Subject to sub-paragraph (3) —

(a) an investigation that is suspended under paragraph 2 may not be resumed while proceedings are continuing before the court of trial in respect of a homicide offence, or the service equivalent of a homicide offence, involving the death of the deceased;

(b) an investigation that is suspended by virtue of sub-paragraph (4) or (5) of that paragraph may not be resumed while proceedings are

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continuing before the court of trial in respect of the offence referred to in that sub-paragraph.

(3) The investigation may be resumed while the proceedings in question are continuing if—

(a) in the case of an investigation suspended by virtue of sub-paragraph (2) or (4) of paragraph 2, the relevant prosecuting authority informs the coroner that it has no objection to the investigation being resumed;

(b) in the case of an investigation suspended by virtue of sub-paragraph (3) or (5) of that paragraph, the Director of Service Prosecutions informs the coroner that he or she has no objection to the investigation being resumed.

(4) For the purposes of sub-paragraph (3)(a), the relevant prosecuting authority—

(a) in the case of an investigation suspended by virtue of sub-paragraph (2) of paragraph 2, is the prosecuting authority responsible for the prosecution in question;

(b) in the case of an investigation suspended by virtue of sub-paragraph (4) of that paragraph, is the prosecuting authority that made the request under that sub-paragraph.

(5) In the case of an investigation resumed under this paragraph, a determination under section 10(1)(a) may not be inconsistent with the outcome of—

(a) the proceedings in respect of the charge (or each charge) by reason of which the investigation was suspended;

(b) any proceedings that, by reason of sub-paragraph (2), had to be concluded before the investigation could be resumed.

*Resumption of investigation suspended under paragraph 3*

9 (1) Where an investigation is suspended under paragraph 3—

(a) it may not be resumed unless, but must be resumed if, the senior coroner thinks that there is sufficient reason for resuming it;

(b) it may not be resumed before the end of the period of 28 days beginning with the relevant day;

(c) where sub-paragraph (4), (6), (8) or (10) applies, it may be resumed only in accordance with that sub-paragraph (and not before the end of the 28-day period mentioned in paragraph (b)).

(2) In sub-paragraph (1)(b) "the relevant day" means—

(a) if the Lord Chancellor gives the coroner notification under this paragraph, the day on which the inquiry concerned is concluded;

(b) otherwise, the day on which the findings of that inquiry are published.

(3) Sub-paragraph (4) applies where, during the suspension of the investigation, the coroner—

(a) becomes aware that a person has appeared or been brought before a magistrates' court charged with a homicide offence involving the death of the deceased, or

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(b) becomes aware that a person has been charged on an indictment with such an offence without having appeared or been brought before a magistrates' court charged with it.

(4) The coroner must not resume the investigation until after the conclusion of proceedings before the court of trial in respect of the offence in question, unless a prosecuting authority informs the coroner that it has no objection to the investigation being resumed before then.

(5) Sub-paragraph (6) applies where, during the suspension of the investigation, the coroner becomes aware that a person has been charged with the service equivalent of a homicide offence involving the death of the deceased.

(6) The coroner must not resume the investigation until after the conclusion of proceedings before the court of trial in respect of the offence in question, unless the Director of Service Prosecutions informs the coroner that he or she has no objection to the investigation being resumed before then.

(7) Sub-paragraph (8) applies where, during the suspension of the investigation, a prosecuting authority informs the senior coroner that a person—

(a) has appeared or been brought before a magistrates' court charged with an offence (other than a service offence) that is alleged to be a related offence, or

(b) has been charged on an indictment with such an offence without having been sent for trial for it.

(8) If the prosecuting authority requests the coroner not to resume the investigation until after the conclusion of proceedings before the court of trial in respect of the offence in question, the coroner must not do so.

But the coroner may resume the investigation before the conclusion of those proceedings if the prosecuting authority subsequently informs the coroner that it has no objection to the investigation being resumed before then.

(9) Sub-paragraph (10) applies where the Director of Service Prosecutions informs the coroner that a person has been charged with a service offence that is alleged to be a related offence.

(10) If the Director of Service Prosecutions requests the coroner not to resume the investigation until after the conclusion of proceedings before the court of trial in respect of the offence in question, the coroner must not do so.

But the coroner may resume the investigation before the conclusion of those proceedings if the Director subsequently informs the coroner that he or she has no objection to the investigation being resumed before then.

(11) In the case of an investigation resumed under this paragraph, a determination under section 10(1)(a) may not be inconsistent with the outcome of—

(a) the inquiry under the Inquiries Act 2005 (c. 12) by reason of which the investigation was suspended;

(b) any proceedings that, by reason of sub-paragraph (4), (6), (8) or (10), had to be concluded before the investigation could be resumed.

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*Resumption of investigation suspended under paragraph 5*

10 An investigation that is suspended under paragraph 5 may be resumed at any time if the senior coroner thinks that there is sufficient reason for resuming it.

*Supplemental*

11 (1) Where an investigation is resumed under this Schedule, the senior coroner must resume any inquest that was adjourned under paragraph 6.

(2) The following provisions apply, in place of section 7, to an inquest that is resumed under this paragraph.

(3) The resumed inquest may be held with a jury if the senior coroner thinks that there is sufficient reason for it to be held with one.

(4) Where the adjourned inquest was held with a jury and the senior coroner decides to hold the resumed inquest with a jury—

(a) if at least seven persons who were members of the original jury are available to serve at the resumed inquest, the resumed inquest must be held with a jury consisting of those persons;

(b) if not, or if the original jury was discharged under paragraph 6(2), a new jury must be summoned.

## SCHEDULE 2

Section 22

### CORONER AREAS

*Coroner areas*

1 (1) England and Wales is to be divided into areas to be known as coroner areas.

(2) Each coroner area is to consist of the area of a local authority or the combined areas of two or more local authorities.

(3) Subject to paragraph 2—

(a) the coroner areas are to be those specified in an order made by the Lord Chancellor;

(b) each coroner area is to be known by whatever name is specified in the order.

(4) Before making an order under this paragraph, the Lord Chancellor must consult—

(a) every local authority,

(b) the Welsh Ministers, and

(c) any other persons the Lord Chancellor thinks appropriate.

*Alteration of coroner areas*

2 (1) The Lord Chancellor may make orders altering coroner areas.

(2) Before making an order under this paragraph the Lord Chancellor must consult—

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(a) whichever local authorities the Lord Chancellor thinks appropriate,
(b) in the case of a coroner area in Wales, the Welsh Ministers, and
(c) any other persons the Lord Chancellor thinks appropriate.

(3) "Altering", in relation to a coroner area, includes (as well as changing its boundaries)—
(a) combining it with one or more other coroner areas;
(b) dividing it between two or more other coroner areas;
(c) changing its name.

*Relevant authorities*

3 (1) This paragraph sets out for the purposes of this Part what is the "relevant authority" for a given coroner area.

(2) In the case of a coroner area consisting of the area of a single local authority, that authority is the relevant authority for the coroner area.

(3) In the case of a coroner area consisting of the areas of two or more local authorities, the relevant authority for the coroner area is—
(a) whichever one of those authorities they jointly nominate;
(b) if they cannot agree on a nomination, whichever one of them the Lord Chancellor determines.

(4) Before making a determination under sub-paragraph (3)(b) the Lord Chancellor must consult—
(a) the Secretary of State, in a case involving local authorities in England;
(b) the Welsh Ministers, in a case involving local authorities in Wales.

(5) This paragraph has effect subject to paragraph 2 of Schedule 22.

*Effect of body being outside coroner area etc*

4 (1) This paragraph applies where—
(a) a senior coroner is responsible for conducting an investigation under this Part into a person's death, and
(b) the body is outside the coroner's area (whether because of its removal or otherwise).

(2) The coroner has the same functions in relation to the body and the investigation as would be the case if the body were within the coroner's area.

(3) The presence of the body at a place outside the coroner's area does not confer any functions on any other coroner.

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# SCHEDULE 3

Section 23

## APPOINTMENT ETC OF SENIOR CORONERS, AREA CORONERS AND ASSISTANT CORONERS

## PART 1

## APPOINTMENT OF SENIOR, AREA AND ASSISTANT CORONERS

*Appointment of senior coroners*

1 (1) The relevant authority for each coroner area must appoint a coroner (the "senior coroner") for that area.

(2) In the case of a coroner area that consists of the areas of two or more local authorities, the relevant authority for the area must consult the other authorities before making an appointment under this paragraph.

(3) A person may not be appointed as a senior coroner unless the Lord Chancellor and the Chief Coroner consent to the appointment of that person.

*Appointment of area and assistant coroners*

2 (1) The Lord Chancellor may by order require the appointment, for any coroner area, of—

(a) an area coroner, or a specified number of area coroners;

(b) a minimum number of assistant coroners.

(2) Before making an order under this paragraph in relation to a particular coroner area, the Lord Chancellor must consult—

(a) the Chief Coroner, and

(b) every local authority whose area falls within the coroner area (or, as the case may be, the local authority whose area is the same as the coroner area).

(3) The relevant authority for a coroner area in relation to which provision is made under sub-paragraph (1)(a) must appoint an area coroner or, as the case may be, the number of area coroners specified for the area in the order.

(4) The relevant authority for a coroner area in relation to which provision is made under sub-paragraph (1)(b) must appoint at least the number of assistant coroners specified for the area in the order.

(5) A person may not be appointed as an area coroner or assistant coroner unless the Lord Chancellor and the Chief Coroner consent to the appointment of that person.

## PART 2

## QUALIFICATIONS OF SENIOR, AREA AND ASSISTANT CORONERS

3 To be eligible for appointment as a senior coroner, area coroner or assistant coroner, a person must—

(a) be under the age of 70, and

(b) satisfy the judicial-appointment eligibility condition on a 5-year basis.

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4 (1) A person who is a councillor for a local authority, or has been during the previous 6 months, may not be appointed as the senior coroner, or as an area coroner or assistant coroner, for a coroner area that is the same as or includes the area of that local authority.

(2) In the application of this paragraph to the Common Council, the reference to a councillor is to be read as a reference to an alderman of the City of London or a common councillor.

## PART 3

## VACANCIES; FUNCTIONS OF AREA AND ASSISTANT CORONERS

*Filling of vacancies*

5 (1) This paragraph applies where a vacancy occurs—
(a) in the office of senior coroner for an area, or
(b) in an office of area coroner for an area.

(2) The relevant authority for the area must—
(a) give notice in writing of the vacancy to the Lord Chancellor and the Chief Coroner as soon as practicable after the vacancy occurs;
(b) appoint a person to fill the vacancy under paragraph 1 or 2 (as the case may be) within 3 months of the vacancy occurring, or within whatever further period the Lord Chancellor allows;
(c) give notice in writing of the appointment of a person to fill the vacancy to the Lord Chancellor and the Chief Coroner as soon as practicable after it is filled.

6 (1) This paragraph applies where—
(a) a vacancy occurs in an office of assistant coroner for an area, and
(b) the vacancy causes the number of assistant coroners for the area to fall below (or further below) the minimum number specified under paragraph 2(1)(b).

(2) Within 3 months of the vacancy occurring, or within whatever further period the Lord Chancellor allows, the relevant authority for the area must appoint a person to fill the vacancy.

*Person to act as senior coroner in case of vacancy*

7 (1) This paragraph applies where a vacancy occurs in the office of senior coroner for an area.

(2) Subject to sub-paragraph (3), the area coroner for the area (or, if there is more than one such area coroner, whichever of them is nominated by the relevant authority for the area) is to act as senior coroner for the area while the office remains vacant.

(3) Where there is no area coroner for the area, whichever assistant coroner for the area is nominated by the relevant authority for the area is to act as senior coroner for the area while the office remains vacant.

(4) In the case of a coroner area that consists of the area of two or more local authorities, the relevant authority for the area must consult the other authority or authorities before making a nomination under this paragraph.

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(5) A person who acts as senior coroner for an area by virtue of this paragraph is to be treated for all purposes of this Part of this Act (except those of this paragraph and paragraphs 1 to 5 and 9 to 19 of this Schedule) as being the senior coroner for the area.

*Functions of area and assistant coroners*

8 (1) An area coroner or assistant coroner for an area may perform any functions of the senior coroner for the area (including functions which that senior coroner has by virtue of section 2 or 3)—

(a) during a period when that senior coroner is absent or unavailable;

(b) at any other time, with the consent of that senior coroner.

(2) Accordingly a reference in a statutory provision (whenever made) to a senior coroner is to be read, where appropriate, as including an area coroner or assistant coroner.

## PART 4

## TERMS OF OFFICE OF SENIOR, AREA AND ASSISTANT CORONERS

*Status of office*

9 The offices of senior coroner, area coroner and assistant coroner are not to be regarded as freehold offices.

*Vacation or termination of office*

10 A senior coroner, area coroner or assistant coroner must vacate office on reaching the age of 70.

11 (1) The senior coroner or an area coroner or assistant coroner for an area ("the relevant coroner area") must vacate office immediately if—

(a) he or she becomes a councillor for a local authority, and

(b) the area of that local authority is the same as or falls within the relevant coroner area.

(2) In the application of this paragraph to the Common Council, the reference to a councillor is to be read as a reference to an alderman of the City of London or a common councillor.

12 The senior coroner or an area coroner or assistant coroner for an area may resign office by giving notice in writing to the relevant authority for the area. But the resignation does not take effect unless and until it is accepted by the authority.

13 (1) The Lord Chancellor may, with the agreement of the Lord Chief Justice, remove a senior coroner, area coroner or assistant coroner from office for incapacity or misbehaviour.

(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise the functions of the Lord Chief Justice under sub-paragraph (1).

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*Discipline*

14 Chapter 3 of Part 4 of the Constitutional Reform Act 2005 (c. 4) (discipline) applies in relation to the offices of senior coroner, area coroner and assistant coroner as it would apply if those offices were listed in Schedule 14 to that Act.

*Salary of senior and area coroners*

15 (1) The senior coroner for an area is entitled to a salary.

(2) The amount of the salary is to be whatever is from time to time agreed by the senior coroner and the relevant authority for the area.

(3) If the senior coroner and the relevant authority cannot agree about an alteration in the amount of the salary—

(a) either of them may refer the matter to the Lord Chancellor;

(b) the Lord Chancellor may determine the amount of the salary and the date on which it is to become payable.

Any alteration in the amount of salary is to take effect in accordance with the Lord Chancellor's determination.

(4) In making a determination under sub-paragraph (3), the Lord Chancellor must have regard—

(a) to the nature and extent of the coroner's functions, and

(b) to all the circumstances of the case.

(5) The salary to which the senior coroner for an area is entitled under this paragraph is payable by the relevant authority for the area.

(6) This paragraph applies in relation to an area coroner for an area as it applies in relation to the senior coroner for an area (references to the senior coroner being read as references to an area coroner).

*Fees payable to assistants*

16 (1) An assistant coroner for an area is entitled to fees.

(2) The amount of the fees is to be whatever is agreed from time to time by the assistant coroner and the relevant authority for the area.

(3) The fees to which an assistant coroner for an area is entitled under this paragraph are payable by the relevant authority for the area.

*Pensions for senior and area coroners*

17 A relevant authority for a coroner area must make provision for the payment of pensions, allowances or gratuities to or in respect of persons who are or have been senior coroners or area coroners for the area.

*Prohibition on receipt of fees etc*

18 Except as permitted by or under this or any other Act, a senior coroner, area coroner or assistant coroner may not accept any remuneration or fee in respect of anything done by that coroner in the performance of his or her functions.

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*Other terms of office*

19 Subject to the preceding provisions of this Part, the senior coroner or an area coroner or assistant coroner for an area holds office on whatever terms are from time to time agreed by that coroner and the relevant authority for the area.

## SCHEDULE 4

Section 25

### CORONER FOR TREASURE AND ASSISTANT CORONERS FOR TREASURE

### PART 1

### APPOINTMENT, QUALIFICATIONS AND TERMS OF OFFICE OF CORONER FOR TREASURE

*Appointment*

1 The Lord Chancellor may appoint a person as the Coroner for Treasure.

*Qualifications*

2 To be eligible for appointment as the Coroner for Treasure, a person must—

(a) be under the age of 70, and

(b) satisfy the judicial-appointment eligibility condition on a 5-year basis.

*Vacation or termination of office*

3 The Coroner for Treasure must vacate office on reaching the age of 70.

4 The Coroner for Treasure may resign office by giving notice to the Lord Chancellor.

But the resignation does not take effect unless and until it is accepted by the Lord Chancellor.

5 (1) The Lord Chancellor may, with the agreement of the Lord Chief Justice, remove the Coroner for Treasure from office for incapacity or misbehaviour.

(2) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) to exercise the functions of the Lord Chief Justice under sub-paragraph (1).

*Remuneration, allowances and expenses*

6 (1) The Lord Chancellor may pay to the Coroner for Treasure amounts determined by the Lord Chancellor by way of remuneration or allowances.

(2) The Lord Chancellor may pay to the Coroner for Treasure amounts determined by the Lord Chancellor towards expenses incurred by the Coroner for Treasure in performing functions as such.

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## PART 2

## DESIGNATION AND REMUNERATION OF ASSISTANT CORONERS FOR TREASURE

*Designation*

7 The Chief Coroner may designate one or more assistant coroners to act as Assistant Coroners for Treasure.

8 A person who is designated under paragraph 7 to act as an Assistant Coroner for Treasure may act as such for so long as the designation continues to have effect.

9 A person's designation under that paragraph ceases to have effect—

(a) when the person ceases to be an assistant coroner;

(b) if earlier, when the designation is terminated by notice given—

(i) by the person to the Chief Coroner, or

(ii) by the Chief Coroner to the person.

*Remuneration, allowances and expenses*

10 (1) The Lord Chancellor may pay to an Assistant Coroner for Treasure amounts determined by the Lord Chancellor by way of remuneration or allowances.

(2) The Lord Chancellor may pay to an Assistant Coroner for Treasure amounts determined by the Lord Chancellor towards expenses incurred by the Assistant Coroner for Treasure in performing functions as such.

## PART 3

## MISCELLANEOUS

*Functions of Assistant Coroners for Treasure*

11 (1) An Assistant Coroner for Treasure may perform any functions of the Coroner for Treasure—

(a) during a period when the Coroner for Treasure is absent or unavailable;

(b) during a vacancy in the office of Coroner for Treasure;

(c) at any other time, with the consent of the Coroner for Treasure.

(2) Accordingly a reference in this Part of this Act to the Coroner for Treasure is to be read, where appropriate, as including an Assistant Coroner for Treasure.

*Staff*

12 (1) The Lord Chancellor may appoint staff to assist the Coroner for Treasure and any Assistant Coroners for Treasure in the performance of their functions.

(2) Such staff are to be appointed on whatever terms and conditions the Lord Chancellor thinks appropriate.

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## SCHEDULE 5

Section 32

### POWERS OF CORONERS

*Power to require evidence to be given or produced*

1 (1) A senior coroner may by notice require a person to attend at a time and place stated in the notice and—

(a) to give evidence at an inquest,

(b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to an inquest, or

(c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to an inquest.

(2) A senior coroner who is conducting an investigation under this Part may by notice require a person, within such period as the senior coroner thinks reasonable—

(a) to provide evidence to the senior coroner, about any matters specified in the notice, in the form of a written statement,

(b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the investigation, or

(c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the investigation.

(3) A notice under sub-paragraph (1) or (2) must—

(a) explain the possible consequences, under paragraphs 6 and 7 of Schedule 6, of not complying with the notice;

(b) indicate what the recipient of the notice should do if he or she wishes to make a claim under sub-paragraph (4).

(4) A claim by a person that—

(a) he or she is unable to comply with a notice under this paragraph, or

(b) it is not reasonable in all the circumstances to require him or her to comply with such a notice,

is to be determined by the senior coroner, who may revoke or vary the notice on that ground.

(5) In deciding whether to revoke or vary a notice on the ground mentioned in sub-paragraph (4)(b), the senior coroner must consider the public interest in the information in question being obtained for the purposes of the inquest or investigation, having regard to the likely importance of the information.

(6) For the purposes of this paragraph a document or thing is under a person's control if it is in the person's possession or if he or she has a right to possession of it.

(7) The validity of a notice under sub-paragraph (1) or (2) is not limited to the coroner area for which the senior coroner issuing the notice is appointed.

(8) A reference in this paragraph to a senior coroner is to be read as including the Coroner for Treasure.

As it applies in relation to the Coroner for Treasure, this paragraph has effect with the omission of sub-paragraph (7).

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2 (1) A person may not be required to give, produce or provide any evidence or document under paragraph 1 if—

(a) he or she could not be required to do so in civil proceedings in a court in England and Wales, or

(b) the requirement would be incompatible with a Community obligation.

(2) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an investigation or inquest under this Part as they apply in relation to civil proceedings in a court in England and Wales.

*Power of entry, search and seizure*

3 (1) A senior coroner conducting an investigation under this Part, if authorised—

(a) by the Chief Coroner, or

(b) by another senior coroner nominated by the Chief Coroner to give authorisation,

may enter and search any land specified in the authorisation.

(2) An authorisation may be given only if—

(a) the senior coroner conducting the investigation has reason to suspect that there may be anything on the land which relates to a matter that is relevant to the investigation, and

(b) any of the conditions in sub-paragraph (3) are met.

(3) Those conditions are—

(a) that it is not practicable to communicate with a person entitled to grant permission to enter and search the land;

(b) that permission to enter and search the land has been refused;

(c) that the senior coroner has reason to believe that such permission would be refused if requested;

(d) that the purpose of a search may be frustrated or seriously prejudiced unless the senior coroner can secure immediate entry to the land on arrival.

(4) A senior coroner conducting an investigation under this Part who is lawfully on any land—

(a) may seize anything that is on the land;

(b) may inspect and take copies of any documents.

(5) A reference in this paragraph to land is not limited to land within the coroner area for which the senior coroner in question is appointed.

(6) A reference in this paragraph to a senior coroner is to be read as including the Coroner for Treasure.

As it applies in relation to the Coroner for Treasure, this paragraph has effect with the omission of sub-paragraphs (1)(b) and (5).

4 (1) The person by whom an authorisation under paragraph 3(1) is given must make a record—

(a) setting out the reasons for the suspicion referred to in paragraph 3(2)(a);

(b) specifying which of the conditions in paragraph 3(3) is met.

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(2) Where the authorisation is given by a senior coroner nominated under paragraph 3(1)(b), that coroner must give the record made under this paragraph to the Chief Coroner.

(3) The Chief Coroner must retain a record made this paragraph until the Chief Coroner has given to the Lord Chancellor the report under section 36 for the calendar year in which the authorisation in question was given.

5 (1) A power under paragraph 3(4) is not exercisable unless the person exercising the power has reasonable grounds for believing—

(a) that its exercise may assist the investigation, and

(b) in the case of the seizure of anything, that the seizure is necessary to prevent the thing being concealed, lost, damaged, altered or destroyed.

(2) The power under paragraph 3(4)(b) includes power to require any information that is stored in an electronic form and is on, or accessible from, the land to be produced in a form—

(a) in which it can be taken away, and

(b) in which it is legible or from which it can readily be produced in a legible form.

(3) A power under paragraph 3(4) does not apply to any item that the person by whom the power is exercisable has reasonable grounds for believing to be subject to legal privilege.

(4) Anything that has been seized or taken away under paragraph 3 may be retained for so long as is necessary in all the circumstances.

(5) A person on whom a power is conferred by virtue of paragraph 3 may use reasonable force, if necessary, in the exercise of the power.

(6) In this paragraph "subject to legal privilege", in relation to an item, has the meaning given by section 10 of the Police and Criminal Evidence Act 1984 (c. 60).

*Exhumation of body for examination*

6 (1) A senior coroner may order the exhumation of a person's body if sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies if—

(a) the body is buried in England and Wales (whether or not within the coroner area for which the coroner is appointed), and

(b) the coroner thinks it necessary for the body to be examined under section 14.

(3) This sub-paragraph applies if—

(a) the body is buried within the coroner area for which the coroner is appointed, and

(b) the coroner thinks it necessary for the body to be examined for the purpose of any criminal proceedings that have been instituted or are contemplated in respect of—

(i) the death of the person whose body it is, or

(ii) the death of another person who died in circumstances connected with the death of that person.

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(4) In sub-paragraph (3) "criminal proceedings" includes proceedings in respect of an offence under section 42 of the Armed Forces Act 2006 (c. 52) (or section 70 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), section 70 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or section 42 of the Naval Discipline Act 1957 (c. 53)).

*Action to prevent other deaths*

7 (1) Where—

(a) a senior coroner has been conducting an investigation under this Part into a person's death,

(b) anything revealed by the investigation gives rise to a concern that circumstances creating a risk of other deaths will occur, or will continue to exist, in the future, and

(c) in the coroner's opinion, action should be taken to prevent the occurrence or continuation of such circumstances, or to eliminate or reduce the risk of death created by such circumstances,

the coroner must report the matter to a person who the coroner believes may have power to take such action.

(2) A person to whom a senior coroner makes a report under this paragraph must give the senior coroner a written response to it.

(3) A copy of a report under this paragraph, and of the response to it, must be sent to the Chief Coroner.

## SCHEDULE 6

Section 33

### OFFENCES

### PART 1

### OFFENCES RELATING TO JURORS

1 (1) It is an offence for a person to serve on a jury at an inquest if the person—

(a) is disqualified from jury service (by reason of being a person listed in Part 2 of Schedule 1 to the Juries Act 1974 (c. 23)), and

(b) knows that he or she is disqualified from jury service.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

2 (1) It is an offence for a person—

(a) to refuse without reasonable excuse to answer any question put under section 8(5),

(b) to give an answer to such a question knowing the answer to be false in a material particular, or

(c) recklessly to give an answer to such a question that is false in a material particular.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3 (1) It is an offence for a person who is duly summoned as a juror at an inquest—

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(a) to make any false representation, or
(b) to cause or permit to be made any false representation on his or her behalf,

with the intention of evading service as a juror at an inquest.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4 (1) It is an offence for a person to make or cause to be made, on behalf of a person who has been duly summoned as a juror at an inquest, any false representation with the intention of enabling the other person to evade service as a juror at an inquest.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

5 (1) A senior coroner, or (as the case may be) the Coroner for Treasure, may impose a fine not exceeding £1000 on a person duly summoned as a juror at an inquest who—
(a) fails without reasonable excuse to attend in accordance with the summons, or
(b) attends in accordance with the summons but refuses without reasonable excuse to serve as a juror.

(2) But a fine may not be imposed under this paragraph unless the summons was duly served on the person in question not later than 14 days before the day on which he or she was required to attend.

## PART 2

### OFFENCES RELATING TO WITNESSES AND EVIDENCE

6 A senior coroner, or (as the case may be) the Coroner for Treasure, may impose a fine not exceeding £1000 on a person who fails without reasonable excuse to do anything required by a notice under paragraph 1 of Schedule 5.

7 (1) It is an offence for a person to do anything that is intended to have the effect of—
(a) distorting or otherwise altering any evidence, document or other thing that is given, produced or provided for the purposes of an investigation under this Part of this Act, or
(b) preventing any evidence, document or other thing from being given, produced or provided for the purposes of such an investigation,

or to do anything that the person knows or believes is likely to have that effect.

(2) It is an offence for a person—
(a) intentionally to suppress or conceal a document that is, and that the person knows or believes to be, a relevant document, or
(b) intentionally to alter or destroy such a document.

(3) For the purposes of sub-paragraph (2) a document is a "relevant document" if it is likely that a person conducting an investigation under this Part of this Act would (if aware of its existence) wish to be provided with it.

(4) A person does not commit an offence under sub-paragraph (1) or (2) by doing anything that is authorised or required—

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(a) by a senior coroner or the Coroner for Treasure, or
(b) by virtue of paragraph 2 of Schedule 5 or any privilege that applies.

(5) Proceedings for an offence under sub-paragraph (1) or (2) may be instituted only by or with the consent of the Director of Public Prosecutions.

(6) A person guilty of an offence under sub-paragraph (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding 51 weeks, or to both.

8 (1) It is an offence for a person, in giving unsworn evidence at an inquest by virtue of section 45(2)(a), to give false evidence in such circumstances that, had the evidence been given on oath, he or she would have been guilty of perjury.

(2) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding £1000, or to imprisonment for a term not exceeding 51 weeks, or to both.

(3) In relation to a person under the age of 14, sub-paragraph (2) has effect as if for the words following "summary conviction" there were substituted "to a fine not exceeding £250".

(4) For the purposes of sub-paragraph (3), a person's age is to be taken to be that which it appears to the court to be after considering any available evidence.

## PART 3

## MISCELLANEOUS

9 (1) The powers of a senior coroner or the Coroner for Treasure under paragraph 5 or 6 are additional to, and do not affect, any other power the coroner may have—
(a) to compel a person to appear before him or her;
(b) to compel a person to give evidence or produce any document or other thing;
(c) to punish a person for contempt of court for failure to appear or to give evidence or to produce any document or other thing.

(2) But a person may not be fined under paragraph 5 or 6 and also be punished under any such other power.

10 In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44), a reference in this Schedule to 51 weeks is to be read as a reference to 6 months.

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# SCHEDULE 7

Section 34

## ALLOWANCES, FEES AND EXPENSES

## PART 1

## ALLOWANCES PAYABLE TO JURORS

1 A person who serves as a juror at an inquest is entitled, in respect of attending the inquest, to receive payments by way of allowance—

(a) for travelling and subsistence;

(b) for financial loss.

This is subject to any conditions prescribed by regulations.

2 But a person is entitled to receive payments by way of allowance for financial loss only if, in consequence of attending the inquest, the person has—

(a) incurred expenses (other than on travelling and subsistence) that he or she would otherwise not have incurred,

(b) suffered a loss of earnings that he or she would otherwise not have suffered, or

(c) suffered a loss of benefit under the enactments relating to social security that he or she would otherwise not have suffered.

3 Regulations may prescribe the rates of any allowances payable under paragraph 1.

4 The amount due to a person under paragraph 1 is to be calculated by the senior coroner and paid by (or on behalf of) the senior coroner or, where appropriate, the Coroner for Treasure.

## PART 2

## ALLOWANCES PAYABLE TO WITNESSES

5 (1) Regulations may prescribe the allowances that may be paid by (or on behalf of) senior coroners or the Coroner for Treasure—

(a) to witnesses;

(b) to persons who produce documents or things by virtue of paragraph 1(1) or (2) of Schedule 5;

(c) to persons who provide evidence in the form of a written statement by virtue of paragraph 1(2)(a) of that Schedule.

(2) In this paragraph "witness" means a person properly attending before a senior coroner to give evidence at an inquest or in connection with the possibility of doing so (whether or not the person actually gives evidence), but does not include—

(a) a police officer, or a member of a service police force, attending in his or her capacity as such;

(b) a full-time officer of an institution to which the Prison Act 1952 (c. 52) applies in his or her capacity as such;

(c) a prisoner in respect of an occasion on which he or she is conveyed in custody to appear before a senior coroner.

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## PART 3

### MISCELLANEOUS FEES, ALLOWANCES AND EXPENSES

6 Regulations may prescribe the fees and allowances that may be paid by (or on behalf of) senior coroners to persons who make examinations under section 14.

7 (1) A relevant authority for a coroner area may issue a schedule of the fees, allowances and expenses that may be lawfully paid or incurred by the senior coroner for the area in the performance of the coroner's functions.

(2) The power under sub-paragraph (1) includes power to amend or revoke any schedule issued.

(3) In exercising the power under sub-paragraph (1) a relevant authority must have regard to any guidance from time to time issued by the Lord Chancellor.

(4) A copy of any schedule that is issued or amended must be given to the senior coroner.

(5) The reference in sub-paragraph (1) to fees and allowances does not include fees or allowances within any of the preceding paragraphs of this Schedule.

8 Regulations may prescribe the fees payable to coroners for supplying copies of documents in their custody relating to investigations or inquests under this Part of this Act that they are conducting or have conducted.

## PART 4

### MEETING OR REIMBURSING EXPENSES

9 (1) Regulations may make provision for or in connection with meeting or reimbursing—

(a) expenses incurred by senior coroners (including expenses incurred under or by virtue of paragraph 4, 5 or 6);

(b) expenses incurred by area coroners and assistant coroners;

(c) expenses incurred by virtue of Schedule 10 in the conduct of an investigation by the Chief Coroner or the Coroner for Treasure or by a judge, former judge or former coroner.

(2) The regulations may make provision—

(a) for accounts or evidence relating to expenses to be provided to relevant authorities;

(b) for or in connection with the meeting or reimbursement by relevant authorities of expenses of a description specified in the regulations;

(c) for or in connection with appeals relating to decisions with respect to meeting or reimbursing expenses.

This sub-paragraph is not to be read as limiting the power in sub-paragraph (1).

(3) A reference in this paragraph to meeting or reimbursing expenses incurred by a person ("P") includes a reference to indemnifying P in respect of—

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(a) costs that P reasonably incurs in or in connection with proceedings in respect of things done or omitted in the exercise (or purported exercise) by P of duties under this Part of this Act;

(b) costs that P reasonably incurs in taking steps to dispute claims that might be made in such proceedings;

(c) damages awarded against P, or costs ordered to be paid by P, in such proceedings;

(d) sums payable by P in connection with a reasonable settlement of such proceedings or of claims that might be made in such proceedings.

## PART 5

## SUPPLEMENTAL

10 For the purposes of paragraph 1, a person who attends for service as a juror in accordance with a summons is to be treated as serving as a juror even if he or she is not sworn.

11 (1) The power to make regulations under this Schedule is exercisable by the Lord Chancellor.

(2) Regulations under this Schedule may be made only if—

(a) the Lord Chief Justice, or

(b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005 (c. 4)) nominated for the purposes of this sub-paragraph by the Lord Chief Justice,

agrees to the making of the regulations.

# SCHEDULE 8

Section 35

## CHIEF CORONER AND DEPUTY CHIEF CORONERS

*Appointment of Chief Coroner*

1 (1) The Lord Chief Justice may appoint a person as the Chief Coroner.

(2) To be eligible for appointment as the Chief Coroner a person must be—

(a) a judge of the High Court or a Circuit judge, and

(b) under the age of 70.

(3) The Lord Chief Justice must consult the Lord Chancellor before making an appointment under this paragraph.

(4) The appointment of a person as the Chief Coroner is to be for a term decided by the Lord Chief Justice after consulting the Lord Chancellor.
The term must be one that expires before the person's 70th birthday.

(5) In this paragraph "appointment" includes re-appointment.

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*Appointment of Deputy Chief Coroners*

2 (1) The Lord Chief Justice may secure the appointment as Deputy Chief Coroners of however many persons the Lord Chief Justice thinks appropriate.

(2) To be eligible for appointment as a Deputy Chief Coroner a person must be—

(a) a judge of the High Court, a Circuit judge, the Coroner for Treasure or a senior coroner, and

(b) under the age of 70.

(3) The Lord Chief Justice must consult the Lord Chancellor as to—

(a) the appropriate number of persons to be appointed as Deputy Chief Coroners;

(b) how many of them are to be persons eligible for appointment by virtue of being judges and how many are to be persons eligible for appointment by virtue of being senior coroners or the Coroner for Treasure.

(4) The function of appointing a person as a Deputy Chief Coroner is exercisable, in the case of a judge of the High Court or a Circuit judge, by the Lord Chief Justice after consulting the Lord Chancellor.

(5) The appointment by the Lord Chief Justice of a person as a Deputy Chief Coroner is to be for a term decided by the Lord Chief Justice after consulting the Lord Chancellor.

The term must be one that expires before the person's 70th birthday.

(6) The function of appointing a person as a Deputy Chief Coroner is exercisable, in the case of a senior coroner or the Coroner for Treasure, by the Lord Chancellor at the invitation of the Lord Chief Justice.

(7) The appointment by the Lord Chancellor of a person as a Deputy Chief Coroner is to be for a term decided by the Lord Chancellor after consulting the Lord Chief Justice.

The term must be one that expires before the person's 70th birthday.

(8) In this paragraph "appointment" includes re-appointment.

*Resignation or removal*

3 (1) The Chief Coroner, or a Deputy Chief Coroner appointed by the Lord Chief Justice, may resign from office by giving notice in writing to the Lord Chief Justice.

(2) But the resignation does not take effect unless and until it is accepted by the Lord Chief Justice, who must consult the Lord Chancellor before accepting it.

(3) A Deputy Chief Coroner appointed by the Lord Chancellor may resign from office by giving notice in writing to the Lord Chancellor.

(4) But the resignation does not take effect unless and until it is accepted by the Lord Chancellor, who must consult the Lord Chief Justice before accepting it.

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4 (1) The Lord Chief Justice may, after consulting the Lord Chancellor, remove the Chief Coroner, or a Deputy Chief Coroner appointed by the Lord Chief Justice, from office for incapacity or misbehaviour.

(2) The Lord Chancellor may, after consulting the Lord Chief Justice, remove a Deputy Chief Coroner appointed by the Lord Chancellor from office for incapacity or misbehaviour.

*Remuneration, allowances and expenses*

5 The Lord Chancellor may pay to the Chief Coroner—

(a) amounts determined by the Lord Chancellor by way of remuneration or allowances;

(b) amounts determined by the Lord Chancellor towards expenses incurred by the Chief Coroner in performing functions as such.

6 The Lord Chancellor may pay to a Deputy Chief Coroner—

(a) amounts determined by the Lord Chancellor by way of remuneration or allowances;

(b) amounts determined by the Lord Chancellor towards expenses incurred by that Deputy Chief Coroner in performing functions as such.

7 A reference in paragraph 5 or 6 to paying expenses incurred by a person ("P") includes a reference to indemnifying P in respect of—

(a) costs that P reasonably incurs in or in connection with proceedings in respect of things done or omitted in the exercise (or purported exercise) by P of duties under this Part;

(b) costs that P reasonably incurs in taking steps to dispute claims that might be made in such proceedings;

(c) damages awarded against P, or costs ordered to be paid by P, in such proceedings;

(d) sums payable by P in connection with a reasonable settlement of such proceedings or of claims that might be made in such proceedings.

*Exercise of Chief Coroner's functions by Deputy Chief coroner*

8 (1) A Deputy Chief Coroner may perform any functions of the Chief Coroner—

(a) during a period when the Chief Coroner is absent or unavailable;

(b) during a vacancy in the office of Chief Coroner;

(c) at any other time, with the consent of the Chief Coroner.

(2) Accordingly a reference in this Part to the Chief Coroner is to be read, where appropriate, as including a Deputy Chief Coroner.

*Staff*

9 (1) The Lord Chancellor must appoint staff to assist the Chief Coroner and any Deputy Chief Coroners in the performance of their functions.

(2) Such staff are to be appointed on whatever terms and conditions the Lord Chancellor thinks appropriate.

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## SCHEDULE 9

Section 38

### MEDICAL ADVISER AND DEPUTY MEDICAL ADVISERS TO THE CHIEF CORONER

*Appointment and functions of Medical Adviser to the Chief Coroner*

1 The Lord Chancellor may appoint a person as Medical Adviser to the Chief Coroner ("the Medical Adviser") to provide advice and assistance to the Chief Coroner as to medical matters in relation to the coroner system.

*Appointment and functions of Deputy Medical Advisers to the Chief Coroner*

2 (1) The Lord Chancellor may appoint however many Deputy Medical Advisers to the Chief Coroner ("Deputy Medical Advisers") the Lord Chancellor thinks appropriate.

(2) A Deputy Medical Adviser may perform any functions of the Medical Adviser—

(a) during a period when the Medical Adviser is absent or unavailable;

(b) during a vacancy in the office of Medical Adviser;

(c) at any other time, with the consent of the Medical Adviser.

*Qualification for appointment*

3 A person may be appointed as the Medical Adviser or as a Deputy Medical Adviser only if, at the time of the appointment, he or she—

(a) is a registered medical practitioner and has been throughout the previous 5 years, and

(b) practises as such or has done within the previous 5 years.

*Consultation before making appointment*

4 Before appointing a person as the Medical Adviser or as a Deputy Medical Adviser, the Lord Chancellor must consult—

(a) the Chief Coroner, and

(b) the Welsh Ministers.

*Terms and conditions of appointment*

5 The appointment of a person as the Medical Adviser or as a Deputy Medical Adviser is to be on whatever terms and conditions the Lord Chancellor thinks appropriate.

*Remuneration, allowances and expenses*

6 (1) The Lord Chancellor may pay to the Medical Adviser—

(a) amounts determined by the Lord Chancellor by way of remuneration or allowances;

(b) amounts determined by the Lord Chancellor towards expenses incurred in performing functions as such.

(2) The Lord Chancellor may pay to a Deputy Medical Adviser—

(a) amounts determined by the Lord Chancellor by way of remuneration or allowances;

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(b) amounts determined by the Lord Chancellor towards expenses incurred by that Deputy Medical Adviser in performing functions as such.

## SCHEDULE 10

Section 41

INVESTIGATION BY CHIEF CORONER OR CORONER FOR TREASURE OR BY JUDGE, FORMER JUDGE OR FORMER CORONER

*Investigation by Chief Coroner*

1 (1) The Chief Coroner may conduct an investigation into a person's death.

(2) Where the Chief Coroner is responsible for conducting an investigation by virtue of this paragraph—

(a) the Chief Coroner has the same functions in relation to the body and the investigation as would be the case if he or she were a senior coroner in whose area the body was situated;

(b) no senior coroner, area coroner or assistant coroner has any functions in relation to the body or the investigation.

(3) Accordingly a reference in a statutory provision (whenever made) to a senior coroner is to be read, where appropriate, as including the Chief Coroner exercising functions by virtue of this paragraph.

*Investigation by Coroner for Treasure*

2 (1) The Chief Coroner may direct the Coroner for Treasure to conduct an investigation into a person's death.

(2) Where a direction is given under this paragraph—

(a) the Coroner for Treasure must conduct the investigation;

(b) the Coroner for Treasure has the same functions in relation to the body and the investigation as would be the case if he or she were a senior coroner in whose area the body was situated;

(c) no senior coroner, area coroner or assistant coroner has any functions in relation to the body or the investigation.

(3) Accordingly, a reference in a statutory provision (whenever made) to a senior coroner is to be read, where appropriate, as including the Coroner for Treasure exercising functions by virtue of this paragraph.

*Investigation by judge, former judge or former coroner*

3 (1) If requested to do so by the Chief Coroner, the Lord Chief Justice may nominate a person within sub-paragraph (2) to conduct an investigation into a person's death.

(2) A person is within this sub-paragraph if at the time of the nomination he or she is—

(a) a judge of the High Court,

(b) a Circuit judge, or

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(c) a person who has held office as a judge of the Court of Appeal or of the High Court (but no longer does so),

and is under the age of 75.

(3) The Chief Coroner may request a person who at the time of the request—

(a) has held office as a senior coroner (but no longer does so), and

(b) is under the age of 75,

to conduct an investigation into a person's death.

(4) If a person nominated or requested under this paragraph agrees to conduct the investigation—

(a) that person is under a duty to do so;

(b) that person has the same functions in relation to the body and the investigation as would be the case if he or she were a senior coroner in whose area the body was situated;

(c) no senior coroner, area coroner or assistant coroner has any functions in relation to the body or the investigation.

(5) Accordingly a reference in a statutory provision (whenever made) to a coroner is to be read, where appropriate, as including a person who has been nominated or requested under this paragraph to conduct an investigation and has agreed to do so.

(6) The Lord Chief Justice must consult the Lord Chancellor before making a nomination under this paragraph.

*Appeals*

4 (1) Where—

(a) by virtue of this Schedule an investigation is conducted by a person who holds or has held office as a judge of the High Court (including the Chief Coroner if he or she is such a person) or by a person who has held office as a judge of the Court of Appeal, and

(b) the investigation gives rise to an appeal under section 40,

that section has effect as if references in it to the Chief Coroner were references to the Court of Appeal, and with the omission of subsections (8) and (9).

(2) Where—

(a) by virtue of this Schedule an investigation is conducted by a Circuit judge (including the Chief Coroner if he or she is a Circuit judge), and

(b) the investigation gives rise to an appeal under section 40,

that section has effect as if references in it to the Chief Coroner were references to a judge of the High Court nominated by the Lord Chief Justice.

*Investigations already begun*

5 A reference in this Schedule to conducting an investigation, in the case of an investigation that has already begun, is to be read as a reference to continuing to conduct the investigation.

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## SCHEDULE 11

Section 49

### AMENDMENTS TO THE CORONERS ACT (NORTHERN IRELAND) 1959

*Witnesses and evidence*

1 In the Coroners Act (Northern Ireland) 1959 (c. 15), for section 17 (witnesses to be summoned) substitute—

**"17A Power to require evidence to be given or produced**

(1) A coroner who proceeds to hold an inquest may by notice require a person to attend at a time and place stated in the notice and—

(a) to give evidence at the inquest,

(b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the inquest, or

(c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the inquest.

(2) A coroner who is making any investigation to determine whether or not an inquest is necessary, or who proceeds to hold an inquest, may by notice require a person, within such period as the coroner thinks reasonable—

(a) to provide evidence to the coroner, about any matters specified in the notice, in the form of a written statement,

(b) to produce any documents in the custody or under the control of the person which relate to a matter that is relevant to the investigation or inquest, or

(c) to produce for inspection, examination or testing any other thing in the custody or under the control of the person which relates to a matter that is relevant to the investigation or inquest.

(3) A notice under subsection (1) or (2) shall—

(a) explain the possible consequences, under subsection (6), of not complying with the notice;

(b) indicate what the recipient of the notice should do if he wishes to make a claim under subsection (4).

(4) A claim by a person that—

(a) he is unable to comply with a notice under this section, or

(b) it is not reasonable in all the circumstances to require him to comply with such a notice,

is to be determined by the coroner, who may revoke or vary the notice on that ground.

(5) In deciding whether to revoke or vary a notice on the ground mentioned in subsection (4)(b), the coroner shall consider the public interest in the information in question being obtained for the purposes of the inquest, having regard to the likely importance of the information.

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(6) A coroner may impose a fine not exceeding £1000 on a person who fails without reasonable excuse to do anything required by a notice under subsection (1) or (2).

(7) For the purposes of this section a document or thing is under a person's control if it is in the person's possession or if he has a right to possession of it.

(8) Nothing in this section shall prevent a person who has not been given a notice under subsection (1) or (2) from giving or producing any evidence, document or other thing.

**17B Giving or producing evidence: further provision**

(1) The power of a coroner under section 17A(6) is additional to, and does not affect, any other power the coroner may have—

(a) to compel a person to appear before him;

(b) to compel a person to give evidence or produce any document or other thing;

(c) to punish a person for contempt of court for failure to appear or to give evidence or to produce any document or other thing.

But a person may not be fined under that section and also be punished under any such other power.

(2) A person may not be required to give or produce any evidence or document under section 17A if—

(a) he could not be required to do so in civil proceedings in a court in Northern Ireland, or

(b) the requirement would be incompatible with a Community obligation.

(3) The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity apply in relation to an inquest as they apply in relation to civil proceedings in a court in Northern Ireland.

**17C Offences relating to evidence**

(1) It is an offence for a person to do anything that is intended to have the effect of—

(a) distorting or otherwise altering any evidence, document or other thing that is given or produced for the purposes of any investigation or inquest under this Act, or

(b) preventing any evidence, document or other thing from being given or produced for the purposes of such an investigation or inquest,

or to do anything that the person knows or believes is likely to have that effect.

(2) It is an offence for a person—

(a) intentionally to suppress or conceal a document that is, and that the person knows or believes to be, a relevant document, or

(b) intentionally to alter or destroy such a document.

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(3) For the purposes of subsection (2) a document is a "relevant document" if it is likely that a coroner making any investigation or holding an inquest would (if aware of its existence) wish to be provided with it.

(4) A person does not commit an offence under subsection (1) or (2) by doing anything that is authorised or required—

(a) by a coroner, or

(b) by virtue of section 17B(2) or (3) or any privilege that applies.

(5) Proceedings for an offence under subsection (1) or (2) may be instituted only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(6) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both."

2 Omit sections 19 (service of summonses) and 20 (provisions as to witnesses) of that Act.

## SCHEDULE 12

Section 61

ENCOURAGING OR ASSISTING SUICIDE: PROVIDERS OF INFORMATION SOCIETY SERVICES

*Domestic service providers: extension of liability*

1 (1) This paragraph applies where a service provider is established in England and Wales (an "E&W service provider").

(2) Section 2 of the Suicide Act 1961 (c. 60) (criminal liability for complicity in another's suicide) applies to an E&W service provider who—

(a) does an act, in an EEA state other than the United Kingdom, which is capable of encouraging or assisting the suicide or attempted suicide of another person and which is intended to encourage or assist suicide or an attempt at suicide, and

(b) does that act in the course of providing information society services,

as well as to persons (of any description) who do such acts in England and Wales.

(3) In the case of an offence under that section, as it applies to an E&W service provider by virtue of sub-paragraph (2)—

(a) proceedings for the offence may be taken at any place in England and Wales, and

(b) the offence may for all incidental purposes be treated as having been committed at any such place.

(4) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 4 to 6.

2 (1) This paragraph applies where a service provider is established in Northern Ireland (a "NI service provider").

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(2) Section 13 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) (criminal liability for complicity in another's suicide) applies to a NI service provider who—

(a) does an act, in an EEA state other than the United Kingdom, which is capable of encouraging or assisting the suicide or attempted suicide of another person and which is intended to encourage or assist suicide or an attempt at suicide, and

(b) does that act in the course of providing information society services,

as well as to persons (of any description) who do such acts in Northern Ireland.

(3) In the case of an offence under that section, as it applies to a NI service provider by virtue of sub-paragraph (2)—

(a) proceedings for the offence may be taken at any place in Northern Ireland, and

(b) the offence may for all incidental purposes be treated as having been committed at any such place.

(4) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 4 to 6.

*Non-UK service providers: restriction on institution of proceedings*

3 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a "non-UK service provider").

(2) Proceedings for a relevant offence may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied.

(3) "Relevant offence" means an offence under—

(a) section 2 of the Suicide Act 1961 (c. 60) (criminal liability for complicity in another's suicide), or

(b) section 13 of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) (criminal liability for complicity in another's suicide).

(4) The derogation condition is satisfied where the institution of proceedings—

(a) is necessary for the purposes of the public interest objective,

(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and

(c) is proportionate to that objective.

(5) "The public interest objective" means the pursuit of public policy.

*Exceptions for mere conduits*

4 (1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in—

(a) the provision of access to a communication network, or

(b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

(2) The condition is that the service provider does not—

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(a) initiate the transmission,
(b) select the recipient of the transmission, or
(c) select or modify the information contained in the transmission.

(3) For the purposes of sub-paragraph (1)—
(a) the provision of access to a communication network, and
(b) the transmission of information in a communication network,
includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

5 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

(2) The service provider is not capable of being guilty of a relevant offence in respect of the automatic, intermediate and temporary storage of information so provided, if—
(a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
(b) the condition in sub-paragraph (3) is satisfied.

(3) The condition is that the service provider—
(a) does not modify the information,
(b) complies with any conditions attached to having access to the information, and
(c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—
(a) the information at the initial source of the transmission has been removed from the network,
(b) access to it has been disabled, or
(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

6 (1) A service provider is not capable of being guilty of a relevant offence in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if—
(a) the service provider had no actual knowledge when the information was provided that the information was capable of, and provided with the intention of, encouraging or assisting suicide or an attempt at suicide, or

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(b) on obtaining such knowledge, the service provider expeditiously removed the information or disabled access to the information.

(2) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

7 (1) This paragraph applies for the purposes of this Schedule.

(2) "Relevant offence" has the same meaning as in paragraph 3.

(3) "Information society services"—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service";

and "the E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

(4) "Recipient", in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

(5) "Service provider" means a person providing an information society service.

(6) For the purpose of construing references in this Schedule to a service provider who is established in a part of the United Kingdom or in some other EEA state—

(a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—

(i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and

(ii) is a national of an EEA state or a company or firm mentioned in Article 48 of the Treaty establishing the European Community;

(b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;

(c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.

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## SCHEDULE 13

Section 68

### PROHIBITED IMAGES: PROVIDERS OF INFORMATION SOCIETY SERVICES

*Domestic service providers: extension of liability*

1 (1) This paragraph applies where a service provider is established in England and Wales or Northern Ireland (a "domestic service provider").

(2) Section 62(1) applies to a domestic service provider who—

(a) is in possession, in an EEA state other than the United Kingdom, of a prohibited image of a child, and

(b) is in possession of it there in the course of providing information society services,

as well as to persons (of any description) who are in possession of such images in England and Wales or Northern Ireland.

(3) In the case of an offence under section 62(1), as it applies to a domestic service provider by virtue of sub-paragraph (2)—

(a) proceedings for the offence may be taken at any place in England and Wales or Northern Ireland, and

(b) the offence may for all incidental purposes be treated as having been committed at any such place.

(4) Nothing in this paragraph is to be read as affecting the operation of any of paragraphs 3 to 5.

*Non-UK service providers: restriction on institution of proceedings*

2 (1) This paragraph applies where a service provider is established in an EEA state other than the United Kingdom (a "non-UK service provider").

(2) Proceedings for an offence under section 62(1) may not be instituted against a non-UK service provider in respect of anything done in the course of the provision of information society services unless the derogation condition is satisfied.

(3) The derogation condition is satisfied where the institution of proceedings—

(a) is necessary for the purposes of the public interest objective,

(b) relates to an information society service that prejudices that objective or presents a serious and grave risk of prejudice to that objective, and

(c) is proportionate to that objective.

(4) "The public interest objective" means the pursuit of public policy.

*Exceptions for mere conduits*

3 (1) A service provider is not capable of being guilty of an offence under section 62(1) in respect of anything done in the course of providing so much of an information society service as consists in—

(a) the provision of access to a communication network, or

(b) the transmission in a communication network of information provided by a recipient of the service,

if the condition in sub-paragraph (2) is satisfied.

(2) The condition is that the service provider does not—

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(a) initiate the transmission,
(b) select the recipient of the transmission, or
(c) select or modify the information contained in the transmission.

(3) For the purposes of sub-paragraph (1)—
(a) the provision of access to a communication network, and
(b) the transmission of information in a communication network,
includes the automatic, intermediate and transient storage of the information transmitted so far as the storage is solely for the purpose of carrying out the transmission in the network.

(4) Sub-paragraph (3) does not apply if the information is stored for longer than is reasonably necessary for the transmission.

*Exception for caching*

4 (1) This paragraph applies where an information society service consists in the transmission in a communication network of information provided by a recipient of the service.

(2) The service provider is not capable of being guilty of an offence under section 62(1) in respect of the automatic, intermediate and temporary storage of information so provided, if—
(a) the storage of the information is solely for the purpose of making more efficient the onward transmission of the information to other recipients of the service at their request, and
(b) the condition in sub-paragraph (3) is satisfied.

(3) The condition is that the service provider—
(a) does not modify the information,
(b) complies with any conditions attached to having access to the information, and
(c) (where sub-paragraph (4) applies) expeditiously removes the information or disables access to it.

(4) This sub-paragraph applies if the service provider obtains actual knowledge that—
(a) the information at the initial source of the transmission has been removed from the network,
(b) access to it has been disabled, or
(c) a court or administrative authority has ordered the removal from the network of, or the disablement of access to, the information.

*Exception for hosting*

5 (1) A service provider is not capable of being guilty of an offence under section 62(1) in respect of anything done in the course of providing so much of an information society service as consists in the storage of information provided by a recipient of the service if—
(a) the service provider had no actual knowledge when the information was provided that it contained offending material, or
(b) on obtaining actual knowledge that the information contained offending material, the service provider expeditiously removed the information or disabled access to it.

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(2) "Offending material" means material the possession of which constitutes an offence under section 62(1).

(3) Sub-paragraph (1) does not apply if the recipient of the service is acting under the authority or control of the service provider.

*Interpretation*

6 (1) This paragraph applies for the purposes of this Schedule.

(2) "Prohibited image of a child" has the same meaning as in section 62.

(3) "Information society services"—

(a) has the meaning given in Article 2(a) of the E-Commerce Directive (which refers to Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations), and

(b) is summarised in recital 17 of the E-Commerce Directive as covering "any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data, and at the individual request of a recipient of a service";

and "the E-Commerce Directive" means Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce).

(4) "Recipient", in relation to a service, means any person who, for professional ends or otherwise, uses an information society service, in particular for the purposes of seeking information or making it accessible.

(5) "Service provider" means a person providing an information society service.

(6) For the purpose of construing references in this Schedule to a service provider who is established in a part of the United Kingdom or in some other EEA state—

(a) a service provider is established in a particular part of the United Kingdom, or in a particular EEA state, if the service provider—

(i) effectively pursues an economic activity using a fixed establishment in that part of the United Kingdom, or that EEA state, for an indefinite period, and

(ii) is a national of an EEA state or a company or firm mentioned in Article 48 of the Treaty establishing the European Community;

(b) the presence or use in a particular place of equipment or other technical means of providing an information society service does not, of itself, constitute the establishment of a service provider;

(c) where it cannot be determined from which of a number of establishments a given information society service is provided, that service is to be regarded as provided from the establishment at the centre of the service provider's activities relating to that service.

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## SCHEDULE 14

Section 99

### SCHEDULE 1A TO THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

The following is the Schedule to be inserted as Schedule 1A to the Youth Justice and Criminal Evidence Act 1999 (c. 23)—

"SCHEDULE 1A

RELEVANT OFFENCES FOR THE PURPOSES OF SECTION 17

*Murder and manslaughter*

1 Murder in a case where it is alleged that a firearm or knife was used to cause the death in question.

2 Manslaughter in a case where it is alleged that a firearm or knife was used to cause the death in question.

3 Murder or manslaughter in a case (other than a case falling within paragraph 1 or 2) where it is alleged that—

(a) the accused was carrying a firearm or knife at any time during the commission of the offence, and

(b) a person other than the accused knew or believed at any time during the commission of the offence that the accused was carrying a firearm or knife.

*Offences against the Person Act 1861 (c. 100)*

4 An offence under section 18 of the Offences against the Person Act 1861 (wounding with intent to cause grievous bodily harm etc) in a case where it is alleged that a firearm or knife was used to cause the wound or harm in question.

5 An offence under section 20 of that Act (malicious wounding) in a case where it is alleged that a firearm or knife was used to cause the wound or inflict the harm in question.

6 An offence under section 38 of that Act (assault with intent to resist arrest) in a case where it is alleged that a firearm or knife was used to carry out the assault in question.

7 An offence under section 47 of the Offences against the Person Act 1861 (assault occasioning actual bodily harm) in a case where it is alleged that a firearm or knife was used to inflict the harm in question.

8 An offence under section 18, 20, 38 or 47 of the Offences against the Person Act 1861 in a case (other than a case falling within any of paragraphs 4 to 7) where it is alleged that—

(a) the accused was carrying a firearm or knife at any time during the commission of the offence, and

(b) a person other than the accused knew or believed at any time during the commission of the offence that the accused was carrying a firearm or knife.

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*Prevention of Crime Act 1953 (c. 14)*

9 An offence under section 1 of the Prevention of Crime Act 1953 (having an offensive weapon in a public place).

*Firearms Act 1968 (c. 27)*

10 An offence under section 1 of the Firearms Act 1968 (requirement of firearm certificate).

11 An offence under section 2(1) of that Act (possession etc of a shot gun without a certificate).

12 An offence under section 3 of that Act (business and other transactions with firearms and ammunition).

13 An offence under section 4 of that Act (conversion of weapons).

14 An offence under section 5(1) of that Act (weapons subject to general prohibition).

15 An offence under section 5(1A) of that Act (ammunition subject to general prohibition).

16 An offence under section 16 of that Act (possession with intent to injure).

17 An offence under section 16A of that Act (possession with intent to cause fear of violence).

18 An offence under section 17 of that Act (use of firearm to resist arrest).

19 An offence under section 18 of that Act (carrying firearm with criminal intent).

20 An offence under section 19 of that Act (carrying firearm in a public place).

21 An offence under section 20 of that Act (trespassing with firearm).

22 An offence under section 21 of that Act (possession of firearms by person previously convicted of crime).

23 An offence under section 21A of that Act (firing an air weapon beyond premises).

24 An offence under section 24A of that Act (supplying imitation firearms to minors).

*Criminal Justice Act 1988 (c. 33)*

25 An offence under section 139 of the Criminal Justice Act 1988 (having article with blade or point in public place).

26 An offence under section 139A of that Act (having article with blade or point (or offensive weapon) on school premises).

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*Violent Crime Reduction Act 2006 (c. 38)*

27 An offence under section 28 of the Violent Crime Reduction Act 2006 (using someone to mind a weapon).

28 An offence under section 32 of that Act (sales of air weapons by way of trade or business to be face to face).

29 An offence under section 36 of that Act (manufacture, import and sale of realistic imitation firearms).

*General*

30 A reference in any of paragraphs 1 to 8 to an offence ("offence A") includes—

(a) a reference to an attempt to commit offence A in a case where it is alleged that it was attempted to commit offence A in the manner or circumstances described in that paragraph,

(b) a reference to a conspiracy to commit offence A in a case where it is alleged that the conspiracy was to commit offence A in the manner or circumstances described in that paragraph,

(c) a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed in a case where it is alleged that the person intended or believed offence A would be committed in the manner or circumstances described in that paragraph, and

(d) a reference to aiding, abetting, counselling or procuring the commission of offence A in a case where it is alleged that offence A was committed, or the act or omission charged in respect of offence A was done or made, in the manner or circumstances described in that paragraph.

31 A reference in any of paragraphs 9 to 29 to an offence ("offence A") includes—

(a) a reference to an attempt to commit offence A,

(b) a reference to a conspiracy to commit offence A,

(c) a reference to an offence under Part 2 of the Serious Crime Act 2007 in relation to which offence A is the offence (or one of the offences) which the person intended or believed would be committed, and

(d) a reference to aiding, abetting, counselling or procuring the commission of offence A.

*Interpretation*

32 In this Schedule—

"firearm" has the meaning given by section 57 of the Firearms Act 1968;

"knife" has the meaning given by section 10 of the Knives Act 1997."

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## SCHEDULE 15

Section 118

### THE SENTENCING COUNCIL FOR ENGLAND AND WALES

*Constitution of the Council*

1 The Council is to consist of—

(a) 8 members appointed by the Lord Chief Justice with the agreement of the Lord Chancellor ("judicial members");

(b) 6 members appointed by the Lord Chancellor with the agreement of the Lord Chief Justice ("non-judicial members").

*Appointment of a person to chair the Council etc*

2 The Lord Chief Justice must, with the agreement of the Lord Chancellor, appoint—

(a) a judicial member to chair the Council ("the chairing member"), and

(b) another judicial member to chair the Council in the absence of the chairing member.

*Appointment of judicial members*

3 (1) A person is eligible for appointment as a judicial member if the person is—

(a) a judge of the Court of Appeal,

(b) a puisne judge of the High Court,

(c) a Circuit judge,

(d) a District Judge (Magistrates' Courts), or

(e) a lay justice.

(2) The judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.

(3) When appointing judicial members, the Lord Chief Justice must have regard to the desirability of the judicial members including at least one person who appears to the Lord Chief Justice to have responsibilities relating to the training of judicial office-holders who exercise criminal jurisdiction in England and Wales.

(4) "Judicial office-holder" has the meaning given by section 109(4) of the Constitutional Reform Act 2005 (c. 4).

*Appointment of non-judicial members*

4 (1) A person is eligible for appointment as a non-judicial member if the person appears to the Lord Chancellor to have experience in one or more of the following areas—

(a) criminal defence;

(b) criminal prosecution;

(c) policing;

(d) sentencing policy and the administration of justice;

(e) the promotion of the welfare of victims of crime;

(f) academic study or research relating to criminal law or criminology;

(g) the use of statistics;

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(h) the rehabilitation of offenders.

(2) The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.

*President of the Council*

5 (1) The Lord Chief Justice is to have the title of President of the Sentencing Council for England and Wales.

(2) The President is not a member of the Council.

*Lord Chancellor's representative*

6 (1) The Lord Chancellor may appoint a person to attend and speak at any meeting of the Council.

(2) The person appointed under sub-paragraph (1) must be a person appearing to the Lord Chancellor to have experience of sentencing policy.

*Terms of appointment*

7 (1) The Lord Chancellor may by order make provision—

(a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members;

(b) enabling the Lord Chancellor to remove a judicial member from office, with the agreement of the Lord Chief Justice, on the grounds of incapacity or misbehaviour;

(c) enabling the Lord Chancellor to remove a non-judicial member from office on the grounds of incapacity or misbehaviour.

(2) The following provisions apply to an order under sub-paragraph (1)—

(a) if the order includes provision falling within sub-paragraph (1)(a), the Lord Chancellor must consult the Lord Chief Justice about that provision before making the order;

(b) if the order includes provision falling within sub-paragraph (1)(b), the order may not be made unless the Lord Chief Justice agrees to the inclusion of that provision.

*Vacancies etc*

8 The validity of anything done by the Council is not affected by any vacancy among its members, by any defect in the appointment of a member or by any failure to comply with paragraph 2, 3 or 4.

*Remuneration etc*

9 (1) The Lord Chancellor may pay—

(a) to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as the Lord Chancellor may determine, and

(b) to any other judicial member, such expenses as the Lord Chancellor may determine.

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(2) The Lord Chancellor may pay to any non-judicial member such remuneration or expenses as the Lord Chancellor may determine (except that, where the Director of Public Prosecutions is such a member, no remuneration may be paid to the Director).

*Interpretation*

10 In this Schedule "lay justice" means a justice of the peace who is not a District Judge (Magistrates' Courts).

## SCHEDULE 16

Section 137

EXTENSION OF DISQUALIFICATION FOR DRIVING

*Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I. 6))*

1 After Article 8 of the Criminal Justice (Northern Ireland) Order 1980 insert—

**"8A Extension of disqualification where custodial sentence also imposed**

(1) This Article applies where a person is convicted of an offence for which the court—

(a) imposes a custodial sentence, and

(b) orders the person to be disqualified under Article 8 for holding or obtaining a driving licence or a provisional licence granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)).

(2) The order under Article 8 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this Article, the court would have disqualified the person under Article 8.

(4) The appropriate extension period is—

(a) where a court imposes a sentence under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (punishment of grave crimes: indeterminate sentences), a period equal to the period specified in the sentence under Article 45(2) of that Order less any relevant discount;

(b) where an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)) (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order less any relevant discount;

(c) where Article 8(1) of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (sentence for a determinate term) applies in relation to the custodial sentence, a period equal to the custodial period specified pursuant to Article 8(2) of that Order less any relevant discount;

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(d) where a court imposes a sentence under Article 13(3) of the Criminal Justice (Northern Ireland) Order 2008 (indeterminate custodial sentences for serious offences), a period equal to the period specified pursuant to Article 13(3)(b) of that Order less any relevant discount;

(e) where Article 14(3) of the Criminal Justice (Northern Ireland) Order 2008 (extended custodial sentences for certain offences where the offender is aged over 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(3)(a) of that Order calculated after that term has been reduced by any relevant discount;

(f) where Article 14(5) of the Criminal Justice (Northern Ireland) Order 2008 (extended custodial sentences for certain offences where the offender is aged under 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(5)(a) of that Order calculated after that term has been reduced by any relevant discount;

(g) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount.

(5) If a period determined under paragraph (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) The "relevant discount" is the number of days by which the custodial sentence is treated as reduced by virtue of section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (periods in custody before sentence passed etc).

(7) This Article does not apply where—

(a) the custodial sentence was a suspended sentence, or

(b) the court has made an order under Article 5(3) of the Life Sentences (Northern Ireland) Order 2001 (life sentence: no early release) in relation to the custodial sentence.

(8) Paragraph (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in Article 18(2)(b) of the Criminal Justice (Northern Ireland) Order 2008 (duty to release prisoners serving extended custodial sentences) is to be read as a reference to another proportion ("the new proportion").

(9) The Secretary of State may by order provide that the proportion specified in paragraph (4)(e) and (f) of this Article is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

(10) An order under paragraph (9) is subject to annulment by a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (instruments subject to annulment by resolution of either House of Parliament) applies accordingly.

(11) In this Article—

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"amending order" means an order under Article 18(9) of the Criminal Justice (Northern Ireland) Order 2008 (alteration by order of relevant part of sentence);

"custodial sentence" has the meaning given by Article 4 of the Criminal Justice (Northern Ireland) Order 2008;

"suspended sentence" means a suspended sentence or order for detention under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968.

**8B Effect of custodial sentence in other cases**

(1) This Article applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under Article 8 for holding or obtaining a driving licence or a provisional licence granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1)) and—

(a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or

(b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under Article 8, the court must have regard to the consideration in paragraph (3) if and to the extent that it is appropriate to do so.

(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

(4) If the court proposes to order the person to be disqualified under Article 8 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of paragraph (2).

(5) In this Article "custodial sentence" and "suspended sentence" have the same meaning as in Article 8A."

*Road Traffic Offenders Act 1988 (c. 53)*

2 (1) The Road Traffic Offenders Act 1988 is amended as follows.

(2) After section 35 insert—

**"35A Extension of disqualification where custodial sentence also imposed**

(1) This section applies where a person is convicted in England and Wales of an offence for which the court—

(a) imposes a custodial sentence, and

(b) orders the person to be disqualified under section 34 or 35.

(2) The order under section 34 or 35 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 34 or 35.

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(4) The appropriate extension period is—

(a) where an order under section 82A(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (life sentence: determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;

(b) in the case of a detention and training order under section 100 of that Act (offenders under 18: detention and training orders), a period equal to half the term of that order;

(c) where an order under section 181 of the Criminal Justice Act 2003 (prison sentences of less than 12 months) is made in relation to the custodial sentence, a period equal to the custodial period specified pursuant to section 181(3)(a) of that Act less any relevant discount;

(d) where an order under section 183 of that Act (intermittent custody orders) is made in relation to the custodial sentence, a period equal to the number of custodial days specified pursuant to section 183(1)(a) of that Act less any relevant discount;

(e) where section 227 of that Act (extended sentence for certain violent or sexual offences: persons 18 or over) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 227(2C)(a) of that Act calculated after that term has been reduced by any relevant discount;

(f) where section 228 of that Act (extended sentence for certain violent or sexual offences: persons under 18) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 228(2B)(a) of that Act calculated after that term has been reduced by any relevant discount;

(g) where an order under section 269(2) of that Act (determination of minimum term in relation to mandatory life sentence: early release) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;

(h) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount.

(5) If a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) The "relevant discount" is the total number of days to count as time served by virtue of a direction under—

(a) section 240 of the Criminal Justice Act 2003 (crediting periods of remand in custody), or

(b) section 240A of that Act (crediting periods of remand on bail).

(7) This section does not apply where—

(a) the custodial sentence was a suspended sentence,

(b) the court has made an order under section 269(4) of the Criminal Justice Act 2003 (determination of minimum term

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in relation to mandatory life sentence: no early release) in relation to the custodial sentence, or

(c) the court has made an order under section 82A(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (determination of minimum term in relation to discretionary life sentence: no early release) in relation to the custodial sentence.

(8) Subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section 244(3)(a) or 247(2) of the Criminal Justice Act 2003 (release of prisoners in certain circumstances) is to be read as a reference to another proportion ("the new proportion").

(9) The Secretary of State may by order—

(a) if the amending order makes provision in respect of section 244(3)(a) of that Act, provide that the proportion specified in subsection (4)(h) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion;

(b) if the amending order makes provision in respect of section 247(2) of that Act, provide that the proportion specified in subsection (4)(e) and (f) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

(10) An order under subsection (9) is to be made by statutory instrument and a draft of the statutory instrument containing the order must be laid before, and approved by a resolution of, each House of Parliament.

(11) In this section—

"amending order" means an order under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence);

"custodial sentence" has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;

"suspended sentence" has the meaning given by section 189 of the Criminal Justice Act 2003.

**35B Effect of custodial sentence in other cases**

(1) This section applies where a person is convicted in England and Wales of an offence for which a court proposes to order the person to be disqualified under section 34 or 35 and—

(a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or

(b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under section 34 or 35, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

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(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

(4) If the court proposes to order the person to be disqualified under section 34 or 35 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of subsection (2).

(5) In this section "custodial sentence" and "suspended sentence" have the same meaning as in section 35A."

(3) After section 35B (as inserted by sub-paragraph (2)) insert—

**"35C Extension of disqualification where sentence of imprisonment also imposed: Scotland**

(1) This section applies where a person is convicted in Scotland of an offence for which the court—
  (a) imposes a sentence of imprisonment, and
  (b) orders the person to be disqualified under section 34 or 35.

(2) The order under section 34 or 35 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 34 or 35.

(4) The appropriate extension period is—
  (a) in the case of a life prisoner, a period equal to the punishment part of the life sentence;
  (b) in the case of a custody and community prisoner, a period equal to half the custody part of the sentence of imprisonment;
  (c) in the case of a person serving an extended sentence, a period equal to half the confinement term;
  (d) in any other case, a period equal to half the sentence of imprisonment imposed.

(5) If a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) For the purposes of subsection (4), a sentence is to be taken to start on the date of commencement of the sentence.

(7) Subsection (8) applies where an amending order provides for a different proportion ("the new proportion") to be substituted for the proportion of a prisoner's sentence referred to in section 6(4)(a) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) ("the 2007 Act").

(8) The Secretary of State may by order provide that the proportion specified in subsection (4)(b) and (c) of this section is to be read, in the case of a sentence of imprisonment to which the amending order applies, as a reference to the new proportion.

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(9) An order under subsection (8) is to be made by statutory instrument and a draft of the statutory instrument containing the order must be laid before, and approved by a resolution of, each House of Parliament.

(10) In this section—

"amending order" means an order made by the Scottish Ministers under section 7 of the 2007 Act;

"confinement term" has the meaning given by section 210A(2)(a) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act");

"custody and community prisoner" has the meaning given by section 4 of the 2007 Act;

"custody part" has the meaning given by section 6(3) of the 2007 Act;

"extended sentence" has the meaning given by section 210A of the 1995 Act;

"life prisoner" has the meaning given by section 4 of the 2007 Act;

"punishment part" has the meaning given by section 4 of the 2007 Act;

"sentence of imprisonment" includes—

(a) an order for detention in residential accommodation under section 44 of the 1995 Act, and

(b) a sentence of detention under section 205, 207 or 208 of the 1995 Act.

**35D Effect of sentence of imprisonment in other cases: Scotland**

(1) This section applies where a person is convicted in Scotland of an offence for which a court proposes to order the person to be disqualified under section 34 or 35 and—

(a) the court proposes to impose on the person a sentence of imprisonment for another offence, or

(b) at the time of sentencing for the offence, a sentence of imprisonment imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under section 34 or 35, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a sentence of imprisonment.

(4) If the court proposes to order the person to be disqualified under section 34 or 35 and to impose a sentence of imprisonment for the same offence, the court may not in relation to that disqualification take that sentence of imprisonment into account for the purposes of subsection (2).

(5) In this section "sentence of imprisonment" has the same meaning as in section 35C."

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*Criminal Procedure (Scotland) Act 1995 (c. 46)*

3 After section 248C of the Criminal Procedure (Scotland) Act 1995 insert—

**"248D Extension of disqualification where sentence of imprisonment also imposed**

(1) This section applies where a person is convicted of an offence for which the court—

(a) imposes a sentence of imprisonment, and

(b) orders the person to be disqualified under section 248 or 248A of this Act from holding or obtaining a driving licence.

(2) The order under section 248 or 248A of this Act must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 248 or 248A of this Act.

(4) The appropriate extension period is—

(a) in the case of a life prisoner, a period equal to the punishment part of the life sentence;

(b) in the case of a custody and community prisoner, a period equal to half the custody part of the sentence of imprisonment;

(c) in the case of a person serving an extended sentence, a period equal to half the confinement term;

(d) in any other case, a period equal to half the sentence of imprisonment imposed.

(5) If a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) For the purposes of subsection (4), a sentence is to be taken to start on the date of commencement of the sentence.

(7) Subsection (8) applies where an amending order provides for a different proportion ("the new proportion") to be substituted for the proportion of a prisoner's sentence referred to in section 6(4)(a) of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17) ("the 2007 Act").

(8) The Secretary of State may by order provide that the proportion specified in subsection (4)(b) and (c) of this section is to be read, in the case of a sentence of imprisonment to which the amending order relates, as a reference to the new proportion.

(9) An order under subsection (8) is to be made by statutory instrument and a draft of the statutory instrument containing the order must be laid before, and approved by a resolution of, each House of Parliament.

(10) In this section—

"amending order" means an order made by the Scottish Ministers under section 7 of the 2007 Act;

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"confinement term" has the meaning given by section 210A(2)(a) of this Act;

"custody and community prisoner" has the meaning given by section 4 of the 2007 Act;

"custody part" has the meaning given by section 6(3) of the 2007 Act;

"extended sentence" has the meaning given by section 210A of this Act;

"life prisoner" has the meaning given by section 4 of the 2007 Act;

"punishment part" has the meaning given by section 4 of the 2007 Act;

"sentence of imprisonment" includes—

(a) an order for detention in residential accommodation under section 44 of this Act, and

(b) a sentence of detention under section 205, 207 or 208 of this Act.

**248E Effect of sentence of imprisonment in other cases**

(1) This section applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under section 248 or 248A from holding or obtaining a driving licence and—

(a) the court proposes to impose on the person a sentence of imprisonment for another offence, or

(b) at the time of sentencing for the offence, a sentence of imprisonment imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under section 248 or 248A, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a sentence of imprisonment.

(4) If the court proposes to order the person to be disqualified under section 248 or 248A and to impose a sentence of imprisonment for the same offence, the court may not in relation to that disqualification take that sentence of imprisonment into account for the purposes of subsection (2).

(5) In this section "sentence of imprisonment" has the same meaning as in section 248D."

*Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I. 10))*

4 After Article 40 of the Road Traffic Offenders (Northern Ireland) Order 1996

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insert—

**"40A Extension of disqualification where custodial sentence also imposed**

(1) This Article applies where a person is convicted of an offence for which the court—

(a) imposes a custodial sentence, and

(b) orders the person to be disqualified under Article 35 or 40.

(2) The order under Article 35 or 40 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this Article, the court would have disqualified the person under Article 35 or 40.

(4) The appropriate extension period is—

(a) where a court imposes a sentence under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (punishment of grave crimes: indeterminate sentences), a period equal to the period specified in the sentence under Article 45(2) of that Order less any relevant discount;

(b) where an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)) (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order less any relevant discount;

(c) where Article 8(1) of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (sentence for a determinate term) applies in relation to the custodial sentence, a period equal to the custodial period specified pursuant to Article 8(2) of that Order less any relevant discount;

(d) where a court imposes a sentence under Article 13(3) of the Criminal Justice (Northern Ireland) Order 2008 (indeterminate custodial sentences for serious offences), a period equal to the period specified pursuant to Article 13(3)(b) of that Order less any relevant discount;

(e) where Article 14(3) of the Criminal Justice (Northern Ireland) Order 2008 (extended custodial sentences for certain offences where the offender is aged over 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(3)(a) of that Order calculated after that term has been reduced by any relevant discount;

(f) where Article 14(5) of the Criminal Justice (Northern Ireland) Order 2008 (extended custodial sentences for certain offences where the offender is aged under 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(5)(a) of that Order calculated after that term has been reduced by any relevant discount;

(g) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount.

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(5) If a period determined under paragraph (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) The "relevant discount" is the number of days by which the custodial sentence is treated as reduced by virtue of section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (periods in custody before sentence passed etc).

(7) This Article does not apply where—

(a) the custodial sentence was a suspended sentence, or

(b) the court has made an order under Article 5(3) of the Life Sentences (Northern Ireland) Order 2001 (life sentence: no early release) in relation to the custodial sentence.

(8) Paragraph (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in Article 18(2)(b) of the Criminal Justice (Northern Ireland) Order 2008 (duty to release prisoners serving extended custodial sentences) is to be read as a reference to another proportion ("the new proportion").

(9) The Secretary of State may by order provide that the proportion specified in paragraph (4)(e) and (f) of this Article is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

(10) An order under paragraph (9) is subject to annulment by a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 (instruments subject to annulment by resolution of either House of Parliament) applies accordingly.

(11) In this Article—

"amending order" means an order under Article 18(9) of the Criminal Justice (Northern Ireland) Order 2008 (alteration by order of relevant part of sentence);

"custodial sentence" has the meaning given by Article 4 of the Criminal Justice (Northern Ireland) Order 2008;

"suspended sentence" means a suspended sentence or order for detention under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968.

**40B Effect of custodial sentence in other cases**

(1) This Article applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under Article 35 or 40 and—

(a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or

(b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under Article 35 or 40, the court must have regard to the consideration in paragraph (3) if and to the extent that it is appropriate to do so.

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(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

(4) If the court proposes to order the person to be disqualified under Article 35 or 40 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of paragraph (2).

(5) In this Article "custodial sentence" and "suspended sentence" have the same meaning as in Article 40A."

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

5 (1) After section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 insert—

**"147A Extension of disqualification where custodial sentence also imposed**

(1) This section applies where a person is convicted of an offence for which the court—

(a) imposes a custodial sentence, and

(b) orders the person to be disqualified under section 146 or 147 for holding or obtaining a driving licence.

(2) The order under section 146 or 147 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

(3) The discretionary disqualification period is the period for which, in the absence of this section, the court would have disqualified the person under section 146 or 147.

(4) The appropriate extension period is—

(a) where an order under section 82A(2) of this Act (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;

(b) in the case of a detention and training order under section 100 of this Act (offenders under 18: detention and training orders), a period equal to half the term of that order;

(c) where an order under section 181 of the Criminal Justice Act 2003 (prison sentences of less than 12 months) is made in relation to the custodial sentence, a period equal to the custodial period specified pursuant to section 181(3)(a) of that Act less any relevant discount;

(d) where an order under section 183 of that Act (intermittent custody orders) is made in relation to the custodial sentence, a period equal to the number of custodial days specified pursuant to section 183(1)(a) of that Act less any relevant discount;

(e) where section 227 of that Act (extended sentence for certain violent or sexual offences: persons 18 or over) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 227(2C)(a) of that Act

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calculated after that term has been reduced by any relevant discount;

(f) where section 228 of that Act (extended sentence for certain violent or sexual offences: persons under 18) applies in relation to the custodial sentence, a period equal to half the term imposed pursuant to section 228(2B)(a) of that Act calculated after that term has been reduced by any relevant discount;

(g) where an order under section 269(2) of that Act (determination of minimum term in relation to mandatory life sentence: early release) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order;

(h) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount.

(5) If a period determined under subsection (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) The "relevant discount" is the total number of days to count as time served by virtue of a direction under—

(a) section 240 of the Criminal Justice Act 2003 (crediting periods of remand in custody), or

(b) section 240A of that Act (crediting periods of remand on bail).

(7) This section does not apply where—

(a) the custodial sentence was a suspended sentence,

(b) the court has made an order under section 269(4) of the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence: no early release) in relation to the custodial sentence, or

(c) the court has made an order under section 82A(4) of this Act (determination of minimum term in relation to discretionary life sentence: no early release) in relation to the custodial sentence.

(8) Subsection (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in section 244(3)(a) or 247(2) of the Criminal Justice Act 2003 (release of prisoners in certain circumstances) is to be read as a reference to another proportion ("the new proportion").

(9) The Secretary of State may by order—

(a) if the amending order makes provision in respect of section 244(3)(a) of that Act, provide that the proportion specified in subsection (4)(h) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion;

(b) if the amending order makes provision in respect of section 247(2) of that Act, provide that the proportion specified in subsection (4)(e) and (f) of this section is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

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(10) In this section—

"amending order" means an order under section 267 of the Criminal Justice Act 2003 (alteration by order of relevant proportion of sentence);

"driving licence" means a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988;

"suspended sentence" has the meaning given by section 189 of the Criminal Justice Act 2003.

**147B Effect of custodial sentence in other cases**

(1) This section applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under section 146 or 147 for holding or obtaining a driving licence and—

(a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or

(b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under section 146 or 147, the court must have regard to the consideration in subsection (3) if and to the extent that it is appropriate to do so.

(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

(4) If the court proposes to order the person to be disqualified under section 146 or 147 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of subsection (2).

(5) In this section "suspended sentence" has the same meaning as in section 147A."

(2) In section 160(3) of that Act (orders subject to the affirmative resolution procedure), after paragraph (a) insert—

"(aa) an order under section 147A(9),".

*Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1))*

6 After Article 91 of the Criminal Justice (Northern Ireland) Order 2008 insert—

**"91A Extension of disqualification where custodial sentence also imposed**

(1) This Article applies where a person is convicted of an offence for which the court—

(a) imposes a custodial sentence, and

(b) orders the person to be disqualified under Article 91 for holding or obtaining a driving licence.

(2) The order under Article 91 must provide for the person to be disqualified for the appropriate extension period, in addition to the discretionary disqualification period.

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(3) The discretionary disqualification period is the period for which, in the absence of this Article, the court would have disqualified the person under Article 91.

(4) The appropriate extension period is—

(a) where a court imposes a sentence under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (punishment of grave crimes: indeterminate sentences), a period equal to the period specified in the sentence under Article 45(2) of that Order less any relevant discount;

(b) where an order under Article 5(1) of the Life Sentences (Northern Ireland) Order 2001 (S.I. 2001/2564 (N.I. 2)) (determination of tariffs) is made in relation to the custodial sentence, a period equal to the part of the sentence specified in that order less any relevant discount;

(c) where Article 8(1) (sentence for a determinate term) applies in relation to the custodial sentence, a period equal to the custodial period specified pursuant to Article 8(2) less any relevant discount;

(d) where a court imposes a sentence under Article 13(3) (indeterminate custodial sentences for serious offences), a period equal to the period specified pursuant to Article 13(3)(b) less any relevant discount;

(e) where Article 14(3) (extended custodial sentences for certain offences where the offender is aged over 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(3)(a) calculated after that term has been reduced by any relevant discount;

(f) where Article 14(5) (extended custodial sentences for certain offences where the offender is aged under 21) applies in relation to the custodial sentence, a period equal to half of the term imposed pursuant to Article 14(5)(a) calculated after that term has been reduced by any relevant discount;

(g) in any other case, a period equal to half the custodial sentence imposed calculated after that sentence has been reduced by any relevant discount.

(5) If a period determined under paragraph (4) includes a fraction of a day, that period is to be rounded up to the nearest number of whole days.

(6) The "relevant discount" is the number of days by which the custodial sentence is treated as reduced by virtue of section 26(2) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29) (periods in custody before sentence passed etc).

(7) This Article does not apply where—

(a) the custodial sentence was a suspended sentence, or

(b) the court has made an order under Article 5(3) of the Life Sentences (Northern Ireland) Order 2001 (life sentence: no early release) in relation to the custodial sentence.

(8) Paragraph (9) applies where an amending order provides that the proportion of a prisoner's sentence referred to in Article 18(2)(b)

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(duty to release prisoners serving extended custodial sentences) is to be read as a reference to another proportion ("the new proportion").

(9) The Secretary of State may by order provide that the proportion specified in paragraph (4)(e) and (f) of this Article is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

(10) In this Article—

"amending order" means an order under Article 18(9) (alteration by order of relevant part of sentence);

"custodial sentence" has the meaning given by Article 4;

"driving licence" has the meaning given by Article 91;

"suspended sentence" means a suspended sentence or order for detention under section 18 of the Treatment of Offenders Act (Northern Ireland) 1968.

**91B Effect of custodial sentence in other cases**

(1) This Article applies where a person is convicted of an offence for which a court proposes to order the person to be disqualified under Article 91 for holding or obtaining a driving licence and—

(a) the court proposes to impose on the person a custodial sentence (other than a suspended sentence) for another offence, or

(b) at the time of sentencing for the offence, a custodial sentence imposed on the person on an earlier occasion has not expired.

(2) In determining the period for which the person is to be disqualified under Article 91, the court must have regard to the consideration in paragraph (3) if and to the extent that it is appropriate to do so.

(3) The consideration is the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence.

(4) If the court proposes to order the person to be disqualified under Article 91 and to impose a custodial sentence for the same offence, the court may not in relation to that disqualification take that custodial sentence into account for the purposes of paragraph (2).

(5) In this Article "custodial sentence" and "suspended sentence" have the same meaning as in Article 91A."

## SCHEDULE 17

Section 144

### TREATMENT OF CONVICTIONS IN OTHER MEMBER STATES ETC

*Evidence of bad character*

1 (1) The Criminal Justice Act 2003 (c. 44) is amended as follows.

(2) In section 103 (matter in issue between the defendant and the prosecution),

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after subsection (6) add—

"(7) Where—

(a) a defendant has been convicted of an offence under the law of any country outside England and Wales ("the previous offence"), and

(b) the previous offence would constitute an offence under the law of England and Wales ("the corresponding offence") if it were done in England and Wales at the time of the trial for the offence with which the defendant is now charged ("the current offence"),

subsection (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.

(8) For the purposes of subsection (2)—

(a) the previous offence is of the same description as the current offence if the corresponding offence is of that same description, as set out in subsection (4)(a);

(b) the previous offence is of the same category as the current offence if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).

(9) For the purposes of subsection (10) "foreign service offence" means an offence which—

(a) was the subject of proceedings under the service law of a country outside the United Kingdom, and

(b) would constitute an offence under the law of England and Wales or a service offence ("the corresponding domestic offence") if it were done in England and Wales by a member of Her Majesty's forces at the time of the trial for the offence with which the defendant is now charged ("the current offence").

(10) Where a defendant has been found guilty of a foreign service offence ("the previous service offence"), for the purposes of subsection (2)—

(a) the previous service offence is an offence of the same description as the current offence if the corresponding domestic offence is of that same description, as set out in subsection (4)(a);

(b) the previous service offence is an offence of the same category as the current offence if the current offence and the corresponding domestic offence belong to the same category of offences prescribed as mentioned in subsection (4)(b).

(11) In this section—

"Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

"service law", in relation to a country outside the United Kingdom, means the law governing all or any of the naval, military or air forces of that country."

(3) In section 108 (offences committed by defendant when a child), after

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subsection (2) insert—

"(2A) Subsection (2B) applies where—

(a) the defendant has been convicted of an offence under the law of any country outside England and Wales ("the previous offence"), and

(b) the previous offence would constitute an offence under the law of England and Wales ("the corresponding offence") if it were done in England and Wales at the time of the proceedings for the offence with which the defendant is now charged.

(2B) For the purposes of subsection (2), the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable."

2 (1) The Criminal Justice (Evidence) (Northern Ireland) Order 2004 (S.I. 2004/1501 (N.I. 10)) is amended as follows.

(2) In Article 8 (matter in issue between the defendant and the prosecution), after paragraph (6) add—

"(7) Where—

(a) a defendant has been convicted of an offence under the law of any country outside Northern Ireland ("the previous offence"), and

(b) the previous offence would constitute an offence under the law of Northern Ireland ("the corresponding offence") if it were done in Northern Ireland at the time of the trial for the offence with which the defendant is now charged ("the current offence"),

paragraph (8) applies for the purpose of determining if the previous offence and the current offence are of the same description or category.

(8) For the purposes of paragraph (2)—

(a) the previous offence is of the same description as the current offence, if the corresponding offence is of that same description, as set out in paragraph (4)(a);

(b) the previous offence is of the same category as the current offence, if the current offence and the corresponding offence belong to the same category of offences prescribed as mentioned in paragraph (4)(b)."

(3) In Article 13 (offences committed by a defendant when a child), after paragraph (1) insert—

"(1A) Paragraph (1B) applies where—

(a) the defendant has been convicted of an offence under the law of any country outside Northern Ireland ("the previous offence"), and

(b) the previous offence would constitute an offence under the law of Northern Ireland ("the corresponding offence") if it were done in Northern Ireland at the time of the proceedings for the offence with which the defendant is now charged.

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(1B) For the purposes of paragraph (1), the previous offence is to be regarded as triable only on indictment if the corresponding offence is so triable."

*Bail*

3 (1) Section 25 of the Criminal Justice and Public Order Act 1994 (c. 33) (no bail for defendants charged with or convicted of homicide or rape after previous conviction of such offences) is amended as follows.

(2) For subsection (3) substitute—

"(3) This section applies in the circumstances described in subsection (3A) or (3B) only.

(3A) This section applies where—

(a) the person has been previously convicted by or before a court in any part of the United Kingdom of any offence within subsection (2) or of culpable homicide, and

(b) if that previous conviction is one of manslaughter or culpable homicide—

(i) the person was then a child or young person, and was sentenced to long-term detention under any of the relevant enactments, or

(ii) the person was not then a child or young person, and was sentenced to imprisonment or detention.

(3B) This section applies where—

(a) the person has been previously convicted by or before a court in another member State of any relevant foreign offence corresponding to an offence within subsection (2) or to culpable homicide, and

(b) if the previous conviction is of a relevant foreign offence corresponding to the offence of manslaughter or culpable homicide—

(i) the person was then a child or young person, and was sentenced to detention for a period in excess of 2 years, or

(ii) the person was not then a child or young person, and was sentenced to detention."

(3) In subsection (5), omit "and" at the end of the definition of "conviction", and at the end insert—

""relevant foreign offence", in relation to a member State other than the United Kingdom, means an offence under the law in force in that member State."

(4) After that subsection insert—

"(5A) For the purposes of subsection (3B), a relevant foreign offence corresponds to another offence if the relevant foreign offence would have constituted that other offence if it had been done in any part of the United Kingdom at the time when the relevant foreign offence was committed."

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*Decision as to allocation*

4 (1) Section 19 of the Magistrates' Courts Act 1980 (c. 43) (decision as to allocation) (as substituted by Schedule 3 to the Criminal Justice Act 2003 (c. 44)) is amended as follows.

(2) In subsection (5), omit "or" at the end of paragraph (a) and insert—

"(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State; or".

(3) After that subsection insert—

"(5A) For the purposes of subsection (5)(aa) an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time when the allocation decision is made."

5 (1) Paragraph 9 of Schedule 3 to the Crime and Disorder Act 1998 (c. 37) (procedure where persons are sent for trial under section 51 of the Crime and Disorder Act 1998) (as amended by Schedule 3 to the Criminal Justice Act 2003) is amended as follows.

(2) In sub-paragraph (5), omit "or" at the end of paragraph (a) and insert—

"(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State, or".

(3) After that sub-paragraph, insert—

"(5A) For the purposes of sub-paragraph (5)(aa) an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time when the allocation decision is made."

*Seriousness*

6 (1) Section 143 of the Criminal Justice Act 2003 (determining the seriousness of an offence) is amended as follows.

(2) In subsection (4)—

(a) omit "or" at the end of paragraph (a) and insert—

"(aa) a previous conviction by a court in another member State of a relevant offence under the law of that State,", and

(b) after paragraph (b) insert "or

(c) a finding of guilt in respect of a member State service offence."

(3) For subsection (5) substitute—

"(5) Subsections (2) and (4) do not prevent the court from treating—

(a) a previous conviction by a court outside both the United Kingdom and any other member State, or

(b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence,

as an aggravating factor in any case where the court considers it appropriate to do so.

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(6) For the purposes of this section—

(a) an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence,

(b) "member State service offence" means an offence which—

(i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence (within the meaning of the Armed Forces Act 2006), if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence,

(c) "Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006, and

(d) "service law", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State."

7 (1) Section 238 of the Armed Forces Act 2006 (c. 52) (deciding the seriousness of an offence) is amended as follows.

(2) In subsection (3)—

(a) omit "or" at the end of paragraph (a), and

(b) at the end of paragraph (b), insert—

"(c) a previous conviction by a court in a member State other than the United Kingdom of a relevant offence under the law of that State, or

(d) a finding of guilt in respect of a member State service offence."

(3) For subsection (4) substitute—

"(4) Nothing in this section prevents the court or officer from treating—

(a) a previous conviction by a court outside both the British Islands and any member State, or

(b) a previous conviction by a court in any member State (other than the United Kingdom) of an offence which is not a relevant offence or a member State service offence,

as an aggravating factor in any case where the court or officer considers it appropriate to do so.

(5) For the purposes of this section—

(a) an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction in respect of the current offence,

(b) "member State service offence" means an offence which—

(i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

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(ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence, and

(c) "service law", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State."

*Availability of community orders*

8 (1) Section 151 of the Criminal Justice Act 2003 (c. 44) (community order or youth rehabilitation order for persistent offender previously fined) (as amended by the Criminal Justice and Immigration Act 2008 (c. 4)) is amended as follows.

(2) For subsection (1)(b) substitute—

"(b) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction—

(i) by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16, or

(ii) by a court in another member State of a relevant offence so committed, and".

(3) For subsection (1A)(c) substitute—

"(c) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction—

(i) by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16, or

(ii) by a court in another member State of a relevant offence so committed."

(4) For subsection (2A)(b) substitute—

"(b) on three or more previous occasions a sentence consisting only of a fine has been passed on the offender on conviction—

(i) by a court in the United Kingdom of an offence committed by the offender after attaining the age of 16, or

(ii) by a court in another member State of a relevant offence so committed, and".

(5) After subsection (4) insert—

"(4A) For the purposes of subsections (1)(b), (1A)(c) and (2A)(b), an offence is "relevant" if the offence would constitute an offence under the law of any part of the United Kingdom if it were done there at the time of the conviction of the defendant for the current offence."

(6) In subsection (8) (as inserted by Schedule 16 to the Armed Forces Act 2006 (c. 52))—

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(a) in paragraph (a) for the words "within the meaning of the Armed Forces Act 2006; and", substitute "or a member State service offence;",

(b) in paragraph (b)—

(i) after "service disciplinary proceedings" insert "(other than proceedings for a member State service offence)", and

(ii) for "that Act" substitute "the Armed Forces Act 2006", and

(c) after that paragraph insert—

"(c) "member State service offence" means an offence which—

(i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence;

(d) "Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

(e) "service law", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State;

(f) "service offence" has the same meaning as in the Armed Forces Act 2006."

9 (1) Section 270B of the Armed Forces Act 2006 (c. 52) (community punishment for offender previously fined) is amended as follows.

(2) In subsection (6) omit "or" at the end of paragraph (a) and insert—

"(aa) a conviction by a court in any member State other than the United Kingdom of a relevant offence; or".

(3) In subsection (10)—

(a) in paragraph (a) after "offence" insert "or a member State service offence";

(b) in paragraph (b) for "such proceedings" substitute "proceedings in respect of a service offence";

(c) after that paragraph insert—

"(c) "relevant offence" means an offence that would constitute an offence under the law of any part of the United Kingdom if it were done in that part at the time of the conviction of the defendant for the current offence;

(d) "member State service offence" means an offence which—

(i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(ii) would constitute an offence under the law of any part of the United Kingdom, or a service offence, if it were done in any part of the

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United Kingdom, by a member of Her Majesty's forces, at the time of the conviction of the defendant for the current offence;

(e) "the service law of a member State other than the United Kingdom" means the law governing all or any of the naval, military or air forces of that State."

*Required custodial sentences for certain offences*

10 (1) Chapter 3 of Part 5 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) is amended as follows.

(2) In section 110 (minimum sentence of 7 years for third class A drug trafficking offence)—

(a) in subsection (1)(b), for "been convicted" to the end substitute "2 relevant drug convictions; and", and

(b) after subsection (2) insert—

"(2A) For the purposes of subsection (1)—

(a) a "relevant drug conviction" means—

(i) a conviction in any part of the United Kingdom of a class A drug trafficking offence, or

(ii) a conviction in another member State of an offence which was committed after the relevant date and would, if done in the United Kingdom at the time of the conviction, have constituted a class A drug trafficking offence; and

(b) "the relevant date" means the date on which this subsection comes into force."

(3) In section 111 (minimum of 3 years for third domestic burglary)—

(a) in subsection (1)—

(i) in paragraph (b), for "been convicted" to the end substitute "2 relevant domestic burglary convictions; and", and

(ii) in paragraph (c), for "30th November 1999" substitute "the relevant date", and

(b) after subsection (2) insert—

"(2A) For the purposes of subsection (1)—

(a) a "relevant domestic burglary conviction" means—

(i) a conviction in England and Wales of a domestic burglary, or

(ii) a conviction in any other part of the United Kingdom or any other member State of an offence which would, if done in England and Wales at the time of the conviction, have constituted domestic burglary;

(b) "the relevant date", in relation to a relevant domestic burglary conviction, means—

(i) in respect of a conviction in England and Wales, 30 November 1999, and

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(ii) in any other case, the day on which this subsection comes into force."

(4) In section 113 (certificates of conviction for the purposes of Chapter 3)—

(a) after subsection (1) insert—

"(1A) Where—

(a) a person is convicted—

(i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,

(ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or

(iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,

(b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the person has been convicted of such an offence on that date, and

(c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, the fact that the person has been convicted of such an offence on that date,

the certificate is evidence, for the purposes of the relevant section of this Chapter, that the person was convicted of such an offence on that date.",

(b) after subsection (2) insert—

"(2A) Where—

(a) a person is convicted—

(i) in any part of the United Kingdom other than England and Wales of a class A drug trafficking offence,

(ii) in any member State other than the United Kingdom of a corresponding drug trafficking offence, or

(iii) in any part of the United Kingdom other than England and Wales, or in any other member State, of a corresponding domestic burglary offence,

(b) in the case of a conviction by or before a court in the United Kingdom, it is stated in open court that the offence was committed on a particular day or over, or at some time during, a particular period, and

(c) the court by or before which the person is convicted certifies, by way of a certificate signed by the proper officer of the court, that the offence was committed on a particular day or over, or at some time during, a particular period,

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the certificate is evidence, for the purposes of the relevant section of this Chapter, that the offence was committed on that day or over, or at some time during, that period.", and

(c) in subsection (3)—

(i) at the beginning of the definitions insert—

""proper officer" means the clerk of the court, that clerk's deputy or any other person having custody of the court record;", and

(ii) omit "and" at the end of the definition of "class A drug trafficking offence" and "domestic burglary", and after those definitions insert—

""corresponding drug trafficking offence" means an offence within section 110(2A)(a)(ii);

"corresponding domestic burglary offence" means an offence within section 111(2A)(a)(ii); and".

(5) In section 114 (offences under service law) (as substituted by Schedule 16 to the Armed Forces Act 2006 (c. 52))—

(a) after subsection (1) insert—

"(1A) Where—

(a) a person has at any time been found guilty of a member State service offence committed after the relevant date, and

(b) the corresponding UK offence was a class A drug trafficking offence or a domestic burglary,

the relevant section of this Chapter and subsection (1) above shall have effect as if the person had at that time been convicted in England and Wales of that corresponding UK offence.

(1B) For the purposes of subsection (1A)—

(a) "member State service offence" means an offence which—

(i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(ii) at the time it was done would have constituted an offence under the law of any part of the United Kingdom, or an offence under section 42 of the Armed Forces Act 2006, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces ("the corresponding UK offence");

(b) "relevant date" means—

(i) where the corresponding UK offence was a class A drug trafficking offence, the relevant date referred to in section 110(2A)(b), and

(ii) where the corresponding UK offence was a domestic burglary, the relevant date referred to in section 111(2A)(b)(ii);

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(c) "Her Majesty's forces" has the same meaning as in the Armed Forces Act 2006;

(d) "service law", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State.", and

(b) after subsection (3) insert—

"(4) Where—

(a) the corresponding UK offence is an offence under section 42 of the Armed Forces Act 2006 by reason of section 43, 45, 46 or 47 of that Act (attempting, conspiring to commit, inciting, aiding, abetting, counselling or procuring criminal conduct); and

(b) the act to which it relates ("the contemplated act") is not an act that is (or that if done would have been) punishable by the law of England and Wales;

for the purposes of subsections (1A) and (1B) it must be assumed that the contemplated act amounted to the offence under the law of England and Wales that it would have amounted to if it had been the equivalent act in England or Wales."

*Restriction on imposing custodial sentence or service detention*

11 In section 263 of the Armed Forces Act 2006 (c. 52) (restriction on imposing custodial sentence or service detention on unrepresented offender)—

(a) at the end of subsection (2)(b) insert ", or sentenced to detention by a court in any other member State or for a member State service offence", and

(b) at the end of subsection (6)(b) insert—

"(c) "member State service offence" means an offence which—

(i) was the subject of proceedings under the service law of a member State other than the United Kingdom, and

(ii) at the time it was done, would have constituted an offence in any part of the United Kingdom, or a service offence, if it had been done in any part of the United Kingdom by a member of Her Majesty's forces;

(d) "service law", in relation to a member State other than the United Kingdom, means the law governing all or any of the naval, military or air forces of that State."

*Young offenders: referral conditions*

12 (1) Section 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (referral conditions for young offenders) (as amended by the Criminal Justice and Immigration Act 2008 (c. 4)) is amended as follows.

(2) For subsection (1)(b) substitute—

"(b) has never been—

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(i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or

(ii) convicted by or before a court in another member State of any offence."

(3) In subsection (2A)—

(a) after "never" insert "—

(a) ", and

(b) at the end insert ", or

(b) been convicted by or before a court in another member State of any offence."

(4) For subsection (2B) substitute—

"(2B) This subsection is satisfied in relation to the offender if, disregarding the offence and any connected offence—

(a) the offender —

(i) has been dealt with by a UK court for any offence on only one previous occasion, and

(ii) was not referred to a youth offender panel under section 16 on that occasion; or

(b) the offender has been dealt with by a court in any member State other than the United Kingdom on only one previous occasion."

(5) For subsection (2C)(a) substitute—

"(a) disregarding the offence and any connected offence, the offender has been dealt with by a UK court or a court in another member State for any offence on one or more previous occasions, and has either—

(i) never been referred to a youth offender panel under section 16 above, or

(ii) been referred to a youth offender panel on only one previous occasion;".

*Proving of foreign convictions before courts in England and Wales*

13 (1) Section 73 of the Police and Criminal Evidence Act 1984 (c. 60) (proof of convictions and acquittals) is amended as follows.

(2) In subsection (1), after "Kingdom" insert "or any other member State".

(3) In subsection (2), after paragraph (b) insert "; and

(c) shall, as regards a conviction or acquittal by a court in a member State (other than the United Kingdom), consist of a certificate, signed by the proper officer of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;".

(4) In subsection (3)—

(a) in paragraph (b), after "other court" insert "in the United Kingdom", and

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(b) after that paragraph add ", and

(c) in relation to any court in another member State ("the EU court"), a person who would be the proper officer of the EU court if that court were in the United Kingdom."

14 (1) Section 74 of that Act (conviction as evidence of commission of offence) is amended as follows.

(2) In subsection (1), after "Kingdom" (in first place it occurs) insert "or any other member State".

(3) In subsection (2), after "Kingdom" (in first place it occurs) insert "or any other member State".

(4) In subsection (3)(a) after "Kingdom" insert "or any other member State".

15 In section 75 of that Act (provisions supplementary to section 74), for subsection (1)(b) substitute—

"(b) the contents of—

(i) the information, complaint, indictment or charge-sheet on which the person in question was convicted, or

(ii) in the case of a conviction of an offence by a court in a member State (other than the United Kingdom), any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in sub-paragraph (i),".

*Proving of foreign convictions before courts in Northern Ireland*

16 (1) Article 71 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (proof of convictions and acquittals) is amended as follows.

(2) After paragraph (1) insert—

"(1A) Where in any criminal proceedings the fact that a person has in a member State been convicted or acquitted of an offence is admissible in evidence, it may be proved by—

(a) producing a certificate of conviction or, as the case may be, of acquittal relating to that offence, and

(b) proving that the person named in the certificate as having been convicted or acquitted of the offence is the person whose conviction or acquittal of the offence is to be proved."

(3) In paragraph (2), after sub-paragraph (b) insert "; and

(c) shall, as regards a conviction or acquittal by a court in a member State (other than the United Kingdom), consist of a certificate, signed by the clerk of the court where the conviction or acquittal took place, giving details of the offence, of the conviction or acquittal, and of any sentence;".

17 (1) Article 72 of that Order (conviction as evidence of commission of offence) is amended as follows.

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(2) In paragraph (1), after "Kingdom" (in first place it occurs) insert "or any other member State".

(3) In paragraph (2), after "Kingdom" (in first place it occurs) insert "or any other member State".

(4) In paragraph (3)(a), after "Kingdom" insert "or any other member State".

18 In Article 73 of that Order (provisions supplementary to Article 72), for paragraph (1)(b) substitute—

"(b) the contents of—

(i) the complaint, information, indictment or charge-sheet on which the person in question was convicted, or

(ii) in the case of a conviction of an offence by a court in a member State (other than the United Kingdom), any document produced in relation to the proceedings for that offence which fulfils a purpose similar to any document or documents specified in paragraph (i),".

## SCHEDULE 18

Section 152

### MOTOR VEHICLE ORDERS

The following is the Schedule to be inserted as Schedule 3A to the Access to Justice Act 1999 (c. 22)—

"SCHEDULE 3A

MOTOR VEHICLE ORDERS

*Introductory*

1 In this Schedule "enforcement regulations" means regulations under section 17A(1) made by virtue of section 17A(2)(e).

*Further general powers to regulate motor vehicle orders*

2 Enforcement regulations may make provision about or in connection with—

(a) the procedure for making motor vehicle orders;

(b) the matters which must be included in such orders;

(c) the fitting of immobilisation devices;

(d) the fixing of notices to motor vehicles to which immobilisation devices have been fitted and the content of such notices;

(e) the removal and storage of motor vehicles;

(f) the release of motor vehicles from immobilisation devices or from storage (including the conditions to be met before a motor vehicle is released);

(g) the sale or other disposal of motor vehicles not released;

(h) the imposition of charges in connection with—

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(i) the fitting of immobilisation devices;

(ii) the removal, storage, release (whether from immobilisation devices or from storage), sale or disposal of motor vehicles;

(i) the recovery of such charges (including provision for them to be recovered from the proceeds of sale of motor vehicles).

*Applications*

3 Enforcement regulations must provide that a motor vehicle order may be made in relation to an overdue sum only on the application of the person or body to which the overdue sum is payable.

*Matters of which court to be satisfied*

4 (1) Enforcement regulations must provide that, before a court makes a clamping order in respect of an individual, it must be satisfied—

(a) that the failure to pay the overdue sum is attributable to the individual's wilful refusal or culpable neglect, and

(b) that the value of the motor vehicle or vehicles to be clamped, if sold, would be likely to be an amount which exceeds half of the estimated recoverable amount.

(2) "The estimated recoverable amount" means the aggregate of—

(a) the amount of the overdue sum, and

(b) the amount of the likely charges due under the enforcement regulations in relation to the motor vehicle or vehicles.

*Ownership of motor vehicles*

5 (1) Enforcement regulations must provide that a clamping order must not be made except in relation to a motor vehicle which is owned by the individual liable to pay the overdue sum.

(2) For this purpose a motor vehicle is owned by an individual if the individual has an interest in the motor vehicle.

*Motor vehicles used by disabled persons*

6 Enforcement regulations must provide that an immobilisation device may not be fitted to a motor vehicle—

(a) which displays a current disabled person's badge or a current recognised badge, or

(b) in relation to which there are reasonable grounds for believing that it is used for the carriage of a disabled person.

*Restrictions on making vehicle sale orders*

7 Enforcement regulations must provide that, where a motor vehicle has been clamped under a clamping order, no vehicle sale

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order may be made in respect of the motor vehicle before the end of the period specified in the regulations.

*Interpretation*

8 In this Schedule—

"disabled person's badge" means a badge issued, or having effect as if issued, under regulations made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (badges for display on motor vehicles used by disabled persons);

"immobilisation device" has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (immobilisation of vehicles illegally parked);

"motor vehicle" means a mechanically propelled vehicle intended or adapted for use on roads, except that section 189 of the Road Traffic Act 1988 (exceptions for certain vehicles) applies for the purposes of this Schedule as it applies for the purposes of the Road Traffic Acts;

"recognised badge" has the meaning given by section 21A of the Chronically Sick and Disabled Persons Act 1970 (recognition of badges issued outside Great Britain);

and "clamped", "clamping order", "motor vehicle order", "overdue sum" and "vehicle sale order" are to be construed in accordance with section 17A."

## SCHEDULE 19

Section 169

### EXPLOITATION PROCEEDS INVESTIGATIONS

1 Part 8 of the Proceeds of Crime Act 2002 (c. 29) (investigations) is amended as follows.

2 In section 341 (investigations), after subsection (4) add—

"(5) For the purposes of this Part an exploitation proceeds investigation is an investigation for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) into—

(a) whether a person is a qualifying offender,

(b) whether a person has obtained exploitation proceeds from a relevant offence,

(c) the value of any benefits derived by a person from a relevant offence, or

(d) the available amount in respect of a person.

Paragraphs (a) to (d) are to be construed in accordance with that Part of that Act."

3 In section 342 (offences of prejudicing investigation)—

(a) in subsection (1), after "detained cash investigation" insert ", an exploitation proceeds investigation", and

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(b) after subsection (3)(ba) insert—

"(bb) the disclosure is made in the exercise of a function under Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc) or in compliance with a requirement imposed under or by virtue of that Act,".

4 In section 343(3) (judges) after "civil recovery investigation" insert "or an exploitation proceeds investigation".

5 In section 344(b) (courts) after "civil recovery investigation" insert "or an exploitation proceeds investigation".

6 In section 345(2) (production orders), in paragraph (a) after "confiscation investigation" insert ", an exploitation proceeds investigation".

7 In section 346 (requirements for making of production order)—

(a) after subsection (2)(c) add—

"(d) in the case of an exploitation proceeds investigation, the person the application for the order specifies as being subject to the investigation is within subsection (2A).", and

(b) after subsection (2) insert—

"(2A) A person is within this subsection if, for the purposes of Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc), exploitation proceeds have been obtained by the person from a relevant offence by reason of any benefit derived by the person.

This subsection is to be construed in accordance with that Part."

8 In section 350(5) (government departments), in paragraph (b) after "civil recovery investigation" insert "or an exploitation proceeds investigation".

9 In section 351(8) (supplementary) after "civil recovery investigation" insert "or an exploitation proceeds investigation".

10 In section 352 (search and seizure warrants)—

(a) in subsection (2)(a), after "confiscation investigation" insert ", an exploitation proceeds investigation", and

(b) after subsection (5)(c) add—

"(d) a member of SOCA's staff, if the warrant is sought for the purposes of an exploitation proceeds investigation."

11 In section 353 (requirements where production order not available)—

(a) after subsection (2)(c) insert—

"(d) in the case of an exploitation proceeds investigation, the person specified in the application for the warrant is within section 346(2A).",

(b) in subsection (5)(a), for "or (8)" substitute ", (8) or (8A)",

(c) after subsection (8) insert—

"(8A) In the case of an exploitation proceeds investigation, material falls within this subsection if it cannot be identified at the time of the application but it—

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(a) relates to the person specified in the application, the question whether exploitation proceeds have been obtained from a relevant offence in relation to that person, any question as to the extent or whereabouts of any benefit as a result of which exploitation proceeds are obtained or any question about the person's available amount, and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

This subsection is to be construed in accordance with Part 7 of the Coroners and Justice Act 2009 (criminal memoirs etc).", and

(d) after subsection (10)(c) add—

"(d) a member of SOCA's staff, if the warrant is sought for the purposes of an exploitation proceeds investigation."

12 In section 356 (further provision: civil recovery), in subsection (1) after "civil recovery investigations" insert "or exploitation proceeds investigations".

13 In section 357 (disclosure orders)—

(a) after subsection (3)(b) add ", or

(c) a person specified in the application is subject to an exploitation proceeds investigation and the order is sought for the purposes of the investigation.", and

(b) after subsection (7)(b) add "; and

(c) in relation to an exploitation proceeds investigation, a member of SOCA's staff."

14 In section 358(2) (requirements for making of disclosure order) after paragraph (b) add—

"(c) in the case of an exploitation proceeds investigation, the person specified in the application for the order is a person within section 346(2A)."

15 In section 362(5) (supplementary) after "investigation" add "or an exploitation proceeds investigation".

16 In section 363(2) (customer information orders), in paragraph (a) after "investigation", in first place it occurs, insert ", an exploitation proceeds investigation".

17 In section 370(2) (account monitoring orders), in paragraph (a) after "confiscation investigation" insert ", an exploitation proceeds investigation".

18 After section 378(6) (officers) insert—

"(6A) In relation to an exploitation proceeds investigation, a member of SOCA's staff is an appropriate officer."

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## SCHEDULE 20

Section 175

### AMENDMENTS OF THE DATA PROTECTION ACT 1998 (C. 29)

### PART 1

### DATA CONTROLLERS' REGISTRATION

1 In section 16 of the Data Protection Act 1998 (meaning of "the registrable particulars" etc), in subsection (1)—

(a) omit "and" at the end of paragraph (ff), and

(b) after paragraph (g) insert ", and

(h) such information about the data controller as may be prescribed under section 18(5A)."

2 In section 18 of that Act (notification by data controllers), after subsection (5) insert—

"(5A) Notification regulations may prescribe the information about the data controller which is required for the purpose of verifying the fee payable under subsection (5)."

3 In section 19 of that Act (register of notifications), after subsection (7) add—

"(8) Nothing in subsection (6) or (7) applies to information which is included in an entry in the register only by reason of it falling within section 16(1)(h)."

4 In section 20 of that Act (duty to notify changes), in subsection (2)—

(a) omit "that at any time",

(b) at the beginning of paragraph (a) insert "that at any time",

(c) before "and" at the end of that paragraph insert—

"(aa) that the correct fee is paid under section 19(4),", and

(d) at the beginning of paragraph (b) insert "that at any time".

### PART 2

### ASSESSMENT NOTICES

5 (1) Section 48 of that Act (rights of appeal) is amended as follows.

(2) In subsection (1) after "enforcement notice" insert ", an assessment notice".

(3) In subsection (3)—

(a) after "enforcement notice" insert ", an assessment notice", and

(b) after "40(8)" insert ", 41B(2)".

6 In section 67 of that Act (general provision about orders etc under the Act)—

(a) in subsection (4) insert at the appropriate place—

"section 41A(2)(c),", and

(b) in subsection (5)(a) insert at the appropriate place—

"section 41A(2)(b),".

7 In section 70(1) of that Act (supplementary definitions) for the definition of "government department" substitute—

""government department" includes—

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(a) any part of the Scottish Administration;
(b) a Northern Ireland department;
(c) the Welsh Assembly Government;
(d) any body or authority exercising statutory functions on behalf of the Crown."

## PART 3

## POWERS TO REQUIRE INFORMATION

8 (1) Section 43 of that Act (information notices) is amended as follows.

(2) In subsection (1) for ", within" to the end substitute "to furnish the Commissioner with specified information relating to the request or to compliance with the principles."

(3) After that subsection insert—

"(1A) In subsection (1) "specified information" means information—
(a) specified, or described, in the information notice, or
(b) falling within a category which is specified, or described, in the information notice.

(1B) The Commissioner may also specify in the information notice—
(a) the form in which the information must be furnished;
(b) the period within which, or the time and place at which, the information must be furnished."

(4) In subsection (4) for "the time" to "expire" substitute "a period specified in an information notice under subsection (1B)(b) must not end, and a time so specified must not fall,".

9 (1) Section 44 of that Act (special information notices) is amended as follows.

(2) in subsection (1) for ", within" to the end substitute "to furnish the Commissioner with specified information for the purpose specified in subsection (2)."

(3) After subsection (1) insert—

"(1A) In subsection (1) "specified information" means information—
(a) specified, or described, in the special information notice, or
(b) falling within a category which is specified, or described, in the special information notice.

(1B) The Commissioner may also specify in the special information notice—
(a) the form in which the information must be furnished;
(b) the period within which, or the time and place at which, the information must be furnished."

(4) In subsection (5) for "the time" to "expire" substitute "a period specified in a special information notice under subsection (1B)(b) must not end, and a time so specified must not fall,".

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## PART 4

## RESTRICTION ON USE OF INFORMATION

10 (1) Section 43 of that Act (information notices) is amended as follows.

(2) In subsection (8), for "other than an offence under this Act," substitute ", other than an offence under this Act or an offence within subsection (8A),".

(3) After that subsection insert—

"(8A) The offences mentioned in subsection (8) are—

(a) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),

(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or

(c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).

(8B) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that person on a prosecution for any offence under this Act (other than an offence under section 47) unless in the proceedings—

(a) in giving evidence the person provides information inconsistent with it, and

(b) evidence relating to it is adduced, or a question relating to it is asked, by that person or on that person's behalf.

(8C) In subsection (8B) "relevant statement", in relation to a requirement under this section, means—

(a) an oral statement, or

(b) a written statement made for the purposes of the requirement."

11 (1) Section 44 of that Act (special information notices) is amended as follows.

(2) In subsection (9), for "other than an offence under this Act," substitute ", other than an offence under this Act or an offence within subsection (9A),".

(3) After subsection (9) of that section insert—

"(9A) The offences mentioned in subsection (9) are—

(a) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),

(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or

(c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).

(9B) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that person on a prosecution for any offence under this Act (other than an offence under section 47) unless in the proceedings—

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(a) in giving evidence the person provides information inconsistent with it, and

(b) evidence relating to it is adduced, or a question relating to it is asked, by that person or on that person's behalf.

(9C) In subsection (9B) "relevant statement", in relation to a requirement under this section, means—

(a) an oral statement, or

(b) a written statement made for the purposes of the requirement."

12 (1) Paragraph 11 of Schedule 7 to that Act (miscellaneous exemptions: self incrimination) is amended as follows.

(2) In sub-paragraph (1), for "other than an offence under this Act," substitute ", other than an offence under this Act or an offence within sub-paragraph (1A),".

(3) After that sub-paragraph insert—

"(1A) The offences mentioned in sub-paragraph (1) are—

(a) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),

(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or

(c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements)."

## PART 5

### MONETARY PENALTIES: RESTRICTION ON MATTERS TO BE TAKEN INTO ACCOUNT

13 In section 55A of that Act (power of Commissioner to impose monetary penalties), after subsection (3) insert—

"(3A) The Commissioner may not be satisfied as mentioned in subsection (1) by virtue of any matter which comes to the Commissioner's attention as a result of anything done in pursuance of—

(a) an assessment notice;

(b) an assessment under section 51(7)."

## PART 6

### WARRANT FOR ENTRY AND INSPECTION

14 (1) Schedule 9 to that Act (powers of entry and inspection) is amended as follows.

(2) After sub-paragraph (1) of paragraph 1 insert—

"(1A) Sub-paragraph (1B) applies if a circuit judge or a District Judge (Magistrates' Courts) is satisfied by information on oath supplied by the Commissioner that a data controller has failed to comply with a requirement imposed by an assessment notice.

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(1B) The judge may, for the purpose of enabling the Commissioner to determine whether the data controller has complied or is complying with the data protection principles, grant a warrant to the Commissioner in relation to any premises that were specified in the assessment notice; but this is subject to sub-paragraph (2) and paragraph 2."

(3) In sub-paragraph (3) of that paragraph—

(a) for "sub-paragraph (1)" substitute "this Schedule", and

(b) for the words from "to enter" to the end substitute "—

(a) to enter the premises;

(b) to search the premises;

(c) to inspect, examine, operate and test any equipment found on the premises which is used or intended to be used for the processing of personal data;

(d) to inspect and seize any documents or other material found on the premises which—

(i) in the case of a warrant issued under sub-paragraph (1), may be such evidence as is mentioned in that paragraph;

(ii) in the case of a warrant issued under sub-paragraph (1B), may enable the Commissioner to determine whether the data controller has complied or is complying with the data protection principles;

(e) to require any person on the premises to provide an explanation of any document or other material found on the premises;

(f) to require any person on the premises to provide such other information as may reasonably be required for the purpose of determining whether the data controller has contravened, or is contravening, the data protection principles."

(4) After sub-paragraph (1) of paragraph 2 insert—

"(1A) In determining whether the Commissioner has given an occupier the seven days' notice referred to in sub-paragraph (1)(a) any assessment notice served on the occupier is to be disregarded."

(5) In paragraph 5 for "evidence in question would not be found" substitute "object of the warrant would be defeated".

(6) In paragraph 12, at the end of paragraph (b) insert—

"(c) makes a statement in response to a requirement under paragraph (e) or (f) of paragraph 1(3) which that person knows to be false in a material respect, or

(d) recklessly makes a statement in response to such a requirement which is false in a material respect,".

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(7) After paragraph 15 add—

*"Self-incrimination*

16 An explanation given, or information provided, by a person in response to a requirement under paragraph (e) or (f) of paragraph 1(3) may only be used in evidence against that person—

(a) on a prosecution for an offence under—

(i) paragraph 12,

(ii) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),

(iii) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or

(iv) Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements), or

(b) on a prosecution for any other offence where—

(i) in giving evidence that person makes a statement inconsistent with that explanation or information, and

(ii) evidence relating to that explanation or information is adduced, or a question relating to it is asked, by that person or on that person's behalf."

## SCHEDULE 21

Section 177

### MINOR AND CONSEQUENTIAL AMENDMENTS

### PART 1

### CORONERS ETC

*Cremation Act 1902 (c. 8)*

1 In section 10 of the Cremation Act 1902 (saving for coroners), for "the Coroners Act 1988" substitute "Part 1 of the Coroners and Justice Act 2009".

*Births and Deaths Registration Act 1926 (c. 48)*

2 The Births and Deaths Registration Act 1926 is amended as follows.

3 In section 4 (prohibition of removal of body out of England without notice), for "the coroner within whose jurisdiction the body is lying" substitute "the senior coroner in whose area the body is situated,".

4 In section 5 (burial of still-born children), for the words after "delivered to him" substitute "either—

(a) a certificate given by the registrar under section 11(2) or (3) of the Births and Deaths Registration Act 1953, or

(b) in a case in relation to which a senior coroner has made enquiries under section 1(7) of the Coroners and Justice Act

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2009 (or has purported to conduct an investigation under Part 1 of that Act), an order of the coroner."

*Visiting Forces Act 1952 (c. 67)*

5 (1) Section 7 of the Visiting Forces Act 1952 (provisions as to coroners' inquests etc) is amended as follows.

(2) For subsection (1) substitute—

"(1) Subsections (1A) and (1B) of this section apply if a coroner who has jurisdiction to conduct an investigation under Part 1 of the Coroners and Justice Act 2009 into a person's death is satisfied that the deceased person, at the time of the death, had a relevant association with a visiting force.

(1A) If no investigation into the person's death has begun, the coroner shall not begin an investigation unless directed to do so by the Lord Chancellor.

(1B) If an investigation into the person's death has begun but has not been completed, the coroner shall suspend the investigation unless directed not to do so by the Lord Chancellor."

(3) In subsection (2)—

(a) for the words from "the last" to "a death" substitute "subsections (1) to (1B) of this section, if in the course of an investigation under Part 1 of the Coroners and Justice Act 2009 into a person's death",

(b) for "Secretary of State" substitute "Lord Chancellor",

(c) for the words from "adjourn the inquest" to "discharge the jury," substitute "suspend the investigation", and

(d) for "at the inquest" substitute "in the course of the investigation".

(4) After subsection (2) insert—

"(2A) A coroner who suspends an investigation under this section shall—

(a) adjourn any inquest being held as part of the investigation, and

(b) discharge any jury that has been summoned.

(2B) The suspension of an investigation under this section does not prevent its suspension under Schedule 1 to the Coroners and Justice Act 2009; and *vice versa*."

(5) For subsection (3) substitute—

"(3) Where an investigation is suspended under this section, the coroner shall not resume it except on the direction of the Lord Chancellor.

(3A) Where the investigation is resumed, the coroner must resume any inquest that was adjourned under subsection (2A).

(3B) A resumed inquest may be held with a jury if the coroner thinks that there is sufficient reason for it to be held with one."

(6) In subsection (4), for the words from "the Secretary of State" to "to be held" substitute "the Lord Chancellor under subsection (1A) or (3) of this section, an investigation is required to be conducted".

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(7) In subsection (5), for "section two of the said Act of 1926" substitute "section 24 of the Births and Deaths Registration Act 1953".

(8) For subsection (7) substitute—

"(7) In the application of this section to Northern Ireland—

(a) in subsection (1), for "a coroner who has jurisdiction to conduct an investigation under Part 1 of the Coroners and Justice Act 2009 into a person's death" there is substituted "a coroner who has jurisdiction under the Coroners Act (Northern Ireland) 1959 to hold an inquest into a person's death";

(b) in subsection (1A), for "no investigation" there is substituted "no inquest" and for "an investigation" there is substituted "an inquest";

(c) in subsection (1B), for "an investigation" there is substituted "an inquest", and for "suspend the investigation" there is substituted "adjourn the inquest";

(d) in subsection (2)—

(i) for "in the course of an investigation under Part 1 of the Coroners and Justice Act 2009" there is substituted "on an inquest";

(ii) for "suspend the investigation" there is substituted "adjourn the inquest";

(iii) for "in the course of the investigation" there is substituted "at the inquest";

(e) in subsection (2A), for the words from "suspends an investigation" to the end there is substituted "adjourns an inquest under this section shall discharge any jury that has been summoned";

(f) in subsection (3), for "investigation is suspended" there is substituted "inquest is adjourned";

(g) subsection (3A) is omitted;

(h) in subsection (3B), for "A resumed inquest" there is substituted "An inquest resumed under this section";

(i) subsections (4) and (5) are omitted."

*Births and Deaths Registration Act 1953 (c. 20)*

6 The Births and Deaths Registration Act 1953 is amended as follows.

7 In section 2 (information concerning birth to be given to registrar within 42 days), in paragraph (ii) of the proviso, for "an inquest is held at which" substitute "an investigation is conducted under Part 1 of the 2009 Act, other than one that is discontinued under section 4 of that Act (cause of death revealed by post-mortem examination), in the course of which".

8 (1) Section 16 (information concerning death in a house) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), for "any relative of the deceased person" substitute "any person who is a relative or the partner of the deceased and who was",

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(b) in paragraph (b), for "any other relative of the deceased residing or being" substitute "any person who is a relative or the partner of the deceased and who is or resides", and

(c) after paragraph (b) insert—

"(ba) any personal representative of the deceased;".

(3) In subsection (3)—

(a) in paragraph (a), for "the nearest relative such" substitute "each such person",

(b) in paragraph (b)—

(i) for "no such relative" substitute "no such person", and

(ii) for "each such relative" substitute "each such person",

(c) in paragraph (c)—

(i) for "if there are no such relatives" substitute "if neither of paragraphs (a) and (b) above applies", and

(ii) for "paragraph (c) or (d)" substitute "paragraph (ba), (c) or (d)",

(d) in paragraph (d), for "if there are no such relatives or persons as aforesaid" substitute "if none of paragraphs (a) to (c) above applies", and

(e) for "five days from the date of the death" substitute "five days from the relevant date".

(4) In that subsection, for paragraph (ii) of the proviso substitute—

"(ii) this subsection shall not have effect if an investigation is conducted under Part 1 of the 2009 Act into the death of the deceased person and has not been discontinued under section 4 of that Act (cause of death revealed by post-mortem examination)."

(5) After that subsection insert—

"(4) In this section, the expression "the relevant date" means—

(a) the date on which the registrar is notified in accordance with regulations under section 20(1)(f)(i) or (h)(i) of the 2009 Act (confirmation or certification by medical examiner of cause of death); or

(b) where an investigation under Part 1 of that Act into the death of the deceased person is discontinued under section 4 of that Act, the date of the discontinuance."

9 (1) Section 17 (information concerning other deaths) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), for "any relative of the deceased who" substitute "any person who is a relative or the partner of the deceased and who", and

(b) after that paragraph insert—

"(aa) any personal representative of the deceased;".

(3) In subsection (3)—

(a) in paragraph (a), for "relative" substitute "person",

(b) in paragraph (b), for "relatives" substitute "persons",

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(c) for "five days from the date of the death or of the finding of the body" substitute "five days from the relevant date", and

(d) for paragraph (ii) of the proviso substitute—

"(ii) this subsection shall not have effect if an investigation is conducted under Part 1 of the 2009 Act into the death of the deceased person and has not been discontinued under section 4 of that Act (cause of death revealed by post-mortem examination)."

(4) After that subsection insert—

"(4) In this section, the expression "the relevant date" means—

(a) the date on which the registrar is notified in accordance with regulations under section 20(1)(f)(i) or (h)(i) of the 2009 Act (confirmation or certification by medical examiner of cause of death); or

(b) where an investigation under Part 1 of that Act into the death of the deceased person is discontinued under section 4 of that Act, the date of the discontinuance."

10 (1) Section 18 (notice preliminary to information of death) is amended as follows.

(2) For the words from the beginning to "that person's death" substitute "If, before the expiration of five days from the relevant date, a qualified informant of a person's death".

(3) For the words from "accompanied by a notice" to "the cause of death," substitute "accompanied by a confirmed attending practitioner's certificate, or a medical examiner's certificate issued in accordance with regulations under section 20 of the 2009 Act (medical certificate of cause of death),".

(4) For "from the date aforesaid" substitute "from the relevant date".

(5) At the end of that section (which becomes subsection (1)) insert—

"(2) In this section, the expression "the relevant date" means—

(a) the date on which the registrar is notified in accordance with regulations under section 20(1)(f)(i) or (h)(i) of the 2009 Act (confirmation or certification by medical examiner of cause of death); or

(b) where an investigation under Part 1 of that Act into the death of the deceased person is discontinued under section 4 of that Act (cause of death revealed by post-mortem examination), the date of the discontinuance."

11 (1) In section 19 (registrar's power to require information concerning death), subsection (1) is amended as follows.

(2) For the words from the beginning to "the registrar may" substitute—

"(A1) This section applies where, after the expiration of the relevant period from—

(a) the date on which the registrar is notified in accordance with regulations under section 20(1)(f)(i) or (h)(i) of the 2009 Act (confirmation or certification by medical examiner of cause of death), or

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(b) where an investigation under Part 1 of that Act into a person's death is discontinued under section 4 of that Act (cause of death revealed by post-mortem examination), the date of the discontinuance,

the death of that person has, owing to the default of the persons required to give information concerning it, not been registered.

(1) The registrar may".

(3) For paragraph (ii) of the proviso substitute—

"(ii) an investigation under Part 1 of the 2009 Act is conducted into the death of the deceased person and has not been discontinued under section 4 of that Act".

12 In section 20 (registration of death free of charge) omit the words from ", at any time" to "of any person,".

13 Omit section 21 (registration of death after twelve months).

14 For section 22 substitute—

**"22 Registration of cause of death on receipt of medical certificate**

(1) This section applies where—

(a) the registrar is given a confirmed attending practitioner's certificate, or a medical examiner's certificate, in accordance with regulations under section 20 of the 2009 Act (medical certificate of cause of death); and

(b) no investigation into the death under Part 1 of that Act is conducted.

(2) The registrar shall enter in the register the cause of death as stated in the certificate, together with—

(a) the name of the medical examiner and such information about the examiner as may be prescribed; and

(b) where an attending practitioner's certificate was prepared, the name of the practitioner by whom it was prepared and such information about that practitioner as may be prescribed."

15 (1) Section 23 (furnishing of information by coroner) is amended as follows.

(2) For subsection (2) substitute—

"(2) Where there has been an investigation under Part 1 of the 2009 Act into a death and the senior coroner sends to the registrar a certificate giving information concerning the death, including the particulars found under section 10(1)(b) of that Act, the registrar shall in the prescribed form and manner register the death and those particulars; and, if the death has been previously registered, those particulars shall be entered in the prescribed manner without any alteration of the original entry.

(2ZA) Where under section 40(8)(a)(i) of the 2009 Act the Chief Coroner amends a finding under section 10(1)(b) of that Act and sends to the registrar a certificate setting out the amended particulars, the

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registrar shall in the prescribed form and manner register the amended particulars without any alteration of the original entry."

(3) For subsection (2A) substitute—

"(2A) Where—

(a) an investigation under Part 1 of the 2009 Act into a death is suspended under Schedule 1 to that Act, and

(b) the senior coroner sends to the registrar a certificate stating the particulars required by this Act to be registered concerning the death (so far as they have been ascertained at the date of the certificate),

the registrar shall in the prescribed form and manner register the death and those particulars.

(2B) Where—

(a) an investigation under Part 1 of the 2009 Act into a death is suspended under paragraph 2 of Schedule 1 to that Act (suspension where certain criminal proceedings brought), and

(b) the senior coroner sends to the registrar a certificate—

(i) stating the result of the proceedings in respect of the charge or charges by reason of which the investigation was suspended, or of any proceedings that had to be concluded before the investigation could be resumed, or

(ii) setting out any changes or additions to the particulars mentioned in subsection (2A) of this section,

the registrar shall in the prescribed form and manner register the result of those proceedings, or the changes or additions, without any alteration of the original entry.

(2C) Where—

(a) an investigation under Part 1 of the 2009 Act into a death is suspended under paragraph 3 of Schedule 1 to that Act (suspension pending inquiry), and

(b) the senior coroner sends to the registrar a certificate—

(i) stating the findings of the inquiry by reason of which the investigation was suspended,

(ii) stating the result of any proceedings that had to be concluded before the investigation could be resumed, or

(iii) setting out any changes or additions to the particulars mentioned in subsection (2A) of this section,

the registrar shall in the prescribed form and manner register the findings of that inquiry, or the result of those proceedings, or the changes or additions, without any alteration of the original entry."

(4) In subsection (3), for the words from the beginning to "stating" substitute "Where an investigation is discontinued under section 4 of the 2009 Act by reason of an examination under section 14 of that Act (post-mortem examinations) and the senior coroner sends to the registrar a certificate stating".

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16 (1) Section 23A (giving of information concerning a death to a person other than the registrar) is amended as follows.

(2) In subsection (2), for paragraphs (a) and (b) substitute—

"(a) if there has been no investigation under Part 1 of the 2009 Act into the death, a copy of a confirmed attending practitioner's certificate, or of a medical examiner's certificate, given to the registrar in accordance with regulations under section 20 of the 2009 Act (medical certificate of cause of death); and

(b) if an investigation into the death has been discontinued under section 4 of that Act by reason of an examination under section 14 of that Act (post-mortem examinations), a copy of a certificate from the senior coroner stating the cause of death as disclosed by the report of the person making the examination;".

(3) In subsection (5), after "a relative" insert "or the partner".

(4) Omit subsection (6).

17 In section 24 (certificates as to registration of death), in subsection (1), for "has received a certificate under section twenty-two of this Act" substitute "has been given a confirmed attending practitioner's certificate or a medical examiner's certificate in accordance with regulations under section 20 of the 2009 Act".

18 (1) Section 29 (correction of error in registers) is amended as follows.

(2) After subsection (3) insert—

"(3A) In the case of a death in relation to which the registrar has been given a confirmed attending practitioner's certificate, or a medical examiner's certificate, in accordance with regulations under section 20 of the 2009 Act—

(a) no correction under subsection (3) of this section relating to the cause of death may be made without the approval of the medical examiner concerned;

(b) any error of fact or substance relating to the cause of death in a register of deaths may be corrected by entry in the margin (without any alteration of the original entry) by the officer having the custody of the register on being notified by the medical examiner of the nature of the error and the true facts of the case.

(3B) In the case of a death in relation to which an investigation under Part 1 of the 2009 Act has been discontinued under section 4 of that Act (cause of death revealed by post-mortem examination)—

(a) no correction under subsection (3) of this section relating to the cause of death may be made without the approval of the senior coroner concerned;

(b) any error of fact or substance relating to the cause of death in a register of deaths may be corrected by entry in the margin (without any alteration of the original entry) by the officer having the custody of the register on being notified by the senior coroner of the nature of the error and the true facts of the case."

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(3) In paragraph (a) of subsection (4), for "touching which he has held an inquest" substitute "into which he has conducted an investigation under Part 1 of the 2009 Act (other than one that has been discontinued under section 4 of that Act)".

(4) Omit paragraph (b) of that subsection and the word "or" preceding it.

19 After section 33 insert—

**"33A Short certificate of death**

(1) Any person shall—

(a) on furnishing the prescribed particulars, and

(b) on payment of such fee as may be specified in regulations made by the Minister by statutory instrument,

be entitled to obtain from the Registrar General, a superintendent registrar or a registrar a short certificate of the death of any person.

(2) Any such certificate shall be in the prescribed form and shall be compiled in the prescribed manner from the records and registers in the custody of the Registrar General, or from the registers in the custody of the superintendent registrar or registrar, as the case may be, and shall contain such particulars as may be prescribed.

(3) A statutory instrument containing regulations under subsection (1)(b) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament."

20 In section 34 (entry in register as evidence of birth or death) omit subsection (4).

21 (1) In section 41 (interpretation) insert the following definitions at the appropriate places—

""the 2009 Act" means the Coroners and Justice Act 2009;";

""attending practitioner's certificate" has the meaning given by section 20(1)(a) of the 2009 Act;";

""confirmed attending practitioner's certificate" means an attending practitioner's certificate in respect of which the cause of death has been confirmed by a medical examiner in accordance with regulations under section 20(1)(f)(i) of the 2009 Act;";

""medical examiner" means a person appointed under section 19 of the 2009 Act;";

""medical examiner's certificate" has the meaning given by section 20(1)(h) of the 2009 Act;";

""partner" (except in the expression "civil partner") is to be read in accordance with subsection (2) of this section."

(2) At the end of that section (which becomes subsection (1)) insert—

"(2) A person is the partner of a deceased person if the two of them (whether of different sexes or the same sex) were living as partners in an enduring relationship at the time of the deceased person's death.

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(3) A reference in this Act to an investigation under Part 1 of the 2009 Act being conducted includes a reference to the case where such an investigation has begun and—

(a) has not yet finished,

(b) is suspended under Schedule 1 to that Act (whether temporarily or otherwise), or

(c) is discontinued under section 4 of that Act."

*Courts Act 1971 (c. 23)*

22 In Schedule 2 to the Courts Act 1971 (certain office-holders eligible for appointment as circuit judges), in Part 1A, for "Coroner appointed under section 2 of the Coroners Act 1988" substitute "Senior coroner appointed under paragraph 1 of Schedule 3 to the Coroners and Justice Act 2009".

*Pensions (Increase) Act 1971 (c. 56)*

23 In Schedule 2 to the Pensions (Increase) Act 1971 (official pensions), in paragraph 61, after "the Coroners Act 1988" insert "or by virtue of paragraph 17 of Schedule 3 to the Coroners and Justice Act 2009".

*Juries Act 1974 (c. 23)*

24 In section 19 of the Juries Act 1974 (payment for jury service), in subsections (2) and (5), for "the Coroners Act 1988" substitute "Schedule 7 to the Coroners and Justice Act 2009".

*Health and Safety at Work etc. Act 1974 (c. 37)*

25 (1) In section 34 of the Health and Safety at Work etc. Act 1974 (extension of time for bringing summary proceedings), subsection (1) is amended as follows.

(2) In paragraph (c), for "a coroner's inquest is held touching" substitute "an investigation under Part 1 of the Coroners and Justice Act 2009 is conducted into".

(3) For the words from "from the report" to "proceedings at the inquest or" substitute "from the report or investigation or, in a case falling within paragraph (d) above, from the proceedings at the".

(4) For "report, inquest or inquiry" substitute "report, investigation or inquiry".

(5) For "conclusion of the inquest" substitute "conclusion of the investigation".

*House of Commons Disqualification Act 1975 (c. 24)*

26 In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices) insert the following entries at the appropriate place—

"Senior coroner, area coroner or assistant coroner appointed under Part 1 of the Coroners and Justice Act 2009."

"Coroner for Treasure."

"Deputy Chief Coroner appointed by the Lord Chancellor under that Part who is not also a senior coroner."

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*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

27 In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices) insert the following entries at the appropriate place—

"Senior coroner, area coroner or assistant coroner appointed under Part 1 of the Coroners and Justice Act 2009."

"Coroner for Treasure."

"Deputy Chief Coroner appointed by the Lord Chancellor under that Part who is not also a senior coroner."

*Magistrates' Courts Act 1980 (c. 43)*

28 In Schedule 6A to the Magistrates' Courts Act 1980 (fines that may be altered under section 143)—

(a) omit the entry relating to the Coroners Act 1988, and

(b) after the entry relating to the Powers of Criminal Courts (Sentencing) Act 2000 insert—

| | |
|---|---|
| "CORONERS AND JUSTICE ACT 2009 | |
| In Schedule 6, paragraphs 5 (refusal to serve as juror etc) and 6 (refusal to give evidence etc) | £1000". |

*Access to Health Records Act 1990 (c. 23)*

29 (1) Section 3 of the Access to Health Records Act 1990 (right of access to health records) is amended as follows.

(2) In subsection (1) (persons entitled to access), at the end insert—

"(g) where the patient has died, a medical examiner exercising functions by virtue of section 20 of the Coroners and Justice Act 2009 in relation to the death."

(3) In subsection (4) (fee for access), at the end insert—

"Paragraphs (a) and (b) above do not apply in the case of access for which an application is made under subsection (1)(g) above."

*Courts and Legal Services Act 1990 (c. 41)*

30 In Schedule 11 to the Courts and Legal Services Act 1990 (judges etc barred from legal practice), for "Coroner appointed under section 2 of the Coroners Act 1988" substitute "Senior coroner appointed under paragraph 1 of Schedule 3 to the Coroners and Justice Act 2009".

*Judicial Pensions and Retirement Act 1993 (c. 8)*

31 In Part 2 of Schedule 1 to the Judicial Pensions and Retirement Act 1993 (other offices that may be qualifying judicial offices), after the entry relating to the Adjudicator to Her Majesty's Land Registry there is inserted—

"Coroner for Treasure.

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Deputy Chief Coroner appointed by the Lord Chancellor who is not also a senior coroner."

*Merchant Shipping Act 1995 (c. 21)*

32 The Merchant Shipping Act 1995 is amended as follows.

33 In section 108 (returns of births and deaths in ships etc), in subsection (6)(b), for "is satisfied that an inquest is unnecessary" substitute "discontinues an investigation under Part 1 of the Coroners and Justice Act 2009 or, as the case may be, is satisfied that an inquest under the Coroners Act (Northern Ireland) 1959 is unnecessary".

34 In section 271 (inquiries into deaths of crew members and others), in subsection (6), for "where" to the end substitute "where—

(a) in England and Wales, an investigation is to be conducted under Part 1 of the Coroners and Justice Act 2009;

(b) in Northern Ireland, an inquest is to be held under the Coroners Act (Northern Ireland) 1959;

(c) in Scotland, an enquiry is to be held under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976."

35 (1) Section 273 (transmission of particulars of certain deaths on ships) is amended as follows.

(2) In paragraph (a), for "or a post mortem examination" to the end substitute "or subsection (2) below applies; and".

(3) At the end of that section (which becomes subsection (1)) insert—

"(2) This subsection applies where—

(a) in England and Wales, an investigation under Part 1 of the Coroners and Justice Act 2009 into a person's death is discontinued under section 4 of that Act (cause of death revealed by post-mortem examination); or

(b) in Northern Ireland, a preliminary investigation is made of a dead body as a result of which the coroner is satisfied that an inquest is unnecessary."

*Employment Rights Act 1996 (c. 18)*

36 (1) The Employment Rights Act 1996 is amended as follows.

(2) In section 43M (jury service), in subsection (1)(a), for "the Coroners Act 1988" substitute "Part 1 of the Coroners and Justice Act 2009".

(3) In section 98B (jury service), in subsection (1)(a), for "the Coroners Act 1988" substitute "Part 1 of the Coroners and Justice Act 2009".

*Treasure Act 1996 (c. 24)*

37 The Treasure Act 1996 is amended as follows.

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38 For section 7 (jurisdiction of coroners) substitute—

**"7 Jurisdiction of coroners**

(1) As regards Northern Ireland, the jurisdiction of coroners which is referred to in section 33 of the Coroners Act (Northern Ireland) 1959 (treasure) is exercisable in relation to anything that is treasure for the purposes of this Act.

(2) That jurisdiction is not exercisable for the purposes of the law relating to treasure trove in relation to anything found after the commencement of section 4.

(3) The Act of 1959 has effect subject to this section.

(4) An inquest held by virtue of subsection (1) is to be held without a jury, unless the coroner orders otherwise.

(5) As regards England and Wales, see Chapter 4 of Part 1 of the Coroners and Justice Act 2009 (which confers jurisdiction on the Coroner for Treasure in relation to an object that is or may be treasure, or treasure trove found before the commencement of section 4)."

39 (1) Section 8 (duty of finder to notify coroner) is amended as follows.

(2) In subsection (1), for "coroner for the district in which the object was found" substitute "Coroner for Treasure".

(3) In subsection (4), for "coroner" substitute "Coroner for Treasure".

(4) For subsection (5) substitute—

"(5) If the office of Coroner for Treasure is vacant, notification under subsection (1) must be given to an Assistant Coroner for Treasure.

(6) This section has effect subject to section 8B."

(5) After that subsection insert—

"(7) In its application to Northern Ireland this section has effect as if—

(a) in subsection (1), for "Coroner for Treasure" there were substituted "coroner for the district in which the object was found";

(b) in subsection (4), for "Coroner for Treasure" there were substituted "coroner"; and

(c) in subsection (5), for the words from "Coroner for Treasure" to the end there were substituted "coroner for a district is vacant, the person acting as coroner for that district is the coroner for the purposes of subsection (1)."

40 After section 8A (inserted by section 30 of this Act) insert—

**"8B Notice under section 8 or 8A to designated officer**

(1) A requirement under section 8 or 8A to give a notification to the Coroner for Treasure (or an Assistant Coroner for Treasure) may, if the relevant place falls within an area for which there is a designated officer, be complied with by giving the notification to that officer.

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(2) A designated officer must notify the Coroner for Treasure of all notifications given under subsection (1).

(3) If the office of Coroner for Treasure is vacant, notification under subsection (2) must be given to an Assistant Coroner for Treasure.

(4) In this section—

"designated officer" means an officer designated by an order made by statutory instrument by the Secretary of State;

"the relevant place" means—

(a) in relation to a requirement under section 8, the place where the object in question was found;

(b) in relation to a requirement under section 8A, the place where the treasure in question is located.

(5) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In its application to Northern Ireland this section has effect as if—

(a) in subsection (1), for "the Coroner for Treasure (or an Assistant Coroner for Treasure)" there were substituted "a coroner";

(b) in subsection (2), for "Coroner for Treasure" there were substituted "coroner for the district in which the relevant place falls";

(c) in subsection (3), for the words from "Coroner for Treasure" to "Assistant Coroner for Treasure" there were substituted "coroner for a district is vacant, the person acting as coroner for that district is the coroner for the purposes of subsection (2)".

**8C Offences under section 8 or 8A: period for bringing proceedings**

(1) Proceedings for an offence under section 8 or 8A may be brought within the period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the prosecutor's knowledge; but no such proceedings may be brought by virtue of this subsection more than three years after the commission of the offence.

(2) For the purposes of subsection (1)—

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which the evidence referred to in that subsection came to the prosecutor's knowledge shall be conclusive evidence to that effect; and

(b) a certificate to that effect and purporting to be so signed shall be deemed to be so signed unless the contrary is proved."

41 For section 9 substitute—

**"9 Procedure for investigations: England and Wales**

(1) Before conducting an investigation concerning an object, the Coroner for Treasure must—

(a) notify the appropriate national museum;

(b) take reasonable steps to notify—

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(i) any person who the coroner thinks may have found the object; and

(ii) any person who, at the time the object was found, occupied land that the coroner thinks may be where it was found.

(2) During an investigation the Coroner for Treasure must take reasonable steps to notify any person within subsection (1)(b) who has not already been notified.

(3) Before or during an investigation, the Coroner for Treasure must take reasonable steps—

(a) to obtain the names and addresses of any other interested persons; and

(b) to notify any interested person whose name and address he obtains.

(4) The Coroner for Treasure must take reasonable steps to give any interested person an opportunity to examine witnesses at any inquest held as part of an investigation.

(5) In this section—

"the appropriate national museum" means—

(a) the British Museum, if the object in question was found or is believed to have been found in England;

(b) the National Museum of Wales, if it was found or is believed to have been found in Wales;

"interested person" has the meaning given by section 47(6) of the Coroners and Justice Act 2009;

"investigation" means an investigation under section 26 of that Act.

(6) This section extends only to England and Wales.

**9A Procedure for inquests: Northern Ireland**

(1) Before conducting an inquest concerning an object, a coroner must—

(a) notify the Department of the Environment for Northern Ireland;

(b) take reasonable steps to notify—

(i) any person who the coroner thinks may have found the object; and

(ii) any person who, at the time the object was found, occupied land that the coroner thinks may be where it was found.

(2) During the inquest the coroner must take reasonable steps to notify any person within subsection (1)(b) who has not already been notified.

(3) Before or during the inquest, the coroner must take reasonable steps—

(a) to obtain the names and addresses of any other interested persons; and

(b) to notify any interested person whose name and address he obtains.

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(4) The coroner must take reasonable steps to give any interested person an opportunity to examine witnesses at the inquest.

(5) In this section—

"inquest" means an inquest held by virtue of section 7(1);

"interested person" means—

(a) the Department of the Environment for Northern Ireland;

(b) the finder of the object in question or any person otherwise involved in the find;

(c) the occupier, at the time the object was found, of the land where it was found or is believed to have been found;

(d) a person who had an interest in that land at that time or who has had such an interest since;

(e) any other person with a sufficient interest.

(6) This section extends only to Northern Ireland."

42 Omit section 13.

*Northern Ireland (Location of Victims' Remains) Act 1999 (c. 7)*

43 In section 4 of the Northern Ireland (Location of Victims' Remains) Act 1999 (restrictions on forensic testing), in subsection (2), for "for the purposes of an inquest, the identity" substitute "for the purposes of—

(a) an inquest under the Coroners Act (Northern Ireland) 1959, or

(b) an investigation under Part 1 of the Coroners and Justice Act 2009,

the identity".

*Freedom of Information Act 2000 (c. 36)*

44 In section 32 of the Freedom of Information Act 2000 (court records etc), in subsection (4)(b), for "any inquest or" substitute "any investigation under Part 1 of the Coroners and Justice Act 2009, any inquest under the Coroners Act (Northern Ireland) 1959 and any".

*International Criminal Court Act 2001 (c. 17)*

45 In section 35 of the International Criminal Court Act 2001 (orders for exhumation), for "section 23 of the Coroners Act 1988 (c. 13)" substitute "paragraph 6 of Schedule 5 to the Coroners and Justice Act 2009".

*Courts Act 2003 (c. 39)*

46 In Schedule 3A to the Courts Act 2003 (further provision about the inspectors of court administration), in paragraph 2(2) (inspection programmes and inspection frameworks: consultation etc), after "the Lord Chief Justice of England and Wales" insert ", the Chief Coroner".

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*Human Tissue Act 2004 (c. 30)*

47 The Human Tissue Act 2004 is amended as follows.

48 In section 1 (authorisation of activities for scheduled purposes), in subsection (2), for the words after "shall be lawful" substitute "if done with the appropriate consent and after—

(a) the confirmation of the cause of death by a medical examiner in accordance with regulations under section 20(1)(f)(i) of the Coroners and Justice Act 2009 or the issue by a medical examiner of a certificate of the cause of death in accordance with regulations under section 20(1)(h)(i) of that Act, or

(b) the signing of a certificate under Article 25(2) of the Births and Deaths Registration (Northern Ireland) Order 1976 of the cause of the person's death."

49 (1) Section 5 (prohibition of activities without consent etc) is amended as follows.

(2) In subsection (3), for the words from "neither" to the end substitute "none of the following has happened in relation to the death of the person concerned—

(a) the confirmation of the cause of death by a medical examiner in accordance with regulations under section 20(1)(f)(i) of the Coroners and Justice Act 2009 or the issue by a medical examiner of a certificate of the cause of death in accordance with regulations under section 20(1)(h)(i) of that Act;

(b) the signing of a certificate under Article 25(2) of the Births and Deaths Registration (Northern Ireland) Order 1976 of the cause of death."

(3) In subsection (4)(a)(i), for "a certificate under either of those provisions has been signed in relation to the cause of death of the person concerned" substitute "one of the things mentioned in paragraphs (a) and (b) of that subsection has happened in relation to the death of the person concerned".

50 In section 43 (preservation for transplantation), after subsection (5) insert—

"(5A) Section 11(2) applies to an act on authority under subsection (1) above as it applies to an act on authority under section 1."

*Constitutional Reform Act 2005 (c. 4)*

51 In Schedule 14 to the Constitutional Reform Act 2005 (the Judicial Appointments Commission: relevant offices and enactments), at the end of Part 3 insert—

| | |
|---|---|
| "Coroner for Treasure | Paragraph 1 of Schedule 4 to the Coroners and Justice Act 2009 |
| Deputy Chief Coroner | Paragraph 2(5) of Schedule 8 to the Coroners and Justice Act 2009". |

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## PART 2

## MURDER AND SUICIDE

*Criminal Justice Act 2003 (c. 44)*

52 In Schedule 21 to the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), in paragraph 11—

(a) in paragraph (d) omit "in a way not amounting to a defence of provocation", and

(b) in paragraph (e), after "self-defence" insert "or in fear of violence".

*Children and Young Persons Act 1933 (c. 12)*

53 In Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons to which special provisions apply), after the entry relating to infanticide insert—

"An offence under section 2(1) of the Suicide Act 1961 (encouraging or assisting suicide) where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the suicide of a child or young person."

*Visiting Forces Act 1952 (c. 67)*

54 In the Visiting Forces Act 1952—

(a) in section 7(6) (provisions as to coroner's inquests and removal of bodies: meaning of homicide) for the words from "murder" to the end substitute "—

(a) murder, manslaughter or infanticide,

(b) any offence under the law of the country in question which is analogous to any of the offences within paragraph (a), and

(c) any offence under the law of the country in question which is analogous to an offence under section 2(1) of the Suicide Act 1961 or section 13(1) of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide).", and

(b) in paragraph 1(a) of the Schedule (offences against the person for purposes of restriction of trial by United Kingdom courts of offenders connected with visiting forces) for "of" to "commit suicide" substitute "under section 2(1) of the Suicide Act 1961 or section 13(1) of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide)".

*Suicide Act 1961 (c. 60)*

55 In Schedule 1 to the Suicide Act 1961—

(a) in Part 1 omit the entry relating to Schedule 1 to the Children and Young Persons Act 1933 (c. 12), and

(b) in Part 2 omit the entry relating to section 7 of the Visiting Forces Act 1952 (c. 67).

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*Criminal Justice Act (Northern Ireland) 1966 (c. 20)*

56 In section 12 of the Criminal Justice Act (Northern Ireland) 1966 (suicide to cease to be a crime), for "13 and 14" substitute "13 to 14".

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

57 In Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968 (offences against children and young persons to which special provisions apply), for the entry for "Aiding, abetting, counselling or procuring the suicide of a child or young person" substitute—

"An offence under section 13(1) of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide) where the relevant act is an act capable of, and done with the intention of, encouraging or assisting the suicide of a child or young person."

*Criminal Attempts Act 1981 (c. 47)*

58 After section 1(4)(b) of the Criminal Attempts Act 1981 (exclusions to offence of attempting to commit an offence) insert—

"(ba) an offence under section 2(1) of the Suicide Act 1961 (c. 60) (encouraging or assisting suicide);".

*Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983/1120 (N.I. 13))*

59 After Article 3(4)(b) of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (exclusions to offence of attempting to commit an offence) insert—

"(ba) an offence under section 13(1) of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide);".

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

60 (1) Section 2 of the Law Reform (Year and a Day Rule) Act 1996 (restriction on institution of proceedings for a fatal offence) is amended as follows.

(2) For subsection (3)(b) (but not the "or" following it) substitute—

"(b) an offence under section 2(1) of the Suicide Act 1961 (offence of encouraging or assisting suicide) in connection with the death of a person,".

(3) In subsection (5) after paragraph (a) insert—

"(aa) the reference in subsection (3)(b) to section 2(1) of the Suicide Act 1961 is to be read as a reference to section 13(1) of the Criminal Justice Act (Northern Ireland) 1966, and".

*Serious Crime Act 2007 (c. 27)*

61 (1) The Serious Crime Act 2007 is amended as follows.

(2) After section 51 insert—

**"51A Exceptions to section 44 for encouraging or assisting suicide**

Section 44 does not apply to an offence under section 2(1) of the Suicide Act 1961 or section 13(1) of the Criminal Justice Act

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(Northern Ireland) 1966 (offence of encouraging or assisting suicide)."

(3) In Schedule 3 (offences to be disregarded for the purposes of the offences under sections 45 and 46)—

(a) in Part 2, after paragraph 27 insert—

*"Suicide Act 1961 (c. 60)*

27A An offence under section 2(1) of the Suicide Act 1961 (encouraging or assisting suicide).", and

(b) in Part 4, after paragraph 42 insert—

*"Criminal Justice Act (Northern Ireland) 1966 (c. 20)*

42A An offence under section 13(1) of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide)."

## PART 3

## PROHIBITED IMAGES OF CHILDREN

*Sexual Offences Act 2003 (c. 42)*

62 (1) Schedule 3 to the Sexual Offences Act 2003 (sexual offences in respect of which offender becomes subject to notification requirements) is amended as follows.

(2) After paragraph 35A insert—

"35B An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children) if the offender—

(a) was 18 or over, and

(b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years."

(3) Paragraphs 92A to 92V, as inserted by Article 13 of the Sexual Offences (Northern Ireland Consequential Amendments) Order 2008 (S.I. 2008/1779), are renumbered as paragraphs 92B to 92W of that Schedule (and are to be regarded as so inserted after paragraph 92A as inserted by paragraph 58(3) of Schedule 26 to the Criminal Justice and Immigration Act 2008 (c. 4)).

(4) After paragraph 92W insert—

"92X An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children) if the offender—

(a) was 18 or over, and

(b) is sentenced in respect of the offence to imprisonment for a term of at least 2 years."

(5) In paragraphs 93(1) and 93A(1) (service offences) for "35A" substitute "35B".

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*Criminal Justice Act 2003 (c. 44)*

63 In Schedule 34A to the Criminal Justice Act 2003 (child sex offences for purposes of provisions about disclosure of information to the public), after paragraph 13 insert—

"13A An offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children)."

*Armed Forces Act 2006 (c. 52)*

64 In Schedule 2 to the Armed Forces Act 2006 (offences), after paragraph 12(au) add—

"(av) an offence under section 62(1) of the Coroners and Justice Act 2009 (possession of prohibited images of children)."

## PART 4

### ABOLITION OF COMMON LAW LIBEL OFFENCES ETC

*Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8)*

65 (1) In section 1 of the Criminal Libel Act 1819 (power of court to make order for seizure of copies of libel)—

(a) after "In every case" insert "in Northern Ireland", and

(b) omit from ", or any seditious libel" to "means".

(2) This paragraph does not extend to Scotland.

*Libel Act 1843 (c. 96)*

66 In section 7 of the Libel Act 1843 (evidence to rebut prima facie case of publication by agent)—

(a) after "Whensoever" insert "in Northern Ireland", and

(b) before "libel" insert "blasphemous".

*Newspaper Libel and Registration Act 1881 (c. 60)*

67 In section 4 of the Newspaper Libel and Registration Act 1881 (inquiry by court of summary jurisdiction as to libel being for public benefit etc)—

(a) after "jurisdiction" insert "in Northern Ireland",

(b) before "libel" (in first place it occurs) insert "blasphemous", and

(c) omit from "as to the publication" to "malice, and".

*Law of Libel Amendment Act 1888 (c. 64)*

68 In section 8 of the Law of Libel Amendment Act 1888 (order of Judge required for prosecution of newspaper proprietor etc)—

(a) after "commenced" insert "in Northern Ireland", and

(b) before "libel" insert "blasphemous".

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## PART 5

## WITNESS ANONYMITY ORDERS

*Criminal Appeal Act 1968 (c. 19)*

69 In section 31 of the Criminal Appeal Act 1968 (powers of Court which are exercisable by single judge), after subsection (2E) insert—

"(2F) The powers of the Court of Appeal to make, discharge or vary a witness anonymity order under Chapter 2 of Part 3 of the Coroners and Justice Act 2009 may be exercised by a single judge in the same manner as they may be exercised by the Court."

*Court Martial Appeals Act 1968 (c. 20)*

70 In section 36 of the Court Martial Appeals Act 1968 (powers of Court which are exercisable by single judge), in subsection (1), after paragraph (j) (as inserted by Schedule 8 to the Armed Forces Act 2006 (c. 52)) insert—

"(k) to make a witness anonymity order under Chapter 2 of Part 3 of the Coroners and Justice Act 2009;

(l) to discharge or vary a witness anonymity order under any of sections 91, 92 and 93 of that Act;".

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

71 In section 45 of the Criminal Appeal (Northern Ireland) Act 1980 (powers of Court which are exercisable by single judge), after subsection (3D) insert—

"(3E) Subject to section 44(4) above, the powers of the Court of Appeal to make, discharge or vary a witness anonymity order under Chapter 2 of Part 3 of the Coroners and Justice Act 2009 may be exercised by a single judge of the Court."

## PART 6

## VULNERABLE AND INTIMIDATED WITNESSES

*Crime and Disorder Act 1998 (c. 37)*

72 In section 1I(3) of the Crime and Disorder Act 1998 (special measures for witnesses: modifications of Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (c. 23))—

(a) in paragraph (a), after "section 17(4)" insert "to (7)",

(b) in paragraph (b), for "section 21(1)(b) and (5) to (7)" substitute "section 21(4C)(e)", and

(c) before paragraph (d) insert—

"(ca) section 22A,".

*Youth Justice and Criminal Evidence Act 1999 (c. 23)*

73 In section 27(5) of the Youth Justice and Criminal Evidence Act 1999 (consequences of admitting video recording), in paragraph (a)(i), for "otherwise than by testimony in court" substitute "in any recording admissible under section 28".

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## PART 7

## BAIL

*Bail Act 1976 (c. 63)*

74 In the Bail Act 1976—

(a) in section 4 (general right to bail of accused persons etc), in subsection (7) at the end add "and section 115(1) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge)", and

(b) in section 7 (liability to arrest for absconding or breaking conditions of bail), after subsection (7) add—

"(8) In the case of a person charged with murder or with murder and one or more other offences—

(a) subsections (4) and (5) have effect as if for "justice of the peace" there were substituted "judge of the Crown Court",

(b) subsection (6) has effect as if for "justice" (in both places) there were substituted "judge", and

(c) subsection (7) has effect, for the purposes of subsection (4), as if at the end there were added ", Saturday or bank holiday."

*Magistrates' Courts Act 1980 (c. 43)*

75 In section 117 of the Magistrates' Courts Act 1980 (warrant endorsed for bail), after subsection (1) insert—

"(1A) Subsection (1) is subject to section 115(1) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge)."

*Supreme Court Act 1981 (c. 54)*

76 In section 81 of the Supreme Court Act 1981 (granting of bail by the Crown Court)—

(a) after subsection (1)(g) insert—

"(h) in respect of whom a judge of the Crown Court is required to make a decision pursuant to section 115(3) of the Coroners and Justice Act 2009 (bail decisions in murder cases to be made by Crown Court judge);", and

(b) in subsection (5) for "either" to the end substitute "—

(a) if the person is charged with murder or with murder and one or more other offences, the Crown Court, and

(b) in any other case, either the Crown Court or a magistrates' court."

*Police and Criminal Evidence Act 1984 (c. 60)*

77 In section 38 of the Police and Criminal Evidence Act 1984 (duties of custody

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officer after charge), after subsection (1)(b) add—

"(c) the offence with which the person is charged is murder."

*Crime and Disorder Act 1998 (c. 37)*

78 In section 52 of the Crime and Disorder Act 1998 (supplementary provision about persons sent for trial to Crown Court), in subsection (1), after "1980 Act" insert ", section 115(1) of the Coroners and Justice Act 2009".

## PART 8

## SENTENCING COUNCIL FOR ENGLAND AND WALES

*Parliamentary Commissioner Act 1967 (c. 13)*

79 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), after the entry for the Security Industry Authority insert—

"Sentencing Council for England and Wales."

*Magistrates' Courts Act 1980 (c. 43)*

80 In section 19 of the Magistrates' Courts Act 1980 (decision as to allocation), as substituted by Schedule 3 to the Criminal Justice Act 2003 (c. 44), in subsection (3) for "170 of the Criminal Justice Act 2003" substitute "122 of the Coroners and Justice Act 2009".

*Crime and Disorder Act 1998 (c. 37)*

81 In Schedule 3 to the Crime and Disorder Act 1998 (procedure where persons are sent for trial under section 51 of that Act), in paragraph 9(3), as substituted by Schedule 3 to the Criminal Justice Act 2003, for "170 of the Criminal Justice Act 2003" substitute "122 of the Coroners and Justice Act 2009".

*Freedom of Information Act 2000 (c. 36)*

82 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities: other public bodies and offices), after the entry for the Senior Salaries Review Body insert—

"The Sentencing Council for England and Wales."

*Criminal Justice Act 2003 (c. 44)*

83 The Criminal Justice Act 2003 is amended as follows.

84 In section 174 (duty to give reasons for, and explain effect of, sentence)—

(a) for subsection (2)(a) substitute—

"(a) identify any definitive sentencing guidelines relevant to the offender's case and explain how the court discharged any duty imposed on it by section 125 of the Coroners and Justice Act 2009,

(aa) where the court did not follow any such guidelines because it was of the opinion that it would be contrary

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to the interests of justice to do so, state why it was of that opinion,",

(b) in subsection (2)(e), for "of particular importance" substitute "relevant to the case",

(c) in subsection (4), for "Secretary of State" substitute "Lord Chancellor", and

(d) in subsection (6), for the definition of "guidelines" substitute—

""definitive sentencing guidelines" means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued;".

85 In section 269 (determination of minimum term in relation to mandatory life sentence)—

(a) in subsection (6), for "Secretary of State" substitute "Lord Chancellor", and

(b) in subsection (7), for "Secretary of State shall consult the Sentencing Guidelines Council" substitute "Lord Chancellor must consult the Sentencing Council for England and Wales".

86 In section 277 (interpretation of Chapter 7), for the definition of "guidelines" substitute—

""guidelines" means sentencing guidelines issued by the Sentencing Council for England and Wales as definitive guidelines under section 120 of the Coroners and Justice Act 2009, as revised by any subsequent guidelines so issued;".

87 In section 330 (orders and rules), in subsection (1), after paragraph (b) add—

"(c) the powers conferred on the Lord Chancellor by sections 174(4) and 269(6) to make an order."

88 In Schedule 38 (transitory, transitional and saving provisions), omit paragraphs 2 and 3.

*Armed Forces Act 2006 (c. 52)*

89 In section 259 of the Armed Forces Act 2006 (sentencing guidelines), for subsection (5) substitute—

"(5) In this section "guidelines" means sentencing guidelines issued by the Sentencing Council for England and Wales under section 120 of the Coroners and Justice Act 2009 as definitive guidelines, as revised by any subsequent guidelines so issued."

## PART 9

## DISQUALIFICATION FOR DRIVING

*Road Traffic Offenders Act 1988 (c. 53)*

90 (1) The Road Traffic Offenders Act 1988 is amended as follows.

(2) In section 34 (disqualification for certain offences), after subsection (4A)

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insert—

"(4AA) For the purposes of subsection (4)(b), a disqualification is to be disregarded if the period of disqualification would have been less than 56 days but for an extension period added pursuant to—

(a) section 35A or 35C,

(b) section 248D of the Criminal Procedure (Scotland) Act 1995, or

(c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000."

(3) In section 34A (as substituted by section 35 of the Road Safety Act 2006 (c. 49)) (reduced disqualification for attendance on courses)—

(a) in subsection (1)(b), after "months" insert "(disregarding any extension period added pursuant to section 35A or 35C)",

(b) in subsection (5), after "of this Act" insert "(disregarding any extension period added pursuant to section 35A or 35C)",

(c) in subsection (6), after "order", in first place it occurs, insert "(but including any extension period added pursuant to section 35A or 35C)", and

(d) after subsection (7) insert—

"(7A) "The reduced period" is the period of disqualification imposed under section 34 of this Act (disregarding any extension period added pursuant to section 35A or 35C) as reduced by an order under this section."

(4) In section 34B (as so substituted) (certificates of completion of courses)—

(a) in subsection (1), for "unreduced period" substitute "total unreduced period of disqualification",

(b) in subsection (2)—

(i) for "unreduced period" substitute "total unreduced period of disqualification", and

(ii) for "reduced period", in both places it occurs, substitute "the total reduced period of disqualification", and

(c) after subsection (11) add—

"(12) For the purposes of this section—

"the total reduced period of disqualification" means the period of disqualification imposed under section 34 (including any extension period added to that period pursuant to section 35A or 35C), as reduced by an order under section 34A;

"the total unreduced period of disqualification" means the period of disqualification imposed under section 34 (including any such extension period), disregarding any reduction by such an order."

(5) In section 34D (as inserted by section 15 of the Road Safety Act 2006) (reduced disqualification period: alcohol ignition interlock programme orders)—

(a) in subsection (1)(d), after "section" insert "and disregarding any extension period added pursuant to section 35A or 35C",

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(b) in subsection (3), after "specify" insert "as the period of disqualification under section 34 (disregarding any extension period added pursuant to section 35A or 35C)",

(c) after subsection (5) insert—

"(5A) An appropriate extension period (within the meaning of section 35A or 35C) is not to be added to the further order referred to in subsection (5).",

(d) in subsection (6)—

(i) in paragraph (a), for "unreduced period" substitute "total unreduced period of disqualification", and

(ii) in paragraph (b), for "reduced period" substitute "total reduced period of disqualification", and

(e) after that subsection insert—

"(6A) In subsection (6)—

"the total reduced period of disqualification" means the period of disqualification imposed under section 34 (including any extension period added to that period pursuant to section 35A or 35C), as reduced by an order under this section;

"the total unreduced period of disqualification" means the period of disqualification imposed under section 34 (including any such extension period), disregarding any reduction by such an order."

(6) In section 35 (disqualification for repeated offences)—

(a) in subsection (2), in the words following paragraph (b), after "offender is" insert ", subject to subsection (2A),", and

(b) after subsection (2) insert—

"(2A) A previous disqualification imposed on an offender for a fixed period is not to be taken into account for the purposes of subsection (2) if that period would have been less than 56 days but for an extension period added pursuant to—

(a) section 35A or 35C,

(b) section 248D of the Criminal Procedure (Scotland) Act 1995, or

(c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000."

(7) In section 37 (effect of order of disqualification)—

(a) in subsection (1A)(a), after "56 days" insert "(disregarding any extension period)",

(b) in subsection (1A), after "period of disqualification" insert "(including any extension period)", and

(c) after subsection (1A) insert—

"(1B) In subsection (1A) "extension period" means an extension period added pursuant to—

(a) section 35A or 35C,

(b) section 248D of the Criminal Procedure (Scotland) Act 1995, or

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(c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000."

(8) In section 42 (removal of disqualification)—

(a) in subsection (3)—

(i) for "the date of the order by which the disqualification was imposed" substitute "the relevant date",

(ii) in paragraph (a), after "four years" insert "(disregarding any extension period)", and

(iii) in paragraph (b), for "period of disqualification, if it is" substitute "period of disqualification (disregarding any extension period), if the disqualification is (disregarding any extension period)",

(b) after subsection (3) insert—

"(3A) In subsection (3) "the relevant date" means—

(a) the date of the order imposing the disqualification in question, or

(b) if the period of the disqualification is extended by an extension period, the date in paragraph (a) postponed by a period equal to that extension period.", and

(c) after subsection (3A) (as inserted by paragraph (b)), insert—

"(3B) "Extension period" means an extension period added pursuant to—

(a) section 35A or 35C,

(b) section 248D of the Criminal Procedure (Scotland) Act 1995, or

(c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000."

(9) In section 47 (supplementary provisions as to disqualification and endorsements)—

(a) in subsection (2) (as substituted by paragraph 44(2) of Schedule 3 to the Road Safety Act 2006 (c. 49)), after "or more" insert "(disregarding any extension period)", and

(b) after subsection (2), insert—

"(2ZA) In subsection (2) "extension period" means an extension period added pursuant to—

(a) section 35A or 35C,

(b) section 248D of the Criminal Procedure (Scotland) Act 1995, or

(c) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000."

*Criminal Procedure (Scotland) Act 1995 (c. 46)*

91 In section 248C of the Criminal Procedure (Scotland) Act 1995 (application of sections 248A and 248B), omit subsection (3).

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*Road Traffic Offenders (Northern Ireland) Order 1996 (S.I. 1996/1320 (N.I. 10))*

92 (1) The Road Traffic Offenders (Northern Ireland) Order 1996 is amended as follows.

(2) In Article 35(4) (disqualification for certain offences), in sub-paragraph (b) after "or more" insert "(disregarding any extension period added pursuant to Article 40A or Article 91A of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)))".

(3) In Article 36 (reduced disqualification period for attendance on courses)—

(a) in paragraph (1)(b), after "months" insert "(disregarding any extension period added pursuant to Article 40A)",

(b) in paragraph (2), after "Article 35" insert "(disregarding any extension period added pursuant to Article 40A) ("the unreduced period")",

(c) in paragraph (3), after "Article 35", in both places it occurs, insert "(disregarding any extension period added pursuant to Article 40A)",

(d) after that paragraph insert—

"(3A) "The reduced period" is the period of disqualification imposed under Article 35 of this Order (disregarding any extension period added pursuant to Article 40A) as reduced by an order under this Article.", and

(e) in paragraph (5), at the end insert "but including any extension period added pursuant to Article 40A."

(4) In Article 37 (certificates of completion of courses)—

(a) in paragraph (1), for "period of disqualification imposed under Article 35" substitute "total unreduced period of disqualification",

(b) in paragraph (2)—

(i) for "period of disqualification imposed under Article 35" substitute "total unreduced period of disqualification",

(ii) for "end of the period as it would have been reduced by the order" substitute "total reduced period of disqualification", and

(iii) for "reduced period" substitute "the total reduced period of disqualification", and

(c) after that paragraph insert—

"(2A) For the purposes of this Article—

"the total reduced period of disqualification" means the period of disqualification imposed under Article 35 (including any extension period added to that period pursuant to Article 40A), as reduced by an order under Article 36;

"the total unreduced period of disqualification" means the period of disqualification imposed under Article 35 (including any such extension period), disregarding any reduction by such an order."

(5) In Article 38A (as inserted by Article 60 of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)) (reduced disqualification period: alcohol ignition interlock programme orders)—

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(a) in paragraph (1)(d), after "Article" insert "and disregarding any extension period added pursuant to Article 40A",

(b) in paragraph (3), after "specify" insert "as the period of disqualification under Article 35 (disregarding any extension period added pursuant to Article 40A)",

(c) after paragraph (5) insert—

"(5A) An appropriate extension period (within the meaning of Article 40A) is not to be added to the further order referred to in paragraph (5).",

(d) in paragraph (6)—

(i) in sub-paragraph (a), for "unreduced period" substitute "total unreduced period of disqualification", and

(ii) in sub-paragraph (b), for "reduced period" substitute "total reduced period of disqualification", and

(e) after that paragraph insert—

"(6A) In paragraph (6)—

"total reduced period of disqualification" means the period of disqualification imposed under Article 35 (including any extension period added to that period pursuant to Article 40A), as reduced by an order under this Article;

"total unreduced period of disqualification" means the period of disqualification imposed under Article 35 (including any such extension period), disregarding any reduction by such an order."

(6) In Article 40(3) (disqualification for repeated offences), after "or more" insert "(disregarding any extension period added pursuant to Article 40A or Article 91A of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)))".

(7) In Article 42 (effect of order of disqualification)—

(a) in paragraph (2)(a), after "56 days" insert "(disregarding any extension period)",

(b) in paragraph (2), after "period of disqualification" insert "(including any extension period)", and

(c) after paragraph (2) insert—

"(2A) In paragraph (2) "extension period" means an extension period added pursuant to—

(a) Article 40A,

(b) Article 8A of the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I. 6)), or

(c) Article 91A of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)))."

(8) In Article 47 (removal of disqualification)—

(a) in paragraph (3)—

(i) for "the date of the order by which the disqualification was imposed" substitute "the relevant date",

(ii) in sub-paragraph (a), after "4 years" insert "(disregarding any extension period)", and

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(iii) in sub-paragraph (b), for "period of disqualification, if it is" substitute "period of disqualification (disregarding any extension period), if the disqualification is (disregarding any extension period)",

(b) after paragraph (3) insert—

"(3A) In paragraph (3) "the relevant date" means—

(a) the date of the order imposing the disqualification in question, or

(b) if the period of the disqualification is extended by an extension period, the date in sub-paragraph (a) postponed by a period equal to that extension period.", and

(c) after paragraph (3A) (as inserted by paragraph (b)), insert—

"(3B) "Extension period" means an extension period added pursuant to—

(a) Article 40A,

(b) Article 8A of the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I. 6)), or

(c) Article 91A of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1))."

(9) In Article 52 (supplementary provisions as to disqualification and endorsements)—

(a) in paragraph (2), after "or more" insert "(disregarding any extension period)", and

(b) after paragraph (2), insert—

"(2ZA) In paragraph (2) "extension period" means an extension period added pursuant to—

(a) Article 40A,

(b) Article 8A of the Criminal Justice (Northern Ireland) Order 1980 (S.I. 1980/704 (N.I. 6)), or

(c) Article 91A of the Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1))."

*Crime (International Co-operation) Act 2003 (c. 32)*

93 In section 54 of the Crime (International Co-operation) Act 2003 (application of provisions requiring notice of driving disqualifications), after subsection (3) insert—

"(3A) When determining whether the period of disqualification is not less than the minimum period, any extension period imposed pursuant to any of the following is to be disregarded—

(a) Article 8A of the Criminal Justice (Northern Ireland) Order 1980;

(b) section 35A or 35C of the Road Traffic Offenders Act 1988;

(c) section 248D of the Criminal Procedure (Scotland) Act 1995;

(d) Article 40A of the Road Traffic Offenders (Northern Ireland) Order 1996;

(e) section 147A of the Powers of Criminal Courts (Sentencing) Act 2000;

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(f) Article 91A of the Criminal Justice (Northern Ireland) Order 2008."

## PART 10

## MISCELLANEOUS

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

94 (1) Section 160 of the Powers of Criminal Courts (Sentencing) Act 2000 (rules and orders) is amended as follows.

(2) For subsection (2) substitute—

"(2) A statutory instrument containing any order under section 107(1)(e) shall be subject to annulment in pursuance of a resolution of either House of Parliament."

(3) For subsection (5) substitute—

"(5) An order under section 107(1)(e) may make different provision for different cases or classes of case."

*Criminal Justice Act 2003 (c. 44)*

95 (1) Section 229 of the Criminal Justice Act 2003 (the assessment of dangerousness) is amended as follows.

(2) In subsection (2A), for paragraph (a) substitute—

"(a) a conviction of an offence in any service disciplinary proceedings, and".

(3) After that subsection insert—

"(2B) For the purposes of subsection (2A)(a) "service disciplinary proceedings" means—

(a) any proceedings under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 (whether before a court-martial or any other court or person authorised under any of those Acts to award a punishment in respect of any offence), and

(b) any proceedings before a Standing Civilian Court;

and "conviction" includes the recording of a finding that a charge in respect of the offence has been proved."

*Animal Welfare Act 2006 (c. 45)*

96 Section 8(6) of the Animal Welfare Act 2006 (penalties for offences relating to provision of information society services) ceases to have effect.

*Legal Services Act 2007 (c. 29)*

97 In Schedule 23 to the Legal Services Act 2007 (repeals), in the second column of the entry for the Constitutional Reform Act 2005 (c. 4), omit "1(2),".

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*Criminal Justice and Immigration Act 2008 (c. 4)*

98 (1) The Criminal Justice and Immigration Act 2008 is amended as follows.

(2) In section 11(6) and (7) for "(1A)(b)" substitute "(1A)(c)".

(3) In paragraph 76 of Schedule 4—

(a) in sub-paragraph (3) for "(1A)(a)" substitute "(1A)(b)", and

(b) in sub-paragraph (5)(b) and (6) for "(1A)(b)" (in each place it occurs) substitute "(1A)(c)".

(4) In Schedule 1, in paragraph 30 (date of taking effect of youth rehabilitation orders etc)—

(a) in sub-paragraph (1)—

(i) for "sub-paragraph (2)" substitute "sub-paragraphs (1A) and (2)", and

(ii) omit "the day after",

(b) after that sub-paragraph insert—

"(1A) A court making a youth rehabilitation order may order that it is to take effect instead on a later date.", and

(c) in sub-paragraph (2), for "If" substitute "In particular, if".

## SCHEDULE 22

Section 177

### TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

### PART 1

### CORONERS ETC

*Coroner areas*

1 (1) Where an order is made under section 182(4) bringing into force the repeal of sections 1 to 7 of the 1988 Act (coroners, coroners' districts and deputy coroners), the Lord Chancellor must make an order under paragraph 1 of Schedule 2—

(a) specifying as a coroner area the area of each coroner's district immediately before the repeal, and

(b) coming into force at the same time as the repeal.

The order made by virtue of this sub-paragraph is referred to in this Schedule as the "transitional order".

(2) Paragraph 1(2) of Schedule 2 does not apply to the coroner areas specified in the transitional order.

(3) The transitional order must specify, as the name of each coroner area, the name by which the corresponding coroner's district was known (but ending "coroner area" instead of "coroner's district").

(4) The transitional order must, in relation to each coroner area, contain the provision that may be made under paragraph 2(1)(b) of Schedule 3 (minimum number of assistant coroners).

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*Relevant authorities*

2 (1) For the purposes of this Part, the "relevant authority" for each coroner area specified in the transitional order is the authority that was the relevant council under the 1988 Act for the corresponding coroner's district.

(2) This paragraph does not apply in relation to a coroner area specified in any subsequent order under Schedule 2.

*Senior and assistant coroners*

3 (1) Sub-paragraphs (2) and (3) apply on the coming into force of the repeal by this Act of sections 1 to 7 of the 1988 Act.

(2) A person who—

(a) immediately before the repeal was the coroner for a district, and

(b) would, but for the repeal, continue in office,

is to be treated as having been appointed under paragraph 1(1) of Schedule 3 as the senior coroner for the corresponding coroner area.

(3) A person who—

(a) immediately before the repeal was the deputy coroner or an assistant deputy coroner appointed by the coroner for a district, and

(b) would, but for the repeal, continue in office,

is to be treated as having been appointed under paragraph 2(4) of Schedule 3 as an assistant coroner for the corresponding coroner area.

(4) A person who—

(a) becomes an assistant coroner as the result of sub-paragraph (3), and

(b) would accordingly (but for this sub-paragraph) be entitled to fees under paragraph 16 of Schedule 3,

is instead entitled to a salary under paragraph 15 of that Schedule if immediately before becoming an assistant coroner he or she was a deputy coroner remunerated by a salary.

(5) Paragraphs 15(6) and 17 of Schedule 3 have effect as if a reference to an area coroner included a reference to a person within sub-paragraph (4).

(6) Paragraphs 3 and 4 of Schedule 3 do not apply in relation to a deemed appointment under sub-paragraph (2) or (3) above.

(7) Paragraph 10 of that Schedule does not apply to a person who becomes a senior coroner, area coroner or assistant coroner as the result of sub-paragraph (2) or (3) above.

(8) Sub-paragraphs (9) to (11) apply where an order under paragraph 2 of Schedule 2 has the effect of creating a coroner area ("the new area") that consists of or includes some or all of the area of one or more existing coroner areas ("the old areas").

(9) A person who does not meet the criteria in paragraph 3 of Schedule 3, or who falls within paragraph 4 of that Schedule, may nevertheless become the senior coroner or an area coroner for the new area at its inception if he or she is someone who—

(a) was treated by virtue of sub-paragraph (2) above as having been appointed as the senior coroner for one of the old areas, and

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(b) held office as such immediately before the inception of the new area.

(10) A person who does not meet the criteria in paragraph 3 of Schedule 3, or who falls within paragraph 4 of that Schedule, may nevertheless become an assistant coroner for the new area at its inception if he or she is someone who—

(a) was treated by virtue of sub-paragraph (2) or (3) above as having been appointed as the senior coroner or an assistant coroner for one of the old areas, and

(b) held office as such immediately before the inception of the new area.

(11) Paragraph 10 of that Schedule does not apply to—

(a) a person within paragraphs (a) and (b) of sub-paragraph (9) above who becomes the senior coroner for the new area at its inception;

(b) a person within paragraphs (a) and (b) of sub-paragraph (10) above who becomes an assistant coroner for the new area at its inception.

*Coroner for Treasure*

4 In the case of the first appointment to the office of Coroner for Treasure, paragraph 2(b) of Schedule 4 does not apply to a person holding office as a coroner, deputy coroner or assistant deputy coroner under the 1988 Act on the coming into force of that Schedule.

*Investigation by former coroner*

5 A person who—

(a) was appointed as a coroner under section 1 of the 1988 Act, and

(b) ceased to hold office as such before the coming into force of the repeal by this Act of that section,

is to be treated for the purposes of paragraph 3(3) of Schedule 10 as having held office as a senior coroner.

*Interpretation*

6 In this Part—

"the 1988 Act" means the Coroners Act 1988 (c. 13);

"coroner's district" or "district" means a coroner's district for the purposes of the 1988 Act;

"corresponding coroner area", in relation to a district, means the coroner area that (by virtue of the transitional order) has the same area as that district;

"corresponding coroner's district", in relation to a coroner area, means the coroner's district whose area becomes (by virtue of the transitional order) the area of that coroner area;

"transitional order" means the order made by virtue of paragraph 1(1).

## PART 2

## CRIMINAL OFFENCES

*Commencement of Chapter 1 of Part 2*

7 (1) No provision of Chapter 1 of Part 2 affects the operation of—

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(a) any rule of the common law, or

(b) any provision of an Act or of subordinate legislation,

in relation to offences committed wholly or partly before the commencement of the provision in question.

(2) For the purposes of this paragraph an offence is partly committed before a particular time if—

(a) a relevant event occurs before that time, and

(b) another relevant event occurs at or after that time.

(3) "Relevant event" in relation to an offence means any act, omission or other event (including any consequence of an act) proof of which is required for conviction of the offence.

*Suicide*

8 The reference to "aiding, abetting, counselling or procuring suicide" in the following enactments is to be read as including a reference to "an offence under section 2(1) of the Suicide Act 1961 (encouraging or assisting suicide) in connection with the death of a person"—

(a) section 70(4) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18);

(b) section 70(4) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19);

(c) section 48(2) of the Naval Discipline Act 1957 (c. 53).

9 Until such time as the following provisions of the Coroners Act 1988 (c. 13) are repealed by this Act, they have effect with the following amendments—

(a) in section 16(1)(a)(iii) for "consisting of aiding, abetting, counselling or procuring the suicide of the deceased" substitute "(encouraging or assisting suicide) in connection with the death of the deceased",

(b) in section 17(1)(c) for "consisting of aiding, abetting, counselling or procuring the suicide of another" substitute "(encouraging or assisting suicide) in connection with a death", and

(c) in section 17(2)(c) for "consisting of aiding, abetting, counselling or procuring the suicide of another" substitute "(encouraging or assisting suicide) in connection with a death".

10 (1) In this paragraph—

"old offence" means an offence under section 2(1) of the Suicide Act 1961 as that section had effect before the section 59 commencement date, or an attempt to commit such an offence;

"new offence" means an offence under section 2(1) of that Act as that Act is amended by section 59 of this Act.

(2) Sub-paragraph (3) applies where—

(a) a person ("the defendant") is charged in respect of the same conduct with both an old offence and a new offence,

(b) the only thing preventing the defendant from being found guilty of the new offence is the fact that it has not been proved beyond reasonable doubt that the offence was committed wholly after the section 59 commencement date, and

(c) the only thing preventing the defendant from being found guilty of the old offence is the fact that it has not been proved beyond reasonable doubt that the offence was committed wholly or partly before the section 59 commencement date.

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(3) For the purpose of determining the guilt of the defendant it is to be conclusively presumed that the offence was committed wholly or partly before the section 59 commencement date.

(4) For this purpose "the section 59 commencement date" means the day appointed under section 182 for the coming into force of section 59.

11 (1) In this paragraph—

"old offence" means an offence under section 13(1) of the Criminal Justice Act (Northern Ireland) 1966 (c. 20) as that section had effect before the section 60 commencement date, or an attempt to commit such an offence;

"new offence" means an offence under section 13(1) of that Act as that Act is amended by section 60 of this Act.

(2) Sub-paragraph (3) applies where—

(a) a person ("the defendant") is charged in respect of the same conduct with both an old offence and a new offence,

(b) the only thing preventing the defendant from being found guilty of the new offence is the fact that it has not been proved beyond reasonable doubt that the offence was committed wholly after the section 60 commencement date, and

(c) the only thing preventing the defendant from being found guilty of the old offence is the fact that it has not been proved beyond reasonable doubt that the offence was committed wholly or partly before the section 60 commencement date.

(3) For the purpose of determining the guilt of the defendant it is to be conclusively presumed that the offence was committed wholly or partly before the section 60 commencement date.

(4) For this purpose "the section 60 commencement date" means the day appointed under section 182 for the coming into force of section 60.

*Prohibited images of children*

12 (1) In section 66(3)(a) in its application in relation to England and Wales the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44).

(2) The Schedules mentioned in subsections (1)(b) and (2)(b) of section 67, as applied by virtue of that section, have effect in relation to property regardless of when it was lawfully seized.

*Slavery, servitude and forced or compulsory labour*

13 In the definition of "the relevant period" in section 71(4), as it extends to England and Wales, the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44).

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## PART 3

## CRIMINAL EVIDENCE, INVESTIGATIONS AND PROCEDURE

*Anonymity in investigations*

14 In section 76(12)(a) the reference to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44).

15 (1) Notwithstanding subsection (4)(a) of section 84, references in that section to a service offence are to be treated as including a reference to—

(a) an offence under Part 2 of the Army Act 1955 (3 & 4 Eliz. 2 c. 18), Part 2 of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or Part 1 of the Naval Discipline Act 1957 (c. 53),

(b) an offence under paragraph 4(6) of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957,

(c) an offence under section 47K of the Naval Discipline Act 1957,

(d) an offence under section 18 or 20 of the Armed Forces Act 1991 (c. 62) committed before the commencement of section 50 of the Armed Forces Act 2006 (c. 52) ("the 2006 Act"),

(e) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996 (c. 14) committed before the commencement of section 50 of the 2006 Act, and

(f) an offence under paragraph 5(1) of Schedule 1 to the Reserve Forces Act 1996 committed before the commencement of section 50 of the 2006 Act which the Court Martial established by the 2006 Act has jurisdiction to try.

(2) Notwithstanding subsection (4)(b) of section 84, references in that section to a charge are to be treated as including a reference to a charge that is not brought under Part 5 of the Armed Forces Act 2006 but is to be regarded for the purposes of Part 5 as allocated for Court Martial trial, summary hearing or (as the case may be) Service Civilian Court trial.

*Anonymity of witnesses*

16 (1) The repeal of sections 1 to 9 of the Criminal Evidence (Witness Anonymity) Act 2008 (c. 15) ("the 2008 Act") by section 96 does not affect the continuation in effect of a witness anonymity order made under the 2008 Act before 1 January 2010.

(2) An application under section 3 of the 2008 Act that falls to be heard on or after 1 January 2010 is to be treated as an application under section 87 of this Act and the conditions in section 88 must be satisfied in relation to it.

(3) The following provisions of this paragraph apply in relation to witness anonymity orders made under the 2008 Act before 1 January 2010.

(4) Sections 91 to 93 of this Act have effect on or after 1 January 2010 for the purpose of discharging or varying a witness anonymity order made under the 2008 Act.

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(5) Accordingly, an application under section 6 of the 2008 Act that falls to be heard on or after 1 January 2010 is to be treated as an application under section 91 of this Act or (as the case may be) section 92.

(6) Where section 91 or 92 of this Act has effect for the purposes of discharging or varying a witness anonymity order made under the 2008 Act, the definition in that section of "the relevant time" is to be treated as including, in a case where a previous application has been made under section 6 of the 2008 Act, the time when the application under section 6 (or the last application under section 6) was made.

(7) Where section 91, 92 or 93 of this Act has effect in relation to a witness anonymity order made under the 2008 Act, the reference in that section to sections 88 and 89 of this Act has effect as a reference to sections 4 and 5 of the 2008 Act.

(8) Sections 90 and 94(3) of this Act have effect on or after 1 January 2010 in relation to a witness to whom a witness anonymity order under the 2008 Act applies as they have effect in relation to a witness to whom a witness anonymity order under Chapter 2 of Part 3 of this Act applies.

17 (1) Where an appeal court's consideration of a relevant appeal commences before 1 January 2010, the repeal by section 96 of this Act of sections 1 to 9 of the 2008 Act is to be disregarded.

(2) Where an appeal court's consideration of a relevant appeal commences on or after 1 January 2010, the reference in section 11(2)(b)(i) to the 2008 Act is to be treated as a reference to Chapter 2 of Part 3 of this Act.

(3) In this paragraph—

"appeal court" has the meaning given by section 11 of the 2008 Act;

"relevant appeal" means an appeal against conviction in relation to which that section applies.

18 (1) Section 92 of this Act has effect with the modifications made by this paragraph for the purposes of discharging or varying—

(a) a witness anonymity order made under the Criminal Evidence (Witness Anonymity) Act 2008 (c. 15) by a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53), or

(b) a witness anonymity order made under Chapter 2 of Part 3 of this Act by a court-martial constituted under any of those Acts.

(2) The references in section 92(2) to (5) to the court that made the order are to be treated—

(a) until the coming into force of section 154(1) of the Armed Forces Act 2006 (c. 52), as references to a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or, as the case may be, the Naval Discipline Act 1957, and

(b) after the coming into force of section 154(1) of the Armed Forces Act 2006, as references to the Court Martial established by that Act.

19 (1) Section 92 has effect with the modifications made by this paragraph for the purposes of discharging or varying a witness anonymity order made under the Criminal Evidence (Witness Anonymity) Act 2008 by—

(a) a Summary Appeal Court established by the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957, or

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(b) a Standing Civilian Court established under the Armed Forces Act 1976 (c. 52).

(2) The references in section 92(2) to (5) to the court that made the order are to be treated—

(a) where the order was made by a Summary Appeal Court, as references to the Summary Appeal Court established by the Armed Forces Act 2006 (c. 52), and

(b) where the order was made by a Standing Civilian Court, as references to the Service Civilian Court established by the Armed Forces Act 2006.

20 (1) Notwithstanding section 97, references in Chapter 2 of Part 3 of this Act to a service court are to be treated as including a reference to—

(a) a court-martial constituted under the Army Act 1955 (3 & 4 Eliz. 2 c. 18), the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) or the Naval Discipline Act 1957 (c. 53);

(b) the Summary Appeal Court established by any of those Acts;

(c) a Standing Civilian Court established under the Armed Forces Act 1976;

(d) the Courts-Martial Appeal Court.

(2) Notwithstanding subsection (6) of section 93 of this Act, the references in section 93 to an appeal court are to be treated as including a reference to the Courts-Martial Appeal Court.

(3) Each of the provisions mentioned in sub-paragraph (4) has effect with the modification set out in that sub-paragraph in a case where—

(a) a witness anonymity order is made under Chapter 2 of Part 3 of this Act by a relevant service court to which that provision applies, and

(b) a person does anything in relation to the order which would, if the court had been a court of law having power to commit for contempt, have been contempt of that court.

(4) In such a case—

(a) section 101(1) of the Army Act 1955 has effect with the omission of the words "not subject to military law",

(b) section 101(1) of the Air Force Act 1955 has effect with the omission of the words "not subject to air-force law", and

(c) section 65(1) of the Naval Discipline Act 1957 has effect with the omission of the words "not subject to this Act".

(5) In sub-paragraph (3) "relevant service court" means—

(a) a court-martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957;

(b) the Summary Appeal Court established by any of those Acts.

21 Notwithstanding section 97, references in Chapter 2 of Part 3 of this Act to a service offence are to be treated as including a reference to—

(a) an offence under Part 2 of the Army Act 1955, Part 2 of the Air Force Act 1955 or Part 1 of the Naval Discipline Act 1957,

(b) an offence under paragraph 4(6) of Schedule 5A to the Army Act 1955 or the Air Force Act 1955 or of Schedule 4A to the Naval Discipline Act 1957,

(c) an offence under section 47K of the Naval Discipline Act 1957,

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(d) an offence under section 18 or 20 of the Armed Forces Act 1991 (c. 62) committed before the commencement of section 50 of the Armed Forces Act 2006 (c. 52) ("the 2006 Act"),

(e) an offence under any of sections 95 to 97 of the Reserve Forces Act 1996 (c. 14) committed before the commencement of section 50 of the 2006 Act, and

(f) an offence under paragraph 5(1) of Schedule 1 to the Reserve Forces Act 1996 committed before the commencement of section 50 of the 2006 Act which the Court Martial established by the 2006 Act has jurisdiction to try.

22 If paragraph 70 of Schedule 21 to this Act comes into force before the commencement of paragraph 53 of Schedule 8 to the Armed Forces Act 2006, the reference in paragraph 70 to the Court Martial Appeals Act 1968 (c. 20) is to be read as a reference to the Courts-Martial (Appeals) Act 1968 (c. 20).

*Vulnerable and intimidated witnesses*

23 (1) The amendments made by sections 98 to 103 apply to proceedings instituted before the commencement of the amendment in question.

(2) But the amendments made by sections 98 to 103 do not affect the continued operation of a special measures direction given before the commencement of the amendment in question.

(3) Sub-paragraph (2) does not prevent an amendment made by sections 98 to 103 from applying after its commencement to—

(a) the variation under section 20 of the Youth Justice and Criminal Evidence Act 1999 (c. 23) of a special measures direction that was given in relation to a witness before the commencement of the amendment, and

(b) the giving of a new special measures direction in relation to a witness (including the giving of a new direction in a case where a special measures direction given in relation to the witness in question has been discharged under section 20 of the Youth Justice and Criminal Evidence Act 1999 after the commencement of the amendment).

(4) In this paragraph, "special measures direction" means a direction under section 19 of the Youth Justice and Criminal Evidence Act 1999.

24 The references in paragraphs 30 and 31 of Schedule 1A to the Youth Justice and Criminal Evidence Act 1999 (inserted by Schedule 14 to this Act) to an offence under Part 2 of the Serious Crime Act 2007 (c. 27) include a reference to the common law offence of incitement.

*Evidence of previous complaint*

25 Section 112 does not have effect in relation to trials or hearings begun before the commencement of that section.

*Indictment of offenders*

26 (1) For the purposes of any proceedings before a court (including proceedings on an appeal to the court) after the passing of this Act, the amendments in subsections (1) and (2) of section 116 are to be deemed always to have had effect.

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(2) For the purposes of sub-paragraph (1), it is immaterial whether the proceedings were begun before or after the passing of this Act.

## PART 4

## SENTENCING

*Sentencing Council for England and Wales*

27 (1) Nothing in section 125 or 126 has effect in relation to the sentencing of persons for offences committed before the commencement of the section in question.

(2) 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 sub-paragraph (1) to have been committed on the last of those days.

28 (1) Without prejudice to the generality of section 177, an order under subsection (3) of that section made by the Lord Chancellor may provide—

(a) for the Sentencing Council for England and Wales to exercise any function conferred on the Sentencing Guidelines Council by any provision of Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) pending the repeal of the provision in question by this Act;

(b) for existing guidelines which have effect immediately before the coming into force of section 125(1) to be treated as guidelines issued by the Sentencing Council for England and Wales under this Act;

(c) that, in relation to the sentencing of persons for offences committed before the coming into force of section 125(1), any provision of Chapter 1 of Part 12 of the Criminal Justice Act 2003 repealed by this Act continues to have effect with such modifications as are specified in the order.

(2) "Existing guidelines" means—

(a) sentencing or allocation guidelines issued as definitive guidelines under section 170 of the Criminal Justice Act 2003;

(b) guidelines with respect to sentencing which were included in any judgment of the Court of Appeal given before 27 February 2004 and have not been superseded by sentencing guidelines so issued.

*Driving disqualification*

29 (1) No provision of Schedule 16 applies in relation to, or has effect by reference to, offences committed wholly or partly before the commencement of the provision in question.

(2) An offence is partly committed before the commencement of a provision if—

(a) a relevant event occurs before commencement, and

(b) another relevant event occurs on or after commencement.

(3) "Relevant event" in relation to an offence means any act or other event (including any consequence of an act) proof of which is required for conviction of the offence.

30 (1) During the transitory period, the Road Traffic Offenders Act 1988 (c. 53) has effect with the amendments made by paragraphs 31 to 33.

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(2) The transitory period is—

(a) in the case of paragraph 31 or 32, the period beginning with the coming into force of the paragraph and ending with the coming into force of section 35 of the Road Safety Act 2006 (c. 49) (which substitutes sections 34A to 34C of the Road Traffic Offenders Act 1988 (c. 53));

(b) in the case of paragraph 33, the period beginning with the coming into force of the paragraph and ending with the coming into force of paragraph 44(2) of Schedule 3 to the Road Safety Act 2006.

31 In section 34A (reduced disqualification period for attendance on courses)—

(a) in subsection (1)(b), after "months" insert "(disregarding any extension period added pursuant to section 35A or 35C)",

(b) in subsection (2), after "section 34" insert "(disregarding any extension period added pursuant to section 35A or 35C) ("the unreduced period")",

(c) in subsection (3), after "section 34", in both places it occurs, insert "(disregarding any extension period added pursuant to section 35A or 35C)",

(d) after that subsection insert—

"(3A) "The reduced period" is the period of disqualification imposed under section 34 of this Act (disregarding any extension period added pursuant to section 35A or 35C) as reduced by an order under this section.", and

(e) in subsection (5), at the end insert "but including any extension period added pursuant to section 35A or 35C."

32 In section 34B (certificates of completion of courses)—

(a) in subsection (1), for "period of disqualification imposed under section 34" substitute "total unreduced period of disqualification",

(b) in subsection (2)—

(i) for "period of disqualification imposed under section 34" substitute "total unreduced period of disqualification",

(ii) for "end of the period as it would have been reduced by the order" substitute "total reduced period of disqualification", and

(iii) for "reduced period" substitute "total reduced period of disqualification", and

(c) after that subsection insert—

"(2A) For the purposes of this section—

"the total reduced period of disqualification" means the period of disqualification imposed under section 34 (including any extension period added to that period pursuant to section 35A or 35C), as reduced by an order under section 34A;

"the total unreduced period of disqualification" means the period of disqualification imposed under section 34 (including any such extension period), disregarding any reduction by such an order."

33 In section 47(2) (supplementary provisions as to disqualification and endorsement) after "or more" insert "(disregarding any extension period)".

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34 (1) Sub-paragraph (2) applies where an order ("the amending order") under section 49(1)(b) of the Criminal Justice Act 1991 (c. 53) (alteration by order of relevant proportions of sentences) provides that the proportion of a prisoner's sentence is to be construed as a reference to another proportion ("the new proportion").

(2) The Secretary of State may by order provide that the proportion specified in section 35A(4)(h) of the Road Traffic Offenders Act 1988 (c. 53) (as inserted by Schedule 16) and section 147A(4)(h) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (as inserted by that Schedule) is to be read, in the case of a custodial sentence to which the amending order applies, as a reference to the new proportion.

35 (1) Sub-paragraph (2) applies where an order ("the amending order") under section 27(2)(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (c. 9) (alteration by order of relevant proportions of sentences) provides that the proportion of a prisoner's sentence is to be construed as a reference to another proportion ("the new proportion").

(2) The Secretary of State may by order provide that the proportion specified in section 35C(4)(d) of the Road Traffic Offenders Act 1988 (as inserted by Schedule 16) and section 248D(4)(d) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (as inserted by that Schedule) is to be read, in the case of a sentence of imprisonment to which the amending order applies, as a reference to the new proportion.

36 Until the coming into force of Part 2 of the Custodial Sentences and Weapons (Scotland) Act 2007 (asp 17), paragraphs 2(3) and 3 of Schedule 16 have effect subject to such amendments as the Secretary of State may by order prescribe.

*Dangerous offenders*

37 (1) The amendments made by section 138 have effect in relation only to offences committed on or after the day that section comes into force.

(2) 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 sub-paragraph (1) to have been committed on the last of those days.

38 (1) The amendments made by section 139 have effect in relation only to offences committed on or after the day that section comes into force.

(2) 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 sub-paragraph (1) to have been committed on the last of those days.

*Confiscation orders*

39 The amendments made by sections 140 and 141 (appeals against certain confiscation orders) apply to appeals which are pending when this Act is passed (as well as appeals made after that time).

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## PART 5

## MISCELLANEOUS

*Treatment of convictions in other member States etc*

40 No provision of paragraph 1, 2 or 13 to 18 of Schedule 17 has effect in relation to trials or hearings begun before the commencement of that provision.

41 (1) No provision of paragraph 6, 8, 10 or 12 of that Schedule has effect in relation to any sentence passed in relation to a conviction for an offence committed before the coming into force of that provision.

(2) 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 sub-paragraph (1) to have been committed on the last of those days.

42 (1) No provision of paragraph 7, 9 or 11 of that Schedule has effect in relation to any sentence passed in relation to a conviction for a service offence committed before the coming into force of that provision.

(2) Where a service 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 sub-paragraph (1) to have been committed on the last of those days.

(3) For the purposes of this paragraph—

(a) "service offence" has the meaning given in section 50(2) of the Armed Forces Act 2006 (c. 52), and

(b) subsections (1) to (3) of section 376 of that Act apply as they apply in relation to that Act.

*Transfer of functions to Parole Board*

43 (1) Except as provided by this paragraph—

(a) section 37(5A) of the 1991 Act (as inserted by section 145(3)(b) of this Act) applies to prisoners released on licence under section 35(1) of that Act before (as well as after) commencement, and

(b) the repeal by this Act of section 37(5) and (6) of that Act applies to such prisoners and to prisoners released on licence under section 33(2), (3) or (3A) of that Act before (as well as after) commencement.

(2) The repeal by this Act of section 37(5) of the 1991 Act does not affect its continued application to a prisoner where—

(a) the prisoner is released on licence after commencement under section 33(2), (3) or (3A) or 35(1) of that Act, but

(b) the Parole Board has before commencement exercised the function under section 37(5) of that Act of making recommendations as to any condition to be included or inserted as a condition in the prisoner's licence (including by making a recommendation that no condition should be included in that licence).

(3) The repeal by this Act of section 37(5) of the 1991 Act does not affect its continued application to a prisoner where, before commencement—

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(a) the prisoner has been released on licence under section 33(2), (3) or (3A) or 35(1) of that Act, and

(b) the Parole Board has exercised the function under section 37(5) of that Act of—

(i) making recommendations as to the inclusion or insertion of a condition in the prisoner's licence (including by making a recommendation that no condition should be included in that licence), or

(ii) making recommendations as to the variation or cancellation of any such condition (including a recommendation that the condition should not be varied or cancelled).

(4) Nothing in this paragraph applies to a person whose licence has, before commencement, ceased to be in force by virtue of section 37(1) of the 1991 Act.

(5) In this paragraph—

(a) "commencement" means the commencement of section 145(3);

(b) "the 1991 Act" means the Criminal Justice Act 1991 (c. 53) (as it continues to apply to persons sentenced for offences committed before 4 April 2005);

(c) the reference in sub-paragraph (1)(a) to section 35(1) of the 1991 Act includes a reference to that provision as modified (for certain long-term prisoners) by the Parole Board (Transfer of Functions) Order 1998 (S.I. 1998/3218);

(d) the references in sub-paragraphs (2)(a) and (3)(a) to section 35(1) are to that provision as so modified;

(e) the references in sub-paragraphs (2) and (3) to section 37(5) of the 1991 Act are to that provision as so modified.

*Knives in court buildings etc*

44 (1) No provision of section 146 has effect in relation to property which was surrendered or seized before the coming into force of that provision.

(2) No provision of section 147 has effect in relation to property which was surrendered or seized before the coming into force of that provision.

*Criminal memoirs etc*

45 Until both sections 22(1) and 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26) come into force the reference in section 161(3)(b) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.

*Assessment notices*

46 Until paragraph 8 of Schedule 4 to the Courts Act 2003 (c. 39) comes into force paragraph 1(1A) of Schedule 9 to the Data Protection Act 1998 (c. 29) (as inserted by paragraph 14(2) of Schedule 20 to this Act) has effect as if the words "or a District Judge (Magistrates' Courts)" were omitted.

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*Assessment of dangerousness and service offences*

47 Nothing in paragraph 95 of Schedule 21 has effect in relation to any person sentenced under section 225, 226, 227 or 228 of the Criminal Justice Act 2003 (c. 44) before the passing of this Act.

## SCHEDULE 23

Section 178

### REPEALS

### PART 1

### CORONERS ETC

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Births and Deaths Registration Act 1953 (c. 20) | In section 20, from ", at any time" to "of any person,".<br>Section 21.<br>Section 23A(6).<br>In section 29(4), paragraph (b) and the "or" preceding it.<br>Section 34(4). |
| Coroners Act (Northern Ireland) 1959 (c. 15) | Section 19.<br>Section 20. |
| Juries Act 1974 (c. 23) | Section 22(1). |
| Magistrates' Courts Act 1980 (c. 43) | In Schedule 6A, the entry relating to the Coroners Act 1988. |
| Coroners Act 1988 (c. 13) | The whole Act. |
| Caldey Island Act 1990 (c. 44) | Section 3.<br>In section 4(1), paragraph (c). |
| Local Government (Wales) Act 1994 (c. 19) | In Schedule 17, paragraph 23. |
| Treasure Act 1996 (c. 24) | Section 13. |
| Access to Justice Act 1999 (c. 22) | Section 71.<br>Section 104(1).<br>In Schedule 2, in paragraph 2, the "and" following paragraph (3). |
| Regional Assemblies (Preparations) Act 2003 (c. 10) | In the Schedule, paragraph 2. |
| Courts Act 2003 (c. 39) | In Schedule 8, paragraph 302. |
| Criminal Justice Act 2003 (c. 44) | In Schedule 3, paragraph 59. |
| Domestic Violence, Crime and Victims Act 2004 (c. 28) | In Schedule 10, paragraphs 26 and 27. |
| Human Tissue Act 2004 (c. 30) | In Schedule 6, paragraph 3. |

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| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Constitutional Reform Act 2005 (c. 4) | In Schedule 1, paragraphs 19 to 21.<br>In Schedule 4, paragraphs 193 to 195.<br>In Schedule 7, in paragraph 4, the entry in Part A relating to the Coroners Act 1988. |
| Road Safety Act 2006 (c. 49) | Section 20(5).<br>Section 21(4). |
| Armed Forces Act 2006 (c. 52) | In Schedule 16, paragraphs 110 and 111. |
| Corporate Manslaughter and Corporate Homicide Act 2007 (c. 19) | In Schedule 2, paragraph 1. |
| Local Government and Public Involvement in Health Act 2007 (c. 28) | In Schedule 1, paragraph 15. |

PART 2

CRIMINAL OFFENCES

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Libel Act 1792 (c. 60) | The whole Act. |
| Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8) | In section 1, from ", or any seditious libel" to "means". |
| Libel Act 1843 (c. 96) | Sections 4 to 6. |
| Newspaper Libel and Registration Act 1881 (c. 60) | In section 4, from "as to the publication" to "malice, and". |
| Law of Libel Amendment Act 1888 (c. 64) | Sections 3 and 4. |
| Defamation Act 1952 (c. 66) | Section 17(2). |
| Homicide Act 1957 (c. 11) | Section 3. |
| Suicide Act 1961 (c. 60) | In Schedule 1—<br>(a) in Part 1, the entry relating to the Children and Young Persons Act 1933, and<br>(b) in Part 2, the entry relating to section 7 of the Visiting Forces Act 1952. |
| Criminal Justice Act (Northern Ireland) 1966 (c. 20) | Section 7. |
| Theatres Act 1968 (c. 54) | In section 4(1), from "(including" to "matter)".<br>In section 7(2), from "or an offence" to "course of a performance of a play".<br>In section 8, from "or an offence" to "play". |
| Broadcasting Act 1990 (c. 42) | In section 166, from "(including" to "matter)". |
| Criminal Procedure and Investigations Act 1996 (c. 25) | Section 61(4) and (5). |

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| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Defamation Act 1996 (c. 31) | Section 20(2). |
| Legal Deposit Libraries Act 2003 (c. 28) | In section 10—<br>(a) in subsection (1), ", or subject to any criminal liability,",<br>(b) in subsection (2)(a), "in the case of liability in damages",<br>(c) in subsection (3), ", or subject to any criminal liability,",<br>(d) in subsection (4)(a), "in the case of liability in damages",<br>(e) in subsection 6(a), ", or subject to any criminal liability,", and<br>(f) in subsection (8), "and criminal liability". |
| Criminal Justice Act 2003 (c. 44) | In Schedule 21, in paragraph 11(d), "in a way not amounting to a defence of provocation". |

*Notes*

1 The repeal of the Libel Act 1792 (c. 60), the repeal in section 1 of the Criminal Libel Act 1819 (60 Geo. 3 & 1 Geo. 4 c. 8), the repeal of section 17(2) of the Defamation Act 1952 (c. 66), the repeal of section 20(2) of the Defamation Act 1996 and the repeals in section 10 of the Legal Deposit Libraries Act 2003 do not extend to Scotland.

2 The repeal of section 4 of the Law of Libel Amendment Act 1888 (c. 64) and the repeal of section 20(2) of the Defamation Act 1996 do not extend to Northern Ireland.

## PART 3

## CRIMINAL EVIDENCE AND PROCEDURE

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36) | In section 2—<br>(a) in subsection (2), from ", and where" to "the bill,",<br>(b) in subsection (2), from "Provided" to the end, and<br>(c) in subsection (3), "has been signed by the proper officer of the court".<br>In Schedule 2, in paragraph 1, "and signing". |
| Supreme Court Act 1981 (c. 54) | In section 82(1), "the signing of indictments,". |
| Police and Criminal Evidence Act 1984 (c. 60) | Section 46ZA(3)(a) and (c).<br>In section 46A(1ZA)(b), from ", without informing" to the end. |
| Crime and Disorder Act 1998 (c. 37) | Section 1I(3)(c). |

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| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Crime and Disorder Act 1998 (c. 37)—*cont.* | In section 57C—<br>(a) subsection (7),<br>(b) in subsection (8), "before or", and<br>(c) in subsection (9), paragraph (a) and the "and" following it.<br>In section 57D—<br>(a) subsection (2)(b), and<br>(b) in subsection (3), paragraph (a) and the "and" following it.<br>In section 57E—<br>(a) in subsection (5), paragraph (a) and the "and" following it, and<br>(b) in subsection (7), paragraph (a) and the "and" following it. |
| Youth Justice and Criminal Evidence Act 1999 (c. 23) | In section 21—<br>(a) subsection (1)(b),<br>(b) in subsection (4), the "and" following paragraph (b), and<br>(c) subsections (5) to (7).<br>Section 22(1)(b).<br>In section 27—<br>(a) in subsection (7)(a), from "if there" to "relevant time,",<br>(b) subsection (8), and<br>(c) in subsection (9), from "and, if" to the end. |
| Criminal Justice Act 2003 (c. 44) | Section 120(7)(d).<br>Section 138(1). |
| Criminal Evidence (Witness Anonymity) Act 2008 (c. 15) | Sections 1 to 9.<br>Section 10(1) to (7).<br>Section 14. |

## PART 4

## SENTENCING

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Parliamentary Commissioner Act 1967 (c. 13) | In Schedule 2, the entries for the Sentencing Advisory Panel and the Sentencing Guidelines Council. |
| Race Relations Act 1976 (c. 74) | In Part 2 of Schedule 1A, the entry for the Sentencing Advisory Panel. |
| Criminal Procedure (Scotland) Act 1995 (c. 46) | Section 248C(3). |
| Freedom of Information Act 2000 (c. 36) | In Part 6 of Schedule 1, the entries for the Sentencing Advisory Panel and the Sentencing Guidelines Council. |
| Criminal Justice Act 2003 | Sections 167 to 173. |

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| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Criminal Justice Act 2003 (c. 44)—*cont.* | In section 176, the definitions of—<br>(a) "allocation guidelines",<br>(b) "the Council",<br>(c) "the Panel", and<br>(d) "sentencing guidelines".<br>In Schedule 38, paragraphs 2 and 3 and the italic heading before paragraph 2. |
| Constitutional Reform Act 2005 (c. 4) | In Schedule 4, paragraphs 357 and 358. |
| Criminal Justice and Immigration Act 2008 (c. 4) | In Schedule 4, paragraph 60(2) and (4).<br>In Part 1 of Schedule 28, the entries relating to section 160(2) and (5) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). |

PART 5

MISCELLANEOUS CRIMINAL JUSTICE PROVISIONS

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Superannuation Act 1972 (c. 11) | In Schedule 1—<br>(a) in the list headed "Other Bodies", the entry for employment as a member of the staff of the Commissioner for Victims and Witnesses, and<br>(b) in the list headed "Offices", the entries for the Commissioner for Victims and Witnesses and the Deputy Commissioner for Victims and Witnesses. |
| House of Commons Disqualification Act 1975 (c. 24) | In Part 3 of Schedule 1, the entries for the Commissioner for Victims and Witnesses and the Deputy Commissioner for Victims and Witnesses. |
| Northern Ireland Assembly Disqualification Act 1975 (c. 25) | In Part 3 of Schedule 1, the entries for the Commissioner for Victims and Witnesses and the Deputy Commissioner for Victims and Witnesses. |
| Magistrates' Courts Act 1980 (c. 43) | In section 19(5), the "or" following paragraph (a). |
| Criminal Justice Act 1991 (c. 53) | Section 37(5) and (6).<br>Section 50. |
| Criminal Justice and Public Order Act 1994 (c. 33) | In section 25(5), the "and" following the definition of "conviction". |
| Crime and Disorder Act 1998 (c. 37) | In Schedule 3, in paragraph 9(5), the "or" following paragraph (a). |
| Powers of Criminal Courts (Sentencing) Act 2000 | In section 113(3), the "and" following the definition of "class A drug trafficking offence". |

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| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Criminal Justice Act 2003 (c. 44) | In section 143(4), the "or" following paragraph (a). |
| Domestic Violence, Crime and Victims Act 2004 (c. 28) | Section 48(3) to (5).<br>Section 49(2)(d) and (3)(b).<br>Section 50(2).<br>Schedule 8.<br>In Schedule 9, paragraph 9. |
| Animal Welfare Act 2006 (c. 45) | Section 8(6). |
| Armed Forces Act 2006 (c. 52) | In section 238(3), the "or" following paragraph (a).<br>In section 270B—<br>(a) in subsection (6), the "or" following paragraph (a), and<br>(b) in subsection (10), the "and" following paragraph (a). |
| Criminal Justice and Immigration Act 2008 (c.4) | Section 27. |

PART 6

LEGAL AID

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Access to Justice Act 1999 (c. 22) | Section 2(2).<br>In section 17(3)(g), from "(including" to the end.<br>In section 17A(2)(e), from "including" to the end.<br>In Schedule 2, paragraph 1(h).<br>In Schedule 3, paragraph 8(5). |

PART 7

CRIMINAL MEMOIRS ETC

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Serious Organised Crime and Police Act 2005 (c. 15) | In section 3(1), the "or" following paragraph (a). |

PART 8

DATA PROTECTION ACT 1998

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Data Protection Act 1998 (c. 29) | In section 16(1), the "and" following paragraph (ff).<br>In section 20(2) "that at any time".<br>In Schedule 9, the "or" following paragraph 12(a). |

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## PART 9

## MISCELLANEOUS

| *Short title and chapter* | *Extent of repeal* |
|---|---|
| Legal Services Act 2007 (c. 29) | In Schedule 23, in the entry for the Constitutional Reform Act 2005 (c. 4), in the second column "1(2),". |
| Criminal Justice and Immigration Act 2008 (c. 4) | In Schedule 1, in paragraph 30(1), "the day after". |

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