

Management of Offenders and Sentencing Bill

[HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Home Office, are published separately as HL Bill 16 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

The Baroness Scotland of Asthal has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Management of Offenders and Sentencing Bill [HL] are compatible with the Convention rights.

Management of Offenders and Sentencing Bill

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Make further provision with respect to the management of offenders, the functions of local probation boards and prisons; to provide for the appointment and functions of Her Majesty’s Commissioner for Offender Management and Prisons; to make provision about fines and other matters relating to sentencing; to make provision for the electronic monitoring of persons on bail; and for connected purposes.

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

THE NATIONAL OFFENDER MANAGEMENT SERVICE

1 Aims of the Service

- (1) This section applies to—
- (a) the functions of the Secretary of State relating to prisons or persons detained in prison; 5
 - (b) the functions of prison officers;
 - (c) the functions of the Secretary of State under Chapter 1 of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43), so far as they may be exercised for the purposes mentioned in section 1 of that Act; and 10
 - (d) the functions of local probation boards and of officers of local probation boards, so far as they may be exercised for those purposes.
- (2) In exercising those functions the person concerned shall have regard to the following aims—
- (a) the protection of the public; 15
 - (b) the reduction of re-offending;
 - (c) the proper punishment of offenders;
 - (d) ensuring offenders’ awareness of the effects of crime on victims and the public;

- (e) the rehabilitation of offenders.
- (3) Nothing in subsection (2) affects the obligation of the person concerned to discharge any duties, or to comply with any requirements, imposed on him apart from this section.
- (4) In subsection (1) – 5
- (a) the reference in paragraph (a) to the Secretary of State is a reference to the Secretary of State having responsibility for prisons;
- (b) “prison” includes a young offender institution; and
- (c) “functions” means statutory functions, that is to say, functions conferred by or under any Act (including, in the case of prison officers, functions exercisable by virtue of section 8 of the Prison Act 1952 (c. 52) (constabulary powers etc)). 10
- (5) Section 2 of the Criminal Justice and Court Services Act 2000 (c. 43) (the effect of which is reproduced by this section) shall cease to have effect.
- 2 Contracting-out by local probation boards: specific directions** 15
- (1) Section 5 of the Criminal Justice and Court Services Act 2000 (arrangements for performing certain functions of local probation boards) is amended as follows.
- (2) After subsection (2) there is inserted –
- “(2A) The Secretary of State may (without prejudice to the generality of any power to give directions apart from this subsection) give a direction to a local probation board – 20
- (a) requiring the board to take specified steps with a view to securing that –
- (i) specified provision is made on behalf of the board through arrangements made with a specified organisation; 25
- (ii) a specified function conferred on officers of the board is performed by a specified individual through arrangements made with that individual; or
- (iii) the terms of any arrangements to be made by the board include (or do not include) specified terms; 30
- (b) requiring the board not to make specified arrangements, or arrangements of a specified description, with any person; and in this subsection “arrangements” means arrangements of the kind mentioned in subsection (2)(a) or (b) and “specified” means specified in the direction.” 35
- (3) In subsection (3) for “such arrangements” there is substituted “arrangements under this section”.
- 3 Disclosure of information**
- After section 5 of the Criminal Justice and Court Services Act 2000 (functions of local probation boards) there is inserted – 40
- “5A Disclosure of information by and to local probation boards etc**
- (1) This section is about the disclosure of certain information by or to a local probation board (“the board”).

- (2) Information held by or on behalf of the board which relates to any individual in respect of whom the board has performed any functions may be disclosed by the board to –
- (a) another local probation board,
 - (b) the Secretary of State, 5
 - (c) a contractor in relation to a contracted-out prison,
 - (d) any person who is made responsible for securing the electronic monitoring of that individual,
 - (e) a chief officer of police,
- in any case where the disclosure is necessary or expedient for relevant purposes. 10
- (3) Information held by or on behalf of a person mentioned in paragraphs (a) to (e) of subsection (2) which relates to an individual may be disclosed by that person to the board in any case where the disclosure is necessary or expedient for relevant purposes. 15
- (4) References in subsections (1) to (3) to a local probation board include a reference to a person carrying out activities for the board.
- (5) In this section “relevant purposes” means the purposes of any of the following –
- (a) the functions of the board or of another local probation board; 20
 - (b) the activities of any person carrying out activities for the board or for another local probation board;
 - (c) the functions of the Secretary of State under this Chapter;
 - (d) the functions of the Secretary of State relating to prisons or to prisoners; 25
 - (e) the activities of a contractor in relation to a contracted-out prison;
 - (f) the activities of a person responsible for the electronic monitoring of an individual; or
 - (g) the functions of a chief officer of police. 30
- (6) In this section references to a person carrying out activities for a local probation board are to any organisation or individual carrying out activities in pursuance of arrangements mentioned in section 5(2) made by that board.
- (7) In this section “contractor” in relation to a contracted-out prison means – 35
- (a) a person who has contracted with the Secretary of State for the running of it or part of it under section 84 of the Criminal Justice Act 1991 (c. 53); or
 - (b) a person who has contracted with a person within paragraph (a) for the running of it or any part of it. 40
- (8) Nothing in this section affects any power to disclose that exists apart from this section.
- (9) Nothing in this section authorises the disclosure of any information in contravention of any provision made by or under an enactment which prohibits or restricts disclosure of the information.” 45

4 Offender management: sentence plans

- (1) It is the duty of a local probation board to secure that –
- (a) a sentence plan for each offender for whom the board is responsible is –
 - (i) prepared as soon as practicable after the offender is sentenced; 5
and
 - (ii) kept under review, and revised as necessary, during the period of the offender’s sentence; and
 - (b) an officer of the board (“the offender manager”) is responsible for preparing, keeping under review and revising the sentence plan for each such offender. 10
- (2) For this purpose “offender” means a person convicted of an offence who receives either of the following sentences –
- (a) a custodial sentence (as defined by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)); or 15
 - (b) a community order (as defined by section 177 of the Criminal Justice Act 2003 (c. 44)) other than one within section 197(1)(a) or (b) of that Act;
- but does not include a person who is aged under 18 on the date of conviction.
- (3) In subsection (2) “custodial sentence” and “community order” do not include anything passed or made before the commencement of this section. 20
- (4) Where an offender is subject to two or more sentences mentioned in subsection (2), the sentence plan required by this section is a single sentence plan covering all of the sentences.
- (5) Where an offender who is the responsibility of one probation board becomes the responsibility of another probation board, that other probation board also takes over the duty to secure that subsection (1)(a) and (b) is complied with in relation to the offender’s sentence plan. 25
- (6) The offender manager responsible for an offender’s sentence plan shall ensure that a copy of that plan is given or shown to the offender as soon as practicable after it is prepared or revised. 30

5 Contents of sentence plans

- (1) This section applies to the sentence plan required to be prepared for an offender by section 4.
- (2) The sentence plan shall set out – 35
- (a) activities which, in the opinion of the offender manager, are suitable for the offender to undertake, and
 - (b) facilities or services which, in the opinion of the offender manager, are suitable for being made available to the offender,
- with a view to achieving any of the aims mentioned in section 1(2) that may be relevant in the offender’s case. 40
- (3) If the offender is subject to a suspended sentence of imprisonment or a community order, the sentence plan shall set out the arrangements for giving effect (while the sentence is suspended or the community order is in force) to any requirements imposed on the offender. 45

- (4) If the offender is subject to a custodial sentence, the sentence plan –
 - (a) may include suggestions for particular conditions which, in the opinion of the offender manager, would be suitable for inclusion in any licence granted to the offender on his release;
 - (b) shall (once the licence conditions are known) set out the arrangements for giving effect to those conditions and for enabling the offender to be supervised by the board after release. 5
- (5) A sentence plan may contain any other information which appears to the offender manager to be appropriate.
- (6) The sentence plan shall, so far as may be practicable, deal with the whole period of the offender’s sentence. 10

6 Sentence plans: supplementary

- (1) A local probation board may secure that a sentence plan is prepared, kept under review and revised as necessary by an officer of the board for any person for whom the board is responsible who – 15
 - (a) is in England and Wales, having been convicted and sentenced for a criminal offence by a court outside England and Wales, and is subject to detention or anything corresponding to –
 - (i) the conditions of a licence granted on release from detention; or
 - (ii) the requirements which may be included in a suspended sentence order or community order; or 20
 - (b) would be an offender within the meaning of subsection (2) of section 4 if it applied to sentences passed before the commencement of that section; or
 - (c) would be such an offender but for his being under 18 when convicted. 25
- (2) In the case of a person who was under 18 when convicted, a sentence plan prepared otherwise than by an officer of the local probation board responsible for the offender may be treated for the purposes of subsection (1) as having been prepared by an officer of the board.
- (3) A sentence plan prepared by virtue of subsection (1) may contain information corresponding to anything mentioned in section 5(2) to (4) or any other information which appears to the officer concerned to be appropriate. 30
- (4) Nothing contained in a sentence plan required by section 4 or prepared by virtue of this section –
 - (a) creates any right or entitlement on the part of the offender; or
 - (b) prevents the offender being given instructions which are not contained in or otherwise consistent with the arrangements set out in the plan. 35

In paragraph (b) “instructions” means instructions for giving effect to any licence condition or any requirement included in his sentence.

PART 2

PRISONS

Contracted-out prisons

- 7 Powers of director of a contracted-out prison**
- Section 85(3) of the Criminal Justice Act 1991 (c. 53) (director of a contracted-out prison not to exercise certain adjudication powers or order removal etc of prisoner) shall cease to have effect. 5
- 8 Prisoner custody officers: power of search**
- (1) Section 86 of the Criminal Justice Act 1991 (powers and duties of prisoner custody officers) is amended as follows. 10
- (2) In subsection (1)(b), after “search” there is inserted “in accordance with prison rules”.
- (3) In subsection (2), for the words from “remove” to the end there is substituted “submit to an intimate search (within the meaning of section 164(5) of the Customs and Excise Management Act 1979).” 15
- 9 Prisoner custody officers: power of detention**
- (1) After section 86 of the Criminal Justice Act 1991 (powers and duties of prisoner custody officers) there is inserted –
- “86A Power of prisoner custody officer to detain suspected offenders**
- (1) A prisoner custody officer performing custodial duties at a contracted-out prison shall have the following powers in relation to any person who is in or is seeking to enter the prison (other than a prisoner confined in the prison). 20
- (2) Where the officer has reason to believe that the person is committing or has committed an offence under section 39, 40 or 41 of the Prison Act 1952, the officer may – 25
- (a) require the person to wait with him for the arrival of a constable for such period as may be necessary (not exceeding two hours); and
- (b) use reasonable force to prevent the person from making off while subject to a requirement under paragraph (a). 30
- (3) A person who makes off while subject to such a requirement is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In subsection (2), a reference to an offence under a particular provision includes a reference to any offence consisting of an attempt to commit, incitement or conspiracy to commit, or aiding, abetting, counselling or procuring the commission of, an offence under that provision.” 35
- (2) In section 88A(2) of that Act (contracted out functions at a directly managed prison) – 40

- (a) for “Section 86” there is substituted “Sections 86 and 86A”; and
- (b) for “it applies” there is substituted “they apply”.

10 Amendment of section 87 of the Criminal Justice Act 1991

- (1) Section 87 of the Criminal Justice Act 1991 (c. 53) (modification of Prison Act 1952 in its application to a contracted out prison) is amended as follows. 5
- (2) For subsection (3) there is substituted –
 - “(3) Section 8 (powers of prison officers) shall not apply (but this does not affect the powers of a prison officer who is temporarily attached to the prison).”
- (3) In subsection (4), after “sections” there is inserted “8A”. 10

Directly-managed prisons

11 Independent Monitoring Boards

- (1) The boards appointed under section 6 of the Prison Act 1952 (c. 52) (boards of visitors) are renamed as independent monitoring boards.
- (2) Accordingly, in section 6 of that Act – 15
 - (a) for the sidenote there is substituted “Independent monitoring boards”;
 - (b) in subsection (2) –
 - (i) for “board of visitors” there is substituted “group of independent monitors”; and
 - (ii) the words from “of whom” to the end shall cease to have effect; 20
 - (c) after subsection (2) there is inserted –
 - “(2A) The groups so appointed are to be known as independent monitoring boards.”;
 - (d) in subsection (3) for “boards of visitors” and “a board of visitors” there is substituted respectively “independent monitoring boards” and “an independent monitoring board”. 25
- (3) In section 19 of that Act (right of justices to visit prison), in subsection (3) for “visiting committee or the board of visitors” there is substituted “independent monitoring board”.
- (4) In Part 2 of Schedule 1A to the Race Relations Act 1976 (c. 74) (public bodies and other persons subject to general statutory duty), there is inserted, in the appropriate place under the heading “Other Bodies Etc.”, the following entry – “An Independent Monitoring Board appointed under section 6(2) of the Prison Act 1952.” 30
- (5) In section 50 of the Employment Rights Act 1996 (c. 18) (right to time off for public duties) – 35
 - (a) in subsection (2)(d), for “a board of prison visitors” there is substituted “an independent monitoring board for a prison”; and
 - (b) in subsection (7)(a), for the words from the beginning to “of visitors” there is substituted ““independent monitoring board” means a board”. 40
- (6) In section 99 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (conversion of sentence of detention or custody to sentence of imprisonment),

in subsection (1)(b) for “board of visitors” there is substituted “independent monitoring board”.

- (7) In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (c. 36) (public authorities: other public bodies and offices) there is inserted, in the appropriate place, the following entry – 5
“Any Independent Monitoring Board established under section 6(2) of the Prison Act 1952.”

12 Amendment of section 8A of the Prison Act 1952

- (1) Section 8A of the Prison Act 1952 (c. 52) (powers of search by authorised employees) is amended as follows. 10
- (2) In the side note, for “employees” there is substituted “persons”.
- (3) In subsections (1) and (2), for “employee” there is substituted “person”.
- (4) In subsection (3) –
- (a) for “authorised employee” there is substituted “authorised person”; and 15
- (b) for “an employee” there is substituted “a person working at the prison,”.

PART 3

HER MAJESTY’S COMMISSIONER FOR OFFENDER MANAGEMENT AND PRISONS

The Commissioner 20

13 Appointment etc of Commissioner

- (1) There is to be a Commissioner, to be known as Her Majesty’s Commissioner for Offender Management and Prisons (in this Part referred to as “the Commissioner”).
- (2) The main functions of the Commissioner are – 25
- (a) dealing with eligible complaints (see sections 14 to 18);
- (b) investigating deaths within his deaths remit (see sections 19, 20 and 22);
- (c) carrying out other investigations at the request of the Secretary of State (see sections 21 and 22).
- (3) The functions of the Commissioner are performed on behalf of the Crown. 30
- (4) Schedule 1 (which makes further provision about the Commissioner) has effect.

Investigation of complaints

14 Eligible complaints

- (1) A complaint is eligible for the purposes of this Part if – 35
- (a) it is about a matter within the Commissioner’s complaints remit; and
- (b) it is made to the Commissioner by a person entitled to make it;

and it is immaterial for this purpose when the matter in question arose.

- (2) A matter is within the Commissioner’s complaints remit if it is of a description specified in Schedule 2 and is not an excluded matter.
- (3) The Secretary of State may by order specify matters which are excluded matters for the purposes of the Commissioner’s complaints remit. 5
- (4) An order under subsection (3) may make –
 - (a) different provision for different purposes; and
 - (b) consequential provision (including provision modifying any Act or subordinate legislation).
- (5) It is for the Commissioner to determine procedures for the making of complaints to him (but they must not preclude the making of oral complaints). 10
- (6) A person is entitled to make a complaint if –
 - (a) he is the relevant person in relation to the complaint; or
 - (b) where the relevant person is dead or unable to act for himself, it appears to the Commissioner to be appropriate for him to make the complaint. 15
- (7) In this Part “the relevant person”, in relation to a complaint about a matter within the complaints remit, is the person mentioned in the relevant paragraph of Schedule 2 as having been affected by that matter.

15 Treatment by Commissioner of complaints 20

- (1) This section applies where a complaint is made to the Commissioner.
- (2) The Commissioner shall consider whether the complaint is eligible and, if it is, take such action as he considers appropriate for the purpose of dealing with it.
- (3) The action which may be taken by the Commissioner under subsection (2) is either or both of the following – 25
 - (a) investigating the complaint to any extent; or
 - (b) taking, or facilitating the taking by another person of, any other action (such as mediation or conciliation) which the Commissioner considers may result in the resolution of the complaint.
- (4) But the Commissioner shall not take any such action if or to the extent that the complaint is excluded from such action by section 16. 30
- (5) The Commissioner may decline to take, or defer or stop taking, any such action in relation to the whole or any part of the complaint.
- (6) The Commissioner may reopen an eligible complaint which he has previously considered (whether or not he took any such action in relation to it). 35
- (7) If the Commissioner –
 - (a) rejects a complaint as being ineligible,
 - (b) determines that a complaint is to any extent excluded by section 16, or
 - (c) does anything else mentioned in subsection (5) or (6),he shall notify the person mentioned in subsection (8) and may notify such other persons as he thinks fit. 40
- (8) The person who must be notified is –

- (a) the complainant; or
 - (b) if the complainant has died or is unable to act for himself, the person who appears to the Commissioner to be the most appropriate person to receive the notification.
- (9) Notification under subsection (7) may be given orally. 5
- (10) It is for the Commissioner to determine the procedures applicable to any action to be taken in relation to a complaint.
- 16 Complaints excluded from investigation etc**
- (1) The Commissioner must not take any action in relation to an eligible complaint if he is satisfied that any of the requirements in subsection (2) has not been met. 10
- (2) Those requirements are –
- (a) that a period of no more than one year has passed since the relevant person first became aware of the matters giving rise to the substance of the complaint;
 - (b) that the substance of the complaint has been communicated to the responsible authority and it has had a reasonable opportunity to deal with it; and 15
 - (c) where the responsible authority has responded to the substance of the complaint following such a communication (whether by rejecting it or by addressing it in some other way), that a period of no more than three months has passed since it did so. 20
- (3) But if the Commissioner is satisfied that there is good reason why –
- (a) any of those requirements should be waived, or
 - (b) a period mentioned in subsection (2) should be extended,
- he may waive that requirement or extend that period. 25
- (4) The Commissioner must not take any action in relation to an eligible complaint so far as it relates to a matter which has been determined –
- (a) at a trial or otherwise by a court;
 - (b) by a tribunal specified in Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53); or 30
 - (c) by the Parole Board.
- (5) Subsection (4) does not prevent the Commissioner from taking action in relation to a complaint about the conduct of a person in connection with the provision of a report for a court or tribunal or for the Parole Board.
- (6) In this section – 35
- “action” means action falling within section 15(3);
 - “the responsible authority”, in relation to a complaint, means the controlling authority thought by the Commissioner to have the most direct responsibility for the matters covered by the complaint.
- 17 Report on the outcome of an investigation** 40
- (1) Once the Commissioner has investigated a complaint, he –
- (a) shall make a report on the outcome of the investigation to the complainant; and
 - (b) may make a report on that outcome to any other person.

- (2) The Commissioner may –
 - (a) make a report orally;
 - (b) make different reports to different persons;
 - (c) show any person a draft of (or of part of) a report;
 - (d) publish the whole or any part of a report. 5
- (3) But the Commissioner must not –
 - (a) publish the complainant’s name without his consent; and
 - (b) if the complainant is not the relevant person in relation to the complaint, publish the relevant person’s name without the consent of the complainant. 10
- (4) If the complainant has died or is unable to act for himself, the report under subsection (1)(a) must be made to the person who appears to the Commissioner to be the most appropriate person to receive the report.

18 Recommendations by Commissioner

- (1) The Commissioner may make recommendations to a controlling authority about any matter arising from a complaint which is or has been the subject of investigation by him. 15
- (2) The authority must, within the period of 28 days commencing with the day on which it receives the recommendations, respond in writing to the Commissioner setting out (with reasons) what it proposes to do about them. 20
- (3) The Commissioner may report on that response to such persons as he thinks fit.
- (4) Section 17(2) and (3) apply in relation to reports under subsection (3) as they apply to reports on the outcome of an investigation.

Other investigations

19 Investigation of deaths 25

- (1) The Commissioner shall investigate any death falling within his deaths remit.
- (2) A death falls within the Commissioner’s deaths remit if it is of a description specified in Schedule 3.
- (3) In carrying out an investigation of a death, the Commissioner must aim –
 - (a) to establish the circumstances surrounding the death; and
 - (b) if he considers it would be helpful to do so, to identify steps that should be taken for the purpose of eliminating or reducing the risk of deaths occurring under the same or similar circumstances. 30
- (4) Subject to that, it is for the Commissioner to determine the scope of, and the procedure to be applied to, the investigation. 35
- (5) The Commissioner may defer the investigation if requested to do so by a person conducting a criminal investigation which relates to the death in question.

20 Reports on the outcome of a death investigation

- (1) The Commissioner must report in writing on the outcome of an investigation under section 19 to –
- (a) the Secretary of State;
 - (b) the controlling authority appearing to the Commissioner to have the most direct responsibility over the matters covered by the investigation (where that authority is not the Secretary of State); 5
 - (c) a coroner who is holding or who is to hold an inquest into the death;
 - (d) the personal representative of the deceased or such relative, friend or partner of the deceased as the Commissioner thinks fit. 10
- (2) The Commissioner may also report to such other persons as he thinks fit.
- (3) The Commissioner may make recommendations to a controlling authority about any matter arising from the investigation.
- (4) Such recommendations may be made during, as well as after, the investigation.

21 Investigations requested by the Secretary of State 15

- (1) The Secretary of State may request the Commissioner to investigate any matter mentioned in subsection (2) or (3) which is specified in the request.
- (2) A request may specify any matter relating to events which have (or may have) occurred –
- (a) at applicable premises; 20
 - (b) while a person is in the custody of prison custody officers, or under their control or escort, anywhere in the world;
 - (c) in the course of the activities of a local probation board or an officer of a local probation board in connection with responsibilities assumed by the board or officer in relation to a person who has been charged with or convicted of an offence; 25
 - (d) in the course of exercising any function mentioned in section 1(1);
 - (e) at immigration detention premises which are not excepted premises;
 - (f) while a person is in the custody of immigration custody officers, or under their control or escort, anywhere in the world (other than immigration detention premises). 30
- (3) A request may also specify any matter the Secretary of State considers is (or may be) linked to events falling within subsection (2).
- (4) A request under this section which –
- (a) is made by virtue of subsection (2)(e) and specifies a matter relating to events which have (or may have) occurred at immigration detention premises in Scotland which are not excepted premises, or 35
 - (b) is made by virtue of subsection (3) and specifies a matter which the Secretary of State considers is (or may be) linked to events which have (or may have) occurred at immigration detention premises in Scotland which are not excepted premises, 40
- shall not be made unless the Secretary of State considers that those events are (or may be) linked to a reserved matter within the meaning of the Scotland Act 1998 (c. 46).

- (5) The Secretary of State shall consult the Scottish Ministers before making a request by virtue of subsection (3) which specifies a matter which appears to him to involve the investigation of events which have (or may have) occurred in Scotland.
- (6) The Commissioner shall investigate any matter which is the subject of a request under this section. 5
- (7) The Commissioner shall consult the Lord Advocate before investigating a matter relating to events which have (or may have) occurred in Scotland.
- (8) The Commissioner shall defer such an investigation if it appears to him that it would be likely to adversely affect a criminal investigation, or an investigation of a death, which is being or is to be conducted by the Lord Advocate or the procurator fiscal. 10
- (9) Subject to any directions given to him by the Secretary of State, it is for the Commissioner to determine the scope of, and the procedure to be applied to, an investigation under this section. 15
- (10) After conducting an investigation under this section the Commissioner shall report in writing to the Secretary of State and to such other persons (if any) as the Secretary of State may direct.
- (11) The reference in subsection (2) to a local probation board includes a reference to a person acting in pursuance of arrangements of the kind mentioned in section 5(2) of the Criminal Justice and Court Services Act 2000 (c. 43). 20

22 Further provision relating to investigations

- (1) This section applies to investigations under section 19 or 21.
- (2) The Commissioner may show any person a draft of a report (or part of a report) relating to an investigation. 25
- (3) The Commissioner may publish a report relating to an investigation in whole or part.
- (4) But the Commissioner must not in the case of a report about a death, publish the name of the deceased without the consent of his personal representative.
- (5) The Commissioner may if he thinks fit reopen an investigation. 30
- (6) In the case of an investigation under section 21 the powers conferred by subsections (2), (3) and (5) must be exercised in accordance with any directions given by the Secretary of State.

General powers and duties of the Commissioner

23 Powers of Commissioner to obtain information etc 35

- (1) This section confers powers on the Commissioner for the purposes of any investigation under this Part.
- (2) The Commissioner may require a person he thinks is able to provide information or produce a document relevant to the investigation to do so.
- (3) The Commissioner has the same powers as the High Court in relation to— 40

- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad); and
 - (b) the production of documents.
 - (4) The Commissioner may also require a person to secure that he is given access to any premises for the purpose of inspecting the premises or any documents or other things situated on them. 5
 - (5) Such access must be given at such reasonable times as the Commissioner may specify.
 - (6) The Commissioner may require any person who is at the premises at those times to provide him with such reasonable assistance as he may specify. 10
 - (7) The Commissioner has no power under this section to require access to premises used solely as a dwelling.
- 24 Exceptions to Commissioner’s powers under section 23**
- (1) Subject to subsection (3), no person shall be compelled by virtue of this Part to give any evidence or do any other thing which he could not be compelled to do in civil proceedings before the High Court. 15
 - (2) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or provided to persons in Her Majesty’s service, whether imposed by or under any enactment or by any rule of law, shall apply in relation to an investigation. 20
 - (3) The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or of the giving of evidence as would otherwise be allowed in legal proceedings.
 - (4) But no person shall be compelled or authorised by virtue of this Part – 25
 - (a) to provide any information relating to proceedings of the Cabinet or of any Committee of the Cabinet; or
 - (b) to produce any document relating to such proceedings.
 - (5) For this purpose a certificate which – 30
 - (a) is issued by the Secretary of the Cabinet with the approval of the Prime Minister, and
 - (b) certifies that any information or document (or part of a document) relates to any proceedings mentioned in subsection (4),
 is conclusive of the matters certified.
 - (6) In this section “investigation” means any investigation under this Part. 35
- 25 Obstruction and contempt**
- (1) If the Commissioner is satisfied that this section applies to a person he may refer the matter to the High Court.
 - (2) This section applies to a person if – 40
 - (a) he has failed to comply with a requirement imposed on him by virtue of section 23 or has otherwise, without lawful excuse, obstructed the Commissioner in the performance of his functions; or

- (b) he has committed an act or omission in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) The High Court may inquire into the matter and after hearing—
 - (a) any witnesses who may be produced against or on behalf of that person, and
 - (b) any statement that may be offered in his defence,it may deal with him as if he were in contempt of court. 5

26 Working with other ombudsmen etc

- (1) This section applies where the Commissioner— 10
 - (a) forms the opinion that a matter he is considering or dealing with relates (in whole or in part) to a matter that has been or could be dealt with by a listed person; and
 - (b) consults that person about that matter.
- (2) This section also applies where a listed person— 15
 - (a) forms the opinion that a matter he is considering or dealing with relates (in whole or in part) to a matter that has been or could be dealt with by the Commissioner; and
 - (b) consults the Commissioner about that matter.
- (3) The Commissioner and the listed person may co-operate with each other in relation to the matter. 20
- (4) That co-operation may include (among other things)—
 - (a) conducting a joint investigation;
 - (b) preparing a joint report;
 - (c) publishing such a report. 25
- (5) But that co-operation may not include any of the things mentioned in subsection (4) where the listed person is the Scottish Public Services Ombudsman.
- (6) In this section “listed person” means—
 - The Parliamentary Commissioner for Administration 30
 - A member of the Commission for Local Administration in England
 - The Health Service Commissioner for England
 - The Scottish Public Services Ombudsman
 - The Children’s Commissioner for Wales
 - The Public Services Ombudsman for Wales. 35
- (7) The Secretary of State may by order amend the list in subsection (6) by—
 - (a) adding or omitting a person or body;
 - (b) changing an entry for the time being specified there.
- (8) Such an order may make consequential provision (including provision modifying an Act or subordinate legislation or an Act of the Scottish Parliament). 40
- (9) Before the commencement of section 1 of the Public Services Ombudsman (Wales) Act 2005, the reference in subsection (6) to the Public Services Ombudsman for Wales shall be taken to refer to a member of the Commission

for Local Administration in Wales, the Welsh Administration Ombudsman and the Health Service Commissioner for Wales.

27 Legal and other representation

The Commissioner may determine the circumstances under which and the extent to which persons may be represented by lawyers or other persons in connection with complaints or investigations under section 19 or 21. 5

Disclosure of information

28 Disclosure of information etc

- (1) For the purposes of this section information is protected information if it is obtained by the Commissioner (or a member of his staff) – 10
- (a) in connection with a complaint or an investigation under section 19 or 21;
 - (b) from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c. 36); or
 - (c) from a listed person (within the meaning of section 26) for the purposes of – 15
 - (i) any consultation of the kind mentioned in subsection (1) or (2) of that section; or
 - (ii) any co-operation under subsection (3) of that section.
- (2) Such information ceases to be protected information 100 years after it is obtained by the Commissioner (or a member of his staff). 20
- (3) Protected information shall not be disclosed except –
- (a) for the purposes of the Commissioner’s consideration of a complaint or of his taking of action in relation to an eligible complaint;
 - (b) for the purposes of an investigation, report or recommendation under this Part; 25
 - (c) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 or of any co-operation under subsection (3) of that section;
 - (d) for the purposes of a notification under section 15(7) or 30; 30
 - (e) for the purposes of proceedings for –
 - (i) an offence under the Official Secrets Act 1989 (c. 6) alleged to have been committed in relation to protected information; or
 - (ii) an offence of perjury alleged to have been committed in relation to anything being done in connection with the Commissioner’s functions; 35
 or for the purposes of an investigation with a view to the taking of such proceedings;
 - (f) for the purposes of proceedings under section 25;
 - (g) to a coroner for the purposes of an inquest; 40
 - (h) to the Lord Advocate or the procurator fiscal for the purposes of an investigation of his;
 - (i) in the case of information to which subsection (4) applies, to the Information Commissioner; or

- (j) in the case of information to which subsection (7) applies, to any person to whom the Commissioner thinks it should be disclosed in the public interest.
 - (4) This subsection applies to information if it appears to the Commissioner to relate to – 5
 - (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (5); or
 - (b) the commission of an offence mentioned in subsection (6).
 - (5) Those enactments are – 10
 - (a) Part 5 of the Data Protection Act 1998 (c. 29);
 - (b) section 48 of the Freedom of Information Act 2000 (c. 36);
 - (c) Part 4 of that Act.
 - (6) Those offences are offences under – 15
 - (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9;
 - (b) section 77 of the Freedom of Information Act 2000.
 - (7) This subsection applies to information if – 20
 - (a) in the opinion of the Commissioner it reveals or otherwise relates to a serious threat to the health or safety of a person; or
 - (b) it does not fall within paragraph (a) but the Commissioner is nevertheless of the opinion that it should be disclosed for the purpose of enabling such a threat to be dealt with.
 - (8) Protected information within subsection (1)(c) may not be disclosed for the purposes of a notification under section 30 unless the Commissioner has consulted the listed person in question about the making of the disclosure. 25
 - (9) No person mentioned in subsection (11) may be called upon in any proceedings to give evidence of protected information within subsection (1)(a) or (c).
 - (10) Subsection (9) does not apply in relation to any proceedings mentioned in subsection (3)(e) to (h). 30
 - (11) Those persons are – 35
 - (a) the Commissioner;
 - (b) a member of his staff;
 - (c) a person from whom advice is obtained by virtue of paragraph 11 of Schedule 1.
 - (12) For the purposes of the law of defamation the publication of any matter by the Commissioner for purposes connected with his functions shall be absolutely privileged.
- 29 Disclosure of information where contrary to public interest 40**
- (1) The Secretary of State may give a notice to the Commissioner stating that the disclosure of –
 - (a) any document or information specified in the notice, or
 - (b) any description of document or information so specified,

would, in the opinion of the Secretary of State, prejudice national security or would otherwise be contrary to the public interest.

- (2) Nothing in this Part authorises or requires the Commissioner (or any member of his staff) to disclose to any person or for any purpose any document or information covered by a current notice under subsection (1). 5

30 Notification of matters of potential concern to the police or other authorities

- (1) If while performing his functions the Commissioner forms the opinion –
 (a) that there should be a criminal investigation into any matter, or
 (b) that a controlling authority should, as a matter of urgency, take action in relation to any matter, 10
 he may notify the police or the authority (as the case may be).
- (2) A notification under this section may include such details relating to the matter in question as the Commissioner thinks fit.

Supplemental

31 Power to pay expenses 15

- (1) The Commissioner may pay such expenses as he thinks fit –
 (a) to a person who has made an eligible complaint; or
 (b) to a person who provides him with information or other assistance in relation to an eligible complaint or to an investigation under section 19 or 21. 20
- (2) The Treasury may issue guidelines in relation to –
 (a) the circumstances under which such payments may be made; and
 (b) the amounts of such payments.
- (3) The Commissioner must comply with any guidelines so issued.

32 Consequential amendments relating to Part 3 25

Schedule 4 (which contains consequential amendments relating to this Part) has effect.

33 Transitional provisions

- (1) The Prisons and Probation Ombudsman (“the Ombudsman”) shall not investigate any complaint made, or death occurring, after the commencement of this section. 30
- (2) The Ombudsman may continue to act under his terms of reference in relation to –
 (a) any complaint made to him before that commencement (“an existing complaint”),
 (b) any death occurring before that commencement (“an existing death investigation”), and
 (c) any other matter referred to him by the Secretary of State before that commencement (“an existing referral investigation”), 35

unless the complaint, death or matter is treated by the Commissioner as one to be investigated under this Part by virtue of subsection (3).

- (3) The Commissioner may treat –
- (a) an existing complaint (so far as relating to matters within his complaints remit) as if it were an eligible complaint; 5
 - (b) an existing death investigation relating to a death that would, if it occurred after the commencement of this section, fall within his deaths remit as an investigation under section 19;
 - (c) an existing referral investigation (so far as relating to matters that could be the subject of a request under section 21) as an investigation under section 21. 10
- (4) For the purposes of any complaint, death or matter which is investigated under this Part by virtue of subsection (3), things done by or in relation to the Ombudsman shall be treated as having been done by or in relation to the Commissioner. 15

34 Interpretation of Part 3

- (1) In this Part –
- “applicable premises” means a prison, a young offender institution, a secure training centre or approved premises;
 - “complaints remit” is to be construed in accordance with section 14(2); 20
 - “deaths remit” is to be construed in accordance with section 19(2);
 - “document” includes information recorded in any form;
 - “eligible complaint” has the meaning given by section 14(1);
 - “excepted premises” means any premises of a description specified in an order under subsection (2); 25
 - “events” includes any conduct or omission;
 - “immigration custody officer” means –
 - (a) a detainee custody officer;
 - (b) an officer who is performing functions conferred on him under section 154(5) of the Immigration and Asylum Act 1999 (c. 33); or 30
 - (c) an officer who is performing functions as a result of a contract entered into under section 156(4)(b) of that Act;
 - “immigration detention premises” means premises which are the subject of a direction under paragraph 18 of Schedule 2 to the Immigration Act 1971 (c. 77); 35
 - “prison custody officer” means –
 - (a) an officer of a prison, of a young offender institution or of a secure training centre; or
 - (b) a prisoner custody officer; 40
 - “relevant person”, in relation to a complaint, has the meaning given by section 14(7).
- (2) The Secretary of State may by order specify descriptions of immigration detention premises which are to be excepted premises for the purposes of this Part (or, if the order so provides, for the purposes of a specified provision of this Part). 45

- (3) For the purposes of this Part the following persons are controlling authorities –
- (a) the Secretary of State;
 - (b) governors and directors of prisons, young offender institutions and secure training centres; 5
 - (c) managers of removal centres;
 - (d) managers of short-term holding facilities by virtue of the extension of section 148 of the Immigration and Asylum Act 1999 (c. 33) to such facilities by regulations made under section 157 of that Act;
 - (e) persons with whom the Secretary of State has made arrangements under section 80 of the Criminal Justice Act 1991 (c. 53) or under section 156 of the Immigration and Asylum Act 1999; 10
 - (f) the Youth Justice Board;
 - (g) local probation boards;
 - (h) organisations with which a local probation board has made arrangements of the kind mentioned in section 5(2)(a) of the Criminal Justice and Court Services Act 2000 (c. 43); 15
 - (i) an independent monitoring board under section 6 of the Prison Act 1952 (c. 52) or a visiting committee under section 152 of the Immigration and Asylum Act 1999; 20
 - (j) any person of a description specified in an order made by the Secretary of State.
- (4) In this Part references to the High Court include a reference –
- (a) to the Court of Session (in so far as this Part extends to Scotland); and
 - (b) to the High Court of Northern Ireland (in so far as this Part extends to Northern Ireland). 25
- (5) References in this Part to a person being held at applicable premises mean, in the case of approved premises, a person accommodated there in pursuance of section 9(1) of the Criminal Justice and Court Services Act 2000.
- (6) In this section – 30
- “approved premises” has the same meaning as in Part 1 of the Criminal Justice and Court Services Act 2000;
 - “detainee custody officer”, “removal centre” and “short-term holding facilities” have the same meanings as in Part 8 of the Immigration and Asylum Act 1999; 35
 - “prison” has the same meaning as in the Prison Act 1952;
 - “prisoner custody officer” has the same meaning as in Part 4 of the Criminal Justice Act 1991.

35 Power to modify certain provisions of Part 3

- (1) The Secretary of State may by order modify Schedule 2 so as to – 40
- (a) add a description of matter to that Schedule; or
 - (b) amend or repeal any description of matter for the time being specified there.
- (2) The power in subsection (1)(b) may not be exercised so as to exclude any matters that fall within a description specified in Schedule 2 when this Act is passed. 45
- (3) The Secretary of State may by order modify Schedule 3 so as to –

- (a) add a description of death; or
 - (b) amend or repeal any description of death for the time being specified there.
 - (4) The power in subsection (3)(b) may not be exercised so as to exclude any deaths that fall within a description specified in Schedule 3 when this Act is passed. 5
 - (5) The Secretary of State may by order modify subsection (2) of section 21 so as to –
 - (a) add a description of events; or
 - (b) amend or repeal any description of events for the time being specified in that subsection. 10
 - (6) The Secretary of State may by order modify section 28 so as to –
 - (a) add an exception to subsection (3);
 - (b) amend or repeal an exception for the time being specified in that subsection; or
 - (c) specify further circumstances in which subsection (9) does not apply. 15
 - (7) The power in subsection (6)(b) may not be exercised so as to remove an exception contained in section 28(3) when this Act is passed.
 - (8) An order under this section may make consequential provision (including provision modifying any Act or subordinate legislation).
- 36 Power to confer new functions on Commissioner 20**
- (1) The Secretary of State may by order –
 - (a) confer additional functions on the Commissioner;
 - (b) confer functions on the Secretary of State in relation to any additional function conferred on the Commissioner; or
 - (c) provide for the application in relation to any such additional function of any provisions of this Part, with or without modifications. 25
 - (2) An order under this section may make consequential provision (including provision modifying any Act or subordinate legislation).

PART 4

SENTENCING 30

Sentencing Guidelines Council

37 Guidelines relating to sentencing

- In section 170 of the Criminal Justice Act 2003 (c. 44) (Sentencing Guidelines Council to frame or revise guidelines relating to sentencing etc) in subsection (5) (Council to have regard to certain matters) after paragraph (c) insert – 35
- “(ca) the resources that are, or are in future likely to be, available for giving effect to sentences imposed by courts in England and Wales,”.

38 Awareness of sentencing matters

- (1) After section 172 of the Criminal Justice Act 2003 (c. 44) insert –

“172A Awareness of sentencing matters

- (1) The Council may promote among persons falling within subsection (2) awareness of matters relating to the sentencing of offenders by courts in England and Wales. 5
- (2) The persons are –
- (a) persons by whom the jurisdiction of the Crown Court is exercisable;
 - (b) persons by whom the criminal jurisdiction of a magistrates’ court is exercisable. 10
- (3) The matters may, in particular, include –
- (a) the sentences imposed by courts in England and Wales;
 - (b) the cost of different sentences and their relative effectiveness in preventing re-offending; 15
 - (c) the resources that are, or are in future likely to be, available for giving effect to sentences imposed by courts in England and Wales;
 - (d) the manner in which courts sentence offenders or exercise any other function relating to the sentencing of offenders.” 20

- (2) After section 172A (as inserted by subsection (1)) insert –

“172B Assistance by Panel

The Council may request the Panel to assist it in the carrying out of its functions under section 172A; and the Panel may, on receiving such a request, provide such assistance.” 25

Requirements for passing a community sentence

39 Restriction on imposing community sentences

In section 148 of the Criminal Justice Act 2003 (restrictions on imposing community sentences), after subsection (4) insert –

- “(5) The fact that by virtue of any provision of this section – 30
- (a) a community sentence may be passed in relation to an offence; or
 - (b) particular restrictions on liberty may be imposed by a community order or youth community order,
- does not require a court to pass such a sentence or to impose those restrictions.” 35

Alteration of standard scale etc

40 Maximum fines for summary or either way offences

- (1) In section 37(2) of the Criminal Justice Act 1982 (c. 48) (table of standard scale of fines for summary offences), for the table showing the standard scale 40

substitute –

<i>“Level on the scale</i>	<i>Amount of fine</i>	
1	£750	
2	£1,500	
3	£3,000	5
4	£7,500	
5	£15,000”.	
(2)	In section 24 of the Magistrates’ Courts Act 1980 (c. 43) – (a) in subsection (3) (maximum fine on summary conviction of young person for indictable offence), for “£1,000” substitute “£3,000”; (b) in subsection (4) (maximum fine on summary conviction of child for summary offence) – (i) for “£1,000” substitute “£3,000”, and (ii) for “£250” substitute “£750”.	10
(3)	In section 32 of that Act (penalties on summary conviction for offence triable either way), in the definition of “the prescribed sum” in subsection (9), for “£5,000” substitute “£15,000”.	15
(4)	In section 135 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) – (a) in subsection (1) (maximum fine on conviction of young person by magistrates’ court), for “£1,000” (in both places) substitute “£3,000”; (b) in subsection (2) (maximum fine on conviction of child by magistrates’ court) – (i) for “£1,000” substitute “£3,000”, and (ii) for “£250” substitute “£750”.	20
(5)	Schedule 5 (which provides for new maxima for certain compensation orders, fines etc, and substitutes a new table in Schedule 6A to the Magistrates’ Courts Act 1980) has effect.	25
(6)	Where a statutory provision specifies, as the amount or maximum amount of any fine or penalty, an amount shown in the first column of the following table (which lists the amounts of fine for the five levels on the standard scale before its amendment by subsection (1)), the Secretary of State may by order amend the provision so as to increase the amount specified to the corresponding amount in the second column (which lists the amounts of fine for the levels on that scale as amended by subsection (1)).	30
	<i>Present amount</i>	<i>Amount to which it may be increased</i>
	£200	£750
	£500	£1,500

35

<i>Present amount</i>	<i>Amount to which it may be increased</i>	
£1,000	£3,000	
£2,500	£7,500	
£5,000	£15,000	5

In this subsection “statutory provision” means any provision contained in an Act passed before the commencement of this section or in an instrument made under any Act before that commencement.

41 Imprisonment for default in paying fine etc

- (1) In paragraph 1 of Schedule 4 to the Magistrates’ Courts Act 1980 (c. 43) (maximum periods of imprisonment in default of payment), for the table substitute – 10

“TABLE

An amount not exceeding £750	21 days	
An amount exceeding £750 but not exceeding £1,500	35 days	15
An amount exceeding £1,500 but not exceeding £3,000	49 days	
An amount exceeding £3,000 but not exceeding £7,500	70 days	20
An amount exceeding £7,500 but not exceeding £15,000	3 months	
An amount exceeding £15,000 but not exceeding £30,000	6 months	
An amount exceeding £30,000	12 months”.	25

- (2) In the table in section 139(4) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (maximum periods of imprisonment for default in paying fine etc imposed by Crown Court), for the first nine entries substitute –

“An amount not exceeding £750	21 days	
An amount exceeding £750 but not exceeding £1,500	35 days	30
An amount exceeding £1,500 but not exceeding £3,000	49 days	
An amount exceeding £3,000 but not exceeding £7,500	70 days	35

An amount exceeding £7,500 but not exceeding £15,000	3 months	
An amount exceeding £15,000 but not exceeding £30,000	6 months	
An amount exceeding £30,000 but not exceeding £50,000	12 months	5
An amount exceeding £50,000 but not exceeding £75,000	18 months	
An amount exceeding £75,000 but not exceeding £100,000	2 years”.	10

42 Unpaid work or curfew for default in paying fine etc

- (1) Schedule 31 to the Criminal Justice Act 2003 (c. 44) (default orders: modification of provisions relating to community orders) is amended as follows.
- (2) In paragraph 2(2) (modification of unpaid work requirement), in the substituted section 199(2)(b) of the Criminal Justice Act 2003, for the table substitute—

“TABLE

<i>Amount</i>	<i>Number of hours</i>	
An amount not exceeding £750	50 hours	20
An amount exceeding £750 but not exceeding £1,500	100 hours	
An amount exceeding £1,500 but not exceeding £3,000	150 hours	25
An amount exceeding £3,000 but not exceeding £7,500	225 hours	
An amount exceeding £7,500	300 hours”.	

- (3) In paragraph 3(2) (modification of curfew requirement), in the substituted

30

section 204(2A) of the Criminal Justice Act 2003, for the table substitute –

“TABLE

<i>Amount</i>	<i>Number of days</i>	
An amount not exceeding £750	28 days	5
An amount exceeding £750 but not exceeding £1,500	56 days	
An amount exceeding £1,500 but not exceeding £3,000	90 days	10
An amount exceeding £3,000 but not exceeding £7,500	135 days	
An amount exceeding £7,500	180 days”.	

Daily income fines

- 43 Fixing of fines by reference to daily disposable income** 15
- (1) In section 164 of the Criminal Justice Act 2003 (c. 44) (fixing of fines), after subsection (5) insert –
- “(6) Subsections (2) to (5) are subject to sections 164A and 164B.”
- (2) After section 164 insert –
- “164A Fixing of fines by reference to daily disposable income** 20
- (1) This section applies where an individual aged 18 or over is convicted by a magistrates’ court of –
- (a) a summary offence punishable by a fine not exceeding a level on the standard scale, or
- (b) an offence triable either way and punishable, on summary conviction, by a fine not exceeding the statutory maximum (a “statutory maximum offence”). 25
- (2) The amount of any fine imposed by the magistrates’ court on the offender in respect of the offence is to be the appropriate number of income units multiplied by the value of an income unit in the offender’s case. 30
- This is subject to the following provisions of this section and section 164B.
- (3) The appropriate number of income units is that which, in the opinion of the court, reflects the seriousness of the offence, taking into account all the circumstances of the case. 35
- (4) That number may not exceed –
- (a) if the offence is a statutory maximum offence, 200;

- (b) if the offence is punishable by a fine not exceeding a particular level on the standard scale, the number given by the following table.

<i>Level on the standard scale</i>	<i>Number of income units</i>	
1	10	5
2	20	
3	40	
4	100	
5	200	

- (5) The value of an income unit in the case of an offender is the amount determined by the court, in accordance with rules made by the Lord Chancellor, to be the offender’s daily disposable income. 10
- (6) If the rules prescribe a minimum amount, the offender’s daily disposable income is to be taken as that amount if in fact it is less.
- (7) The offender’s daily disposable income is to be taken as 1/200th of level 5 on the standard scale if in fact it is more. 15
- (8) Where—
 (a) section 164(5)(a) or (b) applies in the case of an offender, and
 (b) the court considers that it has insufficient information to make a proper determination of the amount of the offender’s daily disposable income in accordance with the rules,
 it may make such determination of the amount as it thinks fit. 20
- (9) Any statutory provision under which the Crown Court’s powers to deal with an offender are the same as, or are limited to, those of a magistrates’ court has effect as if this section had not been enacted. 25

164B Alteration of amount of fine

- (1) This section applies where the amount of a fine falls to be fixed by a magistrates’ court under section 164A.
- (2) If the offence for which the fine is imposed is a penalty offence, a fixed penalty offence or a TV licence offence, the court may increase the amount of the fine to an amount not exceeding—
 (a) in the case of a penalty offence, the amount of the penalty;
 (b) in the case of a fixed penalty offence, the amount of the fixed penalty;
 (c) in the case of a TV licence offence, the amount of the relevant TV licence fee. 30 35
- (3) If the magistrates’ court orders the offender to pay a surcharge under section 161A, the court may reduce the amount of the fine on account of the surcharge but only to the extent that he has insufficient means to pay both. 40

(4)	If the magistrates' court makes a compensation order against the offender, nothing in section 164A(2) prevents it from reducing the amount of the fine in accordance with section 130(12) of the Sentencing Act.	
(5)	Any increase or reduction of a fine made by virtue of this section is to be made by increasing or reducing the amount that has been determined under section 164A(2) (rather than by adjusting the number of income units).	5
(6)	In this section –	
	“penalty offence” has the same meaning as it has for the purposes of Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001;	10
	“fixed penalty offence” has the same meaning as it has for the purposes of Part 3 of the Road Traffic Offenders Act 1988;	
	“TV licence offence” means an offence under section 363 of the Communications Act 2003 (use of television receiver without licence);	15
	“relevant TV licence fee”, in relation to an offender, means the sum that he would be liable to pay by virtue of regulations under section 365(1) of that Act on the issue of a licence under Part 4 of that Act.”	20
44	Application to certain contempts etc	
	Schedule 6 (fixing of fines by reference to daily disposable income in case of certain contempts etc) has effect.	
	<i>General</i>	25
45	Minor and consequential amendments	
	Schedule 7 (minor and consequential amendments relating to Part 4) has effect.	
46	Transitional provision	
(1)	Neither section 40 nor section 43 applies in relation to offences committed before the commencement of that section.	30
(2)	Schedule 6 does not apply in relation to a refusal, contempt or failure to comply occurring before the commencement of that Schedule.	
PART 5		
MISCELLANEOUS PROVISIONS		
	<i>Polygraph condition for certain licences</i>	35
47	Release on licence: polygraph condition	
(1)	This section applies where a person serving a relevant custodial sentence in respect of a relevant sexual offence is released on licence by the Secretary of State under any enactment.	

- (2) This section does not apply if at the time of his release on licence he is aged under 18.
- (3) The Secretary of State may include a polygraph condition in the person’s licence.
- (4) “Relevant custodial sentence” means— 5
 - (a) a sentence of imprisonment for a term of twelve months or more (including such a sentence imposed under section 227 of the Criminal Justice Act 2003 (c. 44)),
 - (b) a sentence of detention in a young offender institution for a term of twelve months or more, 10
 - (c) a sentence of detention under section 90 of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),
 - (d) a sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 for a period of twelve months or more,
 - (e) a sentence of custody for life under section 93 or 94 of the Powers of Criminal Courts (Sentencing) Act 2000, or 15
 - (f) a sentence of detention under section 226 or 228 of the Criminal Justice Act 2003.
- (5) “Relevant sexual offence” means— 20
 - (a) an offence specified in Part 2 of Schedule 15 to the Criminal Justice Act 2003 (specified sexual offences),
 - (b) an offence specified in paragraphs 1 to 21 of Schedule 16 to that Act (offences under the law of Scotland), or
 - (c) an offence specified in Part 2 of Schedule 17 to that Act (offences under the law of Northern Ireland). 25

48 Polygraph condition

- (1) For the purposes of section 47, a polygraph condition is a condition which requires the released person to participate in polygraph sessions conducted with a view to— 30
 - (a) monitoring his compliance with the other conditions of his licence;
 - (b) improving the way in which he is managed during his release on licence.
- (2) A polygraph session is a session during which a person (a “polygraph operator”)— 35
 - (a) administers one or more polygraph examinations to the released person, and
 - (b) interviews the released person in preparation for, or otherwise in connection with, the administration of the examination or examinations.
- (3) For the purposes of subsection (2), a polygraph examination is a procedure in which— 40
 - (a) the polygraph operator administering the examination questions the released person,
 - (b) the questions and the released person’s answers are recorded, and
 - (c) the released person’s physiological reactions while being questioned are measured and recorded by means of equipment of a type approved by the Secretary of State. 45

-
- (4) A requirement to participate in polygraph sessions operates to require the released person –
- (a) to participate in polygraph sessions at such times as may be specified in instructions given by an officer of a local probation board, and
 - (b) while participating in a polygraph session, to comply with instructions given to him by the polygraph operator. 5
- (5) The Secretary of State may from time to time issue guidance as regards the giving of instructions under subsection (4)(a).
- (6) The Secretary of State may make rules as to the conduct of polygraph sessions.
- (7) The rules may, in particular, require polygraph operators to be persons who satisfy such requirements as to qualifications, experience and other matters as are specified in the rules. 10
- 49 Amendment of the Criminal Justice Act 2003**
- In section 250(4) of the Criminal Justice Act 2003 (c. 44) (licence conditions for prisoners serving sentences of imprisonment of twelve months or more etc), in paragraph (b)(i) after “Criminal Justice and Court Services Act 2000” insert “or section 47 of the Management of Offenders and Sentencing Act 2005”. 15
- 50 Evidence from polygraph sessions**
- (1) This section applies if a person participates in a polygraph session pursuant to the requirements of a polygraph condition. 20
- (2) Evidence of the matters falling within subsection (3) may not be used –
- (a) in any criminal proceedings in which the person is a defendant;
 - (b) in any proceedings on an appeal from such criminal proceedings.
- (3) The matters are –
- (a) any statement made by the person while participating in the polygraph session; 25
 - (b) the person’s physiological reactions while being questioned in the course of a polygraph examination administered to him during the polygraph session.
- (4) In this section – 30
- “defendant”, in relation to criminal proceedings, means a person charged with an offence in those proceedings;
 - “polygraph condition”, “polygraph examination” and “polygraph session” have the same meaning as in section 48.
- Attendance centres* 35
- 51 Attendance centres**
- (1) In section 223 of the Criminal Justice Act 2003 (power of Secretary of State to amend limits) after subsection (3) insert –
- “(4) The Secretary of State may by order amend the provisions mentioned in subsection (5) – 40

- (a) by substituting, for the age for the time being specified in those provisions, such other age as may be specified in the order being no lower than 25;
 - (b) by omitting the words “in a case where the offender is aged under” and the age for the time being specified immediately after them; or
 - (c) if those provisions are amended under paragraph (b), by restoring the words “in a case where the offender is aged under” and inserting after them an age which is no lower than 25.
- (5) Those provisions are –
- (a) section 177(1)(l) (community order may include an attendance centre requirement);
 - (b) section 182(1)(h) (licence conditions may include an attendance centre requirement);
 - (c) section 190(1)(l) (suspended sentence order may include an attendance centre requirement).”
- (2) In section 221(2) of that Act (definition of “attendance centre”) the words “aged under 25” shall cease to have effect.

Electronic monitoring

52 Electronic monitoring of the whereabouts of certain offenders 20

Schedule 8 (which makes provision in connection with the imposition in a community order or suspended sentence order of a requirement for the electronic monitoring of the whereabouts of the offender) has effect.

53 Electronic monitoring as condition of bail

Schedule 9 (which makes provision in connection with the electronic monitoring of persons on bail) has effect. 25

PART 6

SUPPLEMENTARY

54 Orders and rules

- (1) Any power of the Secretary of State to make an order or rules under this Act is exercisable by statutory instrument. 30
- (2) An order or rules under this Act may contain transitional or saving provision.
- (3) An order under section 14(3), 34(2), 35 or 36 shall not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament. 35
- (4) A statutory instrument containing any other order under this Act (except an order under section 57(3)) or rules under section 48(6) is subject to annulment in pursuance of a resolution of either House of Parliament.

55 Repeals

Schedule 10 (repeals) has effect.

56 Extent

- (1) Subject as follows, Parts 1 to 5 extend to England and Wales only.
- (2) An amendment or repeal by this Act of any enactment has the same extent as the provision to which it relates. 5
- (3) Part 3 extends also to Scotland and Northern Ireland so far as relating to—
 - (a) complaints about matters mentioned in paragraphs 5 and 6 of Schedule 2; or
 - (b) requests under section 21 which— 10
 - (i) are made by virtue of subsection (2) of that section and specify matters relating to events which have (or may have) occurred as mentioned in paragraph (e) or (f) of that subsection; or
 - (ii) are made by virtue of subsection (3) of that section and specify matters which the Secretary of State considers are (or may be) linked to such events. 15
- (4) Part 3 extends also to Northern Ireland so far as relating to deaths falling within paragraphs 4 to 6 of Schedule 3.

57 Commencement

- (1) This Part (apart from section 55) comes into force on the passing of this Act. 20
- (2) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
 - (a) section 11;
 - (b) section 55 (so far as relating to the repeals in Schedule 10 which relate to section 11); 25
 - (c) sections 37 and 38.
- (3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint.
- (4) Different days may be appointed for different purposes and in relation to different areas. 30
- (5) An order which brings sections 47 to 49 into force only in relation to a specified area may also provide that (unless continued in force by a subsequent order) they are to be in force in relation to that area only for a specified period.
- (6) An order which makes the provision permitted by subsection (5) may contain transitional or saving provision relating to those sections' ceasing to be in force at the end of the specified period. 35
- (7) If an order makes the provision permitted by subsection (5), a subsequent order may amend that order so as to continue those sections in force in relation to that area for a further period.
- (8) If an order has been made bringing sections 47 to 49 into force only in relation to a specified area, an order bringing them fully into force is not to be made 40

unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.

58 Short title

This Act may be cited as the Management of Offenders and Sentencing Act 2005.

SCHEDULES

SCHEDULE 1

Section 13

HER MAJESTY’S COMMISSIONER FOR OFFENDER MANAGEMENT AND PRISONS

Appointment and removal from office

- | | | |
|---|--|----|
| 1 | Her Majesty may appoint a person to be the Commissioner. | 5 |
| 2 | (1) A person appointed as Commissioner shall hold office for such term, not exceeding five years, as may be specified in his terms of appointment. | |
| | (2) At the end of that term the person concerned is eligible for reappointment for a further period not exceeding five years. | |
| | (3) A person may not be reappointed for a third consecutive term unless, by reason of special conditions, such reappointment is desirable in the public interest. | 10 |
| 3 | (1) The Commissioner may be relieved of office by Her Majesty at his own request or removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament. | 15 |
| | (2) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed is incapable for medical reasons of performing his functions. | |

Remuneration, pensions and other benefits

- | | | |
|---|---|----|
| 4 | The Commissioner shall be paid such remuneration and such travelling and other allowances as the Secretary of State may determine. | 20 |
| 5 | There shall be paid to or in respect of a person who holds or has held office as Commissioner such pension, allowances or gratuities as the Secretary of State may determine. | |

Appointment of acting Commissioner 25

- | | | |
|---|--|----|
| 6 | (1) Where the office of Commissioner becomes vacant, the Secretary of State may appoint a person as acting Commissioner. | |
| | (2) The power under sub-paragraph (1) may not be exercised after the end of the period of two years beginning with the day on which the vacancy arose. | |
| 7 | (1) Any person holding office as acting Commissioner shall cease to hold that office – | 30 |
| | (a) on the appointment of a new Commissioner; or | |
| | (b) at the end of the period of two years beginning with the day on which the vacancy arose. | |

(2) Otherwise, an acting Commissioner holds office in accordance with his terms of appointment.

8 A person holding office as acting Commissioner is to be treated for all purposes (apart from those of paragraphs 1 to 7) as the Commissioner.

Staff 5

9 The Commissioner’s staff shall be provided by (or in pursuance of arrangements made by) the Secretary of State.

Delegation of functions

10 Any function of the Commissioner may be performed on his behalf by any member of his staff who is authorised for the purpose by the Commissioner (whether generally or specially). 10

Advisers

11 (1) The Commissioner may obtain advice to assist him in the performance of his functions from any person who, in his opinion, is qualified to give it.
(2) The Commissioner may pay fees or allowances to any person in relation to the provision of advice under this paragraph. 15

Annual and other reports

12 (1) The Commissioner –
(a) shall publish a general report on the performance of his functions during each year (an “annual report”); 20
(b) may publish other reports with respect to his functions.
(2) An annual report must be published as soon as may be practicable after the end of the year to which it relates.
(3) The Commissioner shall send a copy of each report under this paragraph to the Secretary of State. 25
(4) The Secretary of State shall lay before Parliament –
(a) a copy of each annual report,
(b) a copy of any other report under this paragraph which is sent with a request for it to be so laid,
and shall do so as soon as practicable after he receives a copy of the report concerned. 30

Financial provision

13 The Secretary of State shall pay such sums towards the expenses of the Commissioner as the Secretary of State may determine.

SCHEDULE 2

Section 14

THE COMMISSIONER’S COMPLAINTS REMIT: SPECIFIED MATTERS

- | | | |
|---|--|----|
| 1 | Any matter relating to the way in which a person has been treated at any applicable premises while being held there. | |
| 2 | Any matter relating to the way in which a person has been treated by prison custody officers while in their custody, or under their control or escort, anywhere in the world. | 5 |
| 3 | Any matter relating to the conduct of a local probation board or officer of a local probation board in connection with responsibilities assumed by the board or officer in relation to a person who has been charged with or convicted of an offence.
<i>Note:</i> The reference to a local probation board includes a reference to a person acting in pursuance of arrangements of the kind mentioned in section 5(2) of the Criminal Justice and Court Services Act 2000 (c. 43). | 10 |
| 4 | Any matter relating to the exercise of functions of the kind mentioned in section 1(1) in relation to a person who has been charged with or convicted of an offence or who is being or has been held in applicable premises. | 15 |
| 5 | Any matter relating to the way in which a person has been treated at any immigration detention premises (other than excepted premises) while being detained there under the Immigration Act 1971 (c. 77) or under section 62 of the Nationality, Immigration and Asylum Act 2002 (c. 41). | 20 |
| 6 | Any matter relating to the way in which a person has been treated by immigration custody officers while in their custody, or under their control or escort, anywhere in the world (other than immigration detention premises). | 25 |

SCHEDULE 3

Section 19

THE COMMISSIONER’S DEATHS REMIT

- | | | |
|---|---|----|
| 1 | A death of a person at any applicable premises while he was being held there. | |
| 2 | A death of a person while in the custody, or under the control or escort, of prison custody officers anywhere in the world. | 30 |
| 3 | A death of a person which the Commissioner is satisfied should be investigated by him because it is or may be linked to events which have occurred –
(a) at any applicable premises while the deceased was being held there;
or
(b) while the deceased was in the custody, or under the control or escort, of prison custody officers anywhere in the world. | 35 |
| 4 | A death of a person at any immigration detention premises (other than excepted premises or premises in Scotland) while he was being detained there under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002. | 40 |

- 5 A death of a person while in the custody, or under the control or escort, of immigration custody officers anywhere in the world (other than immigration detention premises).
- 6 A death of a person which the Commissioner is satisfied should be investigated by him because it is or may be linked to events which have occurred –
- (a) at any immigration detention premises (other than excepted premises or premises in Scotland) while the deceased was being detained there; or
 - (b) while the deceased was in the custody, or under the control or escort, of immigration custody officers anywhere in the world (other than immigration detention premises).

SCHEDULE 4

Section 32

CONSEQUENTIAL AMENDMENTS RELATING TO PART 3

Parliamentary Commissioner Act 1967 (c. 13) 15

- 1 (1) In subsection (2) of section 11 of the Parliamentary Commissioner Act 1967 (restrictions on disclosure of information) after paragraph (a) there is inserted –
- “(aa) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005;
 - (ab) for the purposes of any co-operation under subsection (3) of that section;”.
- (2) After subsection (5) of that section there is inserted –
- “(6) Information which –
 - (a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005 or for the purposes of any co-operation under subsection (3) of that section, and
 - (b) is protected information within the meaning of section 28 of that Act, - shall be treated for the purposes of subsection (2) of this section as obtained in the course of an investigation under this Act; and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.”
- (3) In Schedule 3 to that Act (matters not subject to investigation by the Parliamentary Commissioner) after paragraph 11 there is inserted –
- “12 Any matter which falls within the complaints or deaths remit of Her Majesty’s Commissioner for Offender Management and Prisons (within the meaning of Part 3 of the Management of Offenders and Sentencing Act 2005).”

- (4) Sub-paragraph (3) has no effect in relation to any matter which the Parliamentary Commissioner for Administration has started to investigate before the commencement of that sub-paragraph.

Local Government Act 1974 (c. 7)

- 2 (1) In subsection (2) of section 32 of the Local Government Act 1974 (restrictions on disclosure of information) after paragraph (a) there is inserted – 5
- “(aa) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005, or
- (ab) for the purposes of any co-operation under subsection (3) of that section, or” 10
- (2) After subsection (7) of that section there is inserted –
- “(8) Information which –
- (a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005 or for the purposes of any co-operation under subsection (3) of that section, and 15
- (b) is protected information within the meaning of section 28 of that Act, 20
- shall be treated for the purposes of subsection (2) above as obtained in the course of an investigation under this Part of this Act; and, in relation to such information, the reference in subsection (2)(a) above to the investigation shall have effect as a reference to any investigation.” 25

Health Service Commissioners Act 1993 (c. 46)

- 3 (1) In subsection (1) of section 15 of the Health Service Commissioners Act 1993 (restrictions on disclosure of information) after paragraph (a) there is inserted – 30
- “(aa) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005;
- (ab) for the purposes of any co-operation under subsection (3) of that section;” 35
- (2) After subsection (4) of that section there is inserted –
- “(5) Information which –
- (a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005 or for the purposes of any co-operation under subsection (3) of that section, and 40
- (b) is protected information within the meaning of section 28 of that Act, 45
- shall be treated for the purposes of subsections (1) and (2) as obtained in the course of an investigation; and, in relation to such information,

the reference in subsection (1)(a) to the investigation shall have effect as a reference to any investigation.”

Data Protection Act 1998 (c. 29)

- 4 In section 31(4) of the Data Protection Act 1998 (exceptions to data protection requirements for ombudsmen), after paragraph (a)(i) there is inserted – 5
“(ia) Her Majesty’s Commissioner for Offender Management and Prisons;”.

Government of Wales Act 1998 (c. 38)

- 5 (1) In sub-paragraph (1) of paragraph 25 of Schedule 9 to the Government of Wales Act 1998 (restrictions on disclosure of information) after paragraph (a) there is inserted – 10
“(aa) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005;
(ab) for the purposes of any co-operation under subsection (3) of that section;”.

(2) After sub-paragraph (5) of that paragraph there is inserted –

- “(6) Information which –
(a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005 or for the purposes of any co-operation under subsection (3) of that section, and 20
(b) is protected information within the meaning of section 28 of that Act, 25
shall be treated for the purposes of sub-paragraphs (1) and (2) as obtained in the course of an investigation; and, in relation to such information, the reference in sub-paragraph (1)(a) to the investigation shall have effect as a reference to any investigation.” 30

Care Standards Act 2000 (c. 14)

- 6 In section 76 of the Care Standards Act 2000 (further functions of the Children’s Commissioner for Wales) after subsection (3) there is inserted –
“(3A) The Commissioner may give advice and information to Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of – 35
(a) any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005; or
(b) any co-operation under subsection (3) of that section.” 40

Freedom of Information Act 2000 (c. 36)

- 7 (1) In section 76(1) of the Freedom of Information Act 2000 (disclosure of information between Information Commissioner and ombudsmen) in the Table at the appropriate place there is inserted the following entry –

“Her Majesty’s Commissioner for Offender Management and Prisons.		Part 3 of the Management of Offenders and Sentencing Act 2005.”
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- (2) In Part 6 of Schedule 1 to that Act (public authorities) at the appropriate place there is inserted “Her Majesty’s Commissioner for Offender Management and Prisons”. 5

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 8 (1) Section 19 of the Scottish Public Services Ombudsman Act 2002 (asp 11) (restrictions on disclosure of information) is amended as follows.
- (2) In subsection (2), after paragraph (a) there is inserted – 10
- “(aa) the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005;
- (ab) the purposes of any co-operation under subsection (3) of that section;” 15
- (3) After subsection (8) there is inserted –
- “(8A) Information which –
- (a) is obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005 or for the purposes of any co-operation under subsection (3) of that section, and 20
- (b) is protected information within the meaning of section 28 of that Act, 25
- shall be treated for the purposes of subsections (1) and (5) as obtained in connection with any matter in respect of which a complaint or request has been made.”
- (4) In subsection (9), for “such information” there is substituted “information within subsection (8) or (8A)”. 30

Public Services Ombudsman (Wales) Act 2005

- 9 (1) Section 25 of the Public Services Ombudsman (Wales) Act 2005 (disclosure of information) is amended as follows.
- (2) In subsection (1), after paragraph (b) there is inserted –
- “(ba) protected information (within the meaning of section 28 of the Management of Offenders and Sentencing Act 2005) obtained from Her Majesty’s Commissioner for Offender Management and Prisons for the purposes of any consultation of the kind mentioned in section 26(1) or (2) of that Act or for the purposes of any co-operation under section 26(3) of that Act;” 35
- 40

- (3) In subsection (2), after paragraph (e) there is inserted –
 “(ea) for the purposes of any consultation of the kind mentioned in subsection (1) or (2) of section 26 of the Management of Offenders and Sentencing Act 2005 or for the purposes of any co-operation under subsection (3) of that section;” 5
- (4) In subsection (6), for “or (b)” there is substituted “, (b) or (ba)”.

SCHEDULE 5

Section 40

INCREASE OF CERTAIN MAXIMA

- 1 In each of the provisions listed in the first column of the following table (which relate to the maximum amounts or fines broadly described there), for the amount specified in the second column substitute the amount specified in the third column. 10

<i>Provision</i>	<i>Present amount</i>	<i>New amount</i>	
Sea Fish (Conservation) Act 1967 (c. 84)			15
Section 11(1)(b) (maximum fine for offence under section 3, 4(9A) or 5(6))	£5,000	£15,000	
Section 15(2C) (maximum fine for offences in relation to sea-fishery officers)	£5,000	£15,000	
Sea Fisheries Act 1968 (c. 77)			20
Section 10(4) (maximum fine for offences in relation to sea-fishery officers)	£5,000	£15,000	
Attachment of Earnings Act 1971 (c. 32)			25
Section 23(3) (maximum judge’s fine in High Court or county court)	£250	£750	
Misuse of Drugs Act 1971 (c. 38)			30
In Schedule 4 (prosecution and punishment of offences), the entry for section 5(2) (sixth column)	£1,000	£3,000	
In Schedule 4, the entries for sections 4(2), 4(3), 5(2) (fifth column), 5(3), 8, 12(6) and 13(3)	£2,500	£7,500	
Magistrates’ Courts Act 1980 (c. 43)			35
Section 63(3)(a) (maximum fine for disobeying order other than for payment of money)	£5,000	£15,000	

<i>Provision</i>	<i>Present amount</i>	<i>New amount</i>	
Section 97(4) (maximum fine for refusing to give evidence)	£2,500	£7,500	
Contempt of Court Act 1981 (c. 49)			5
Section 12(2) (maximum fine for contempt in face of magistrates' court)	£2,500	£7,500	
Section 14(2) (maximum fine for contempt in face of inferior court)	£2,500	£7,500	
British Fishing Boats Act 1983 (c. 8)			10
Section 4(1) (maximum fine for offences in relation to sea-fishery officers)	£5,000	£15,000	
County Courts Act 1984 (c. 28)			
Section 55(2) (maximum fine for refusing or neglecting to give evidence)	£1,000	£3,000	15
Section 118(1) (maximum fine for contempt of court)	£2,500	£7,500	
Coroners Act 1988 (c. 13)			
Section 10(1) (maximum coroner's fine for refusing to serve as juror)	£1,000	£3,000	20
Section 10(2) (maximum coroner's fine for refusing to give evidence)	£1,000	£3,000	
Section 21(5) (maximum coroner's fine for refusal by medical practitioner to give evidence)	£1,000	£3,000	25
Criminal Procedure and Investigations Act 1996 (c. 25)			
Section 18(3)(a) (maximum fine for use or disclosure of object or information in contravention of confidentiality requirements)	£5,000	£15,000	30
Crime and Disorder Act 1998 (c. 37)			
Section 1AB(3)(a) (maximum fine for failing to comply with individual support order: young person)	£1,000	£3,000	35
Section 1AB(3)(b) (maximum fine for failing to comply with individual support order: child)	£250	£750	

<i>Provision</i>	<i>Present amount</i>	<i>New amount</i>	
Paragraph 4(7)(b) of Schedule 3 (maximum fine for refusing to give deposition or produce exhibit)	£2,500	£7,500	5
Youth Justice and Criminal Evidence Act 1999 (c. 23)			
Section 57(2)(b) (penalty for giving false unsworn evidence: adult or young person)	£1,000	£3,000	10
Section 57(3) (penalty for giving false unsworn evidence: child)	£250	£750	
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)			
Section 7(4)(a) (maximum fine for person committed to Crown Court after being summarily tried because under 18)	£5,000	£15,000	15
Section 131(1) (maximum amount of compensation order)	£5,000	£15,000	
Paragraph 2(1) of Schedule 5 (maximum fine for failing to comply with attendance centre order or attendance centre rules)	£1,000	£3,000	20
Paragraph 2(2) of Schedule 7 (maximum fine for failing to comply with supervision order)	£1,000	£3,000	25
Proceeds of Crime Act 2002 (c. 29)			
Section 67(6)(a) (maximum amount payable for failure by bank or building society to pay money on account of amount payable under confiscation order)	£5,000	£15,000	30
Criminal Justice Act 2003 (c. 44)			
Section 211(5)(a) (unwillingness to comply with drug rehabilitation requirement: maximum fine for offender who has attained age of 18)	£5,000	£15,000	35
Sub-paragraph (1)(a) of paragraph 12 of Schedule 8 (as amended by paragraph 5 of Schedule 6 to this Act) (failure to comply with community order: maximum fine for offender who has attained age of 18)	£5,000	£15,000	40

- 2 In Schedule 6A to the Magistrates' Courts Act 1980 (c. 43) (fines that may be altered under section 143), for the table substitute –

<i>“Enactment</i>	<i>Maximum fine</i>	
Attachment of Earnings Act 1971 (c. 32)		
Section 23(3) (judge’s fine)	£750	5
Magistrates’ Courts Act 1980 (c. 43)		
Section 63(3)(a) (disobeying orders other than for payment of money)	£15,000	
Section 97(4) (refusing to give evidence)	£7,500	
Contempt of Court Act 1981 (c. 49)		
Section 12(2) (contempt in face of magistrates’ court)	£7,500	10
Section 14(2) (contempt in inferior court)	£7,500	
County Courts Act 1984 (c. 28)		
Section 55(2) (neglect or refusal to give evidence)	£3,000	15
Section 118(1) (contempt in face of court)	£7,500	
Coroners Act 1988 (c. 13)		
Section 10(1) (refusal to serve as juror)	£3,000	
Section 10(2) (refusal to give evidence)	£3,000	
Section 21(5) (refusal by medical practitioner to give evidence)	£3,000	20
Powers of Criminal Courts (Sentencing) Act 2000 (c. 6)		
Paragraph 2(1) of Schedule 5 (failure to comply with attendance centre order or attendance centre rules)	£3,000	25
Paragraph 2(2) of Schedule 7 (failure to comply with supervision order)	£3,000*.	

SCHEDULE 6

Section 44

FIXING OF FINES BY REFERENCE TO DAILY DISPOSABLE INCOME IN CASE OF CERTAIN
CONTEMPTS ETC 30

Magistrates’ Courts Act 1980 (c. 43)

- 1 In section 97 of the Magistrates’ Courts Act 1980 (summons to witness etc),

after subsection (4) (custody or fine for refusal) insert –

- “(4A) Section 164A of the Criminal Justice Act 2003 (fixing of fines by reference to daily disposable income) applies for the purposes of subsection (4) above as if the refusal to be sworn or give evidence or to produce a document or thing were a summary offence punishable by a fine not exceeding level 4 on the standard scale.” 5

Contempt of Court Act 1981 (c. 49)

- 2 In section 12 of the Contempt of Court Act 1981 (offences of contempt of magistrates’ court), after subsection (2) insert –
- “(2ZA) Section 164A of the Criminal Justice Act 2003 (fixing of fines by reference to daily disposable income) applies for the purposes of subsection (2) above as if the contempt of court were a summary offence punishable by a fine not exceeding level 4 on the standard scale.” 10
- 3 In section 14 of that Act (offences of contempt in relation to proceedings in England and Wales) after subsection (2) insert –
- “(2ZA) Section 164A of the Criminal Justice Act 2003 (fixing of fines by reference to daily disposable income) applies for the purposes of subsection (2) above as if the contempt of court were a summary offence punishable by a fine not exceeding level 4 on the standard scale.” 20

Crime and Disorder Act 1998 (c. 37)

- 4 In Schedule 3 to the Crime and Disorder Act 1998 (procedure where persons are sent for trial under section 51 or 51A of that Act), after paragraph 4(7) (power to take deposition: penalty for refusal) insert –
- “(7A) Section 164A of the Criminal Justice Act 2003 (fixing of fines by reference to daily disposable income) applies for the purposes of sub-paragraph (7)(b) above as if the refusal to have evidence taken as a deposition or to produce a document or thing were a summary offence punishable by a fine not exceeding level 4 on the standard scale.” 30

Criminal Justice Act 2003 (c. 44)

- 5 In Schedule 8 to the Criminal Justice Act 2003 (breach of community order etc), at the end of paragraph 12 (which becomes sub-paragraph (1) of that paragraph) insert –
- “(2) Section 164A (adult offenders to pay fines fixed by reference to daily disposable income) applies for the purposes of sub-paragraph (1)(a) as if the failure to comply with the requirements of the community order were a summary offence punishable by a fine not exceeding level 5 on the standard scale.” 40

SCHEDULE 7

Section 45

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 4

Magistrates' Courts Act 1980 (c. 43)

- 1 In section 76 of the Magistrates' Courts Act 1980 (enforcement of sums adjudged to be paid), after subsection (3) insert— 5
- “(3A) In determining the length of that period, the court shall, where the amount due is or includes an amount attributable to a daily income fine, take into account the number of income units involved.
- (3B) In subsection (3A)— 10
- “daily income fine” means a fine that is fixed under section 164A of the Criminal Justice Act 2003, without being increased under section 164B(2) of that Act;
- “income unit” has the same meaning as in section 164A of that Act.”
- 2 (1) Section 91 of that Act (transfer of fines from Scotland or Northern Ireland) is amended as follows. 15
- (2) After subsection (2) insert—
- “(2A) For the purpose of determining the period of imprisonment which may be imposed under this Act in default of payment of a fine originally imposed by a magistrates' court in Northern Ireland, Schedule 4 to this Act shall have effect as if for the Table set out in paragraph 1 there were substituted the Table set out in paragraph 1 of Schedule 3 to the Magistrates' Courts (Northern Ireland) Order 1981.” 20
- (3) After subsection (3) insert— 25
- “(3A) Where a transfer of fine order under Order 95 of the Magistrates' Court (Northern Ireland) Order 1981 or section 222 of the Criminal Procedure (Scotland) Act 1995 provides for the enforcement of a fine originally imposed by the Crown Court in Northern Ireland, the term of imprisonment which may be imposed under this section shall be— 30
- (a) the term fixed in pursuance of section 35 of the Criminal Justice Act (Northern Ireland) Act 1945, or
- (b) a term which bears the same proportion to the term so fixed as the amount of the fine remaining due bears to the amount of the fine imposed by that court, 35
- notwithstanding that the term exceeds the period applicable to the case under Schedule 4 to this Act.”
- 3 In section 143 of that Act (power to alter sums specified), in subsection (3) (definition of “relevant date”), for “section 17 of the Criminal Justice Act 1991” substitute “section 40 of the Management of Offenders and Sentencing Act 2005”. 40

Magistrates’ Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26))

- 4 Article 96 of the Magistrates’ Courts (Northern Ireland) Order 1981 (transfer of fines elsewhere in United Kingdom) is amended as follows.
- 5 In paragraph (1), for “subject to paragraph 2” substitute “subject to paragraphs (1A) and (2)”. 5
- 6 After that paragraph insert –
- “(1A) For the purpose of determining the period of imprisonment which may be imposed under this Order in default of payment of a fine originally imposed by a magistrates’ court in England and Wales, Schedule 3 shall have effect as if for the Table set out in paragraph 1 there were substituted the Table set out in paragraph 1 of Schedule 4 to the Magistrates’ Courts Act 1980.” 10

Criminal Procedure (Scotland) Act 1995 (c. 46)

- 7 In section 222 of the Criminal Procedure (Scotland) Act 1995 (transfer of fine orders), after subsection (6) insert – 15
- “(6A) But for the purpose of determining the period of imprisonment which may be imposed under this Part of this Act by virtue of subsection (6) above in default of payment of a fine originally imposed by a magistrates’ court in England and Wales, section 219 of this Act shall have effect as if for the Table set out in subsection (2) of that section there were substituted the Table set out in paragraph 1 of Schedule 4 to the Magistrates’ Courts Act 1980.” 20
- 8 In section 307 of that Act (interpretation), in subsection (1) insert at the appropriate place – 25
- ““compensation order” has the meaning assigned to it by section 249(1) of this Act except that in section 252 it includes a compensation order within the meaning given by section 130(1) of the Powers of Criminal Courts (Sentencing) Act 2000;”.

Criminal Justice Act 2003 (c. 44) 30

- 9 (1) Section 165 of the Criminal Justice Act 2003 (remission of fines) is amended as follows.
- (2) In subsection (1) – 35
- (a) for “where a court” substitute “where –
- (a) a court”;
- (b) at the end insert “, or
- (b) a magistrates’ court has determined the amount of the offender’s daily disposable income under section 164A”.
- (3) In subsection (2)(a), after “smaller amount” insert “or determined that the amount of the offender’s daily disposable income was smaller”. 40
- 10 (1) Section 166 of that Act (savings for powers to mitigate etc) is amended as follows.

-
- (2) In subsection (1), after paragraph (d) insert –
 “(e) section 164A or 164B(2) (fixing of fines by reference to daily disposable income),”.
- (3) In subsections (3) and (5), for “subsection (1)(a) to (d)” substitute “subsection (1)(a) to (e)”. 5
- (4) After subsection (4) insert –
 “(4A) Any mitigation of a fine that falls to be fixed under section 164A is to be effected by determining under that section a smaller number of income units than would otherwise be determined.”
- 11 In section 305 of that Act (interpretation of Part 12), in subsection (1), at the appropriate place insert – 10
 “income unit” has the meaning given by section 164A.”
- 12 In section 330 of that Act (orders and rules), in subsection (1), after paragraph (a) insert –
 “(aa) the power conferred by section 164A on the Lord Chancellor to make rules;” 15
- 13 (1) Schedule 31 to that Act (modifications of community order provisions for purposes of default order) is amended as follows.
- (2) In paragraph 2 (unpaid work requirement), after sub-paragraph (2) (which modifies section 199 of the Criminal Justice Act 2003) insert – 20
 “(2A) After subsection (2) there is inserted –
 “(2A) In determining the number of hours, the court must, where the amount in default is or includes an amount attributable to a daily income fine, take into account the number of income units involved. 25
 (2B) In subsection (2A) “daily income fine” means a fine that is fixed under section 164A, without being increased under section 164B(2).””
- (3) In paragraph 3 (curfew requirement), after sub-paragraph (2) (which modifies section 204 of the Criminal Justice Act 2003) insert – 30
 “(2A) After subsection (2) there is inserted –
 “(2A) In determining the number of days, the court must, where the amount in default is or includes an amount attributable to a daily income fine, take into account the number of income units involved. 35
 (2B) In subsection (2A) “daily income fine” means a fine that is fixed under section 164A, without being increased under section 164B(2).””

SCHEDULE 8

Section 52

ELECTRONIC MONITORING REQUIREMENTS FOR CERTAIN OFFENDERS

- 1 The Criminal Justice Act 2003 (c. 44) is amended as follows.
- 2 In section 177 (requirements which may be imposed by a community order) – 5
- (a) in subsection (1), after paragraph (k) there is inserted –
- “(ka) a continuous monitoring requirement (as defined in section 213A),”;
- (b) in subsections (3) and (4), for “an electronic” there is substituted “a compliance” and for “215(2)” there is substituted “215A(1)”. 10
- 3 In section 182 (requirements which may be imposed by licence conditions in a custody plus order), in subsections (3) and (4), for “an electronic” there is substituted “a compliance” and for “215(2)” there is substituted “215A(1)”. 10
- 4 In section 190 (requirements which may be imposed by a suspended sentence order) – 15
- (a) in subsection (1), after paragraph (k) there is inserted –
- “(ka) a continuous monitoring requirement (as defined in section 213A),”;
- (b) in subsections (3) and (4), for “an electronic” there is substituted “a compliance” and for “215(2)” there is substituted “215A(1)”. 20
- 5 In section 192(3)(b) (reviews of suspended sentence order) for “an electronic” there is substituted “a compliance”.
- 6 In section 197(1) (meaning of “the responsible officer”), for paragraph (a) there is substituted – 25
- “(a) in a case where the order –
- (i) imposes a curfew requirement or an exclusion requirement, and
- (ii) imposes a compliance monitoring requirement, but
- (iii) does not include any other requirement mentioned in section 177(1), 182(1) or 190(1) (as the case may require) (other than a continuous monitoring requirement included in a community order or suspended sentence order), 30
- the person who under section 215A(2) is responsible for the electronic monitoring under the compliance monitoring requirement;”. 35
- 7 After section 213 (supervision requirement) there is inserted –
- “213A Continuous monitoring requirement**
- (1) In this Part “continuous monitoring requirement”, in relation to a relevant order, means a requirement for securing the electronic monitoring of the offender’s whereabouts (otherwise than for the purpose of securing his compliance with other requirements included in the order) during the period specified in the order. 40
- (2) The period specified in the order may not exceed six months.

- (3) A court may not include a continuous monitoring requirement in the order unless an officer of a local probation board has informed the court that in his opinion the inclusion of such a requirement would be suitable for the offender.”
- 8 In the cross-heading before section 215, at the end there is inserted “of compliance with other requirements” 5
- 9 In section 215 (electronic monitoring requirement) –
- (a) in the sidenote, for “Electronic” there is substituted “Compliance”;
- (b) in subsection (1), for “electronic” there is substituted “compliance”;
- (c) subsections (2) and (3) (which are superseded by section 215A) shall cease to have effect; 10
- (d) in subsection (4), for “an electronic” there is substituted “a compliance” and, in paragraph (c), for “subsection (2)(b)” there is substituted “section 215A(1)(b)”.
- 10 Before section 216 (petty sessions area to be specified in relevant order) there is inserted – 15
- “215A Electronic monitoring requirements: common provisions**
- (1) Where –
- (a) it is proposed to include an electronic monitoring requirement in a relevant order, but 20
- (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure that the monitoring takes place,
- the requirement may not be included in the order without that person’s consent. 25
- (2) A relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring.
- (3) The person who is made responsible for the monitoring must be of a description specified in an order made by the Secretary of State.” 30
- 11 (1) Section 218 (availability of arrangements in local area) is amended as follows.
- (2) In subsection (4), for “an electronic” there is substituted “a compliance” and, in paragraph (b), for “those arrangements” there is substituted “the arrangements currently available”. 35
- (3) After subsection (8) there is inserted –
- “(9) A court may not include a continuous monitoring requirement in a relevant order unless the court –
- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in each relevant area; and 40
- (b) is satisfied that the necessary provision for dealing with the offender can be made under the arrangements currently available.
- (10) For the purposes of subsection (9) an area is a relevant area if the court considers that it will not be practicable to secure the electronic 45

- monitoring of the offender’s whereabouts unless suitable electronic monitoring arrangements are available in that area.”
- 12 In section 223(d) (power to amend certain limits), after paragraph (d) there is inserted –
“(e) section 213A(2) (continuous monitoring requirement).” 5
- 13 In section 305 (interpretation of Part 12) –
(a) after the definition of “community sentence” there is inserted –
“compliance monitoring requirement” has the meaning given by section 215;
“continuous monitoring requirement” has the meaning given by section 213A;” and 10
(b) in the definition of “electronic monitoring requirement”, for the words from “in relation” to “215” there is substituted “means a compliance monitoring requirement or a continuous monitoring requirement;”. 15
- 14 In Schedule 8 (breach etc of community order) in paragraph 3(b), for “an electronic” there is substituted “a compliance”.
- 15 (1) Schedule 9 (transfer of community order to Scotland or Northern Ireland) is amended as follows.
(2) In paragraph 1(2), for paragraph (g) (and the preceding “and”) there is substituted – 20
“(fa) a continuous monitoring requirement;
(g) a compliance monitoring requirement.”
(3) In paragraph 2(3) –
(a) after paragraph (c) there is inserted – 25
“(ca) subsection (3) of section 215A (electronic monitoring requirements: common provisions);” and
(b) in paragraph (d) for “subsection (4)” there is substituted “subsections (4) and (9)”.
(4) Paragraph 2(5) shall cease to have effect. 30
(5) In paragraph 3(2), for paragraph (h) (and the preceding “and”) there is substituted –
“(ga) a continuous monitoring requirement;
(h) a compliance monitoring requirement.”
(6) In paragraph 4(3) – 35
(a) after paragraph (c) there is inserted –
“(ca) subsection (3) of section 215A (electronic monitoring requirements: common provisions);” and
(b) in paragraph (d) for “subsection (4)” there is substituted “subsections (4) and (9)”. 40
(7) Paragraph 4(6) shall cease to have effect.
- 16 In paragraph 5(2)(b) of Schedule 10 (revocation or amendment of custody plus orders and amendment of intermittent custody orders), for “an electronic” there is substituted “a compliance”.

-
- 17 (1) Schedule 11 (transfer of custody plus orders and intermittent custody orders to Scotland or Northern Ireland) is amended as follows.
- (2) In paragraph 2(3), for paragraph (d) (and the preceding “and”) there is substituted—
- “(ca) a continuous monitoring requirement; 5
 (d) a compliance monitoring requirement.”
- (3) In paragraph 7(3)—
- (a) after paragraph (b) there is inserted—
- “(ba) subsection (3) of section 215A (electronic monitoring requirements: common provisions),”; and 10
- (b) in paragraph (c) for “subsection (4)” there is substituted “subsections (4) and (9)”.
- (4) Paragraph 7(4) shall cease to have effect.
- (5) In paragraph 9(3), for paragraph (e) (and the preceding “and”) there is substituted— 15
- “(da) a continuous monitoring requirement;
 (e) a compliance monitoring requirement.”
- (6) In paragraph 13(3)—
- (a) after paragraph (b) there is inserted—
- “(ba) subsection (3) of section 215A (electronic monitoring requirements: common provisions),”; and 20
- (b) in paragraph (c) for “subsection (4)” there is substituted “subsections (4) and (9)”.
- (7) Paragraph 13(5) shall cease to have effect.
- 18 In Schedule 12 (breach or amendment of suspended sentence order and effect of further conviction), in paragraph 15(2)(b) for “an electronic” there is substituted “a compliance”. 25
- 19 (1) Schedule 13 (transfer of suspended sentence orders to Scotland or Northern Ireland) is amended as follows.
- (2) In paragraph 1(2), for paragraph (g) (and the preceding “and”) there is substituted— 30
- “(fa) a continuous monitoring requirement;
 (g) a compliance monitoring requirement.”
- (3) In paragraph 4(3)—
- (a) after paragraph (c) there is inserted— 35
- “(ca) subsection (3) of section 215A (electronic monitoring requirements: common provisions),”; and
- (b) in paragraph (d) for “subsection (4)” there is substituted “subsections (4) and (9)”.
- (4) Paragraph 4(5) shall cease to have effect. 40
- (5) In paragraph 6(2), for paragraph (h) (and the preceding “and”) there is substituted—
- “(ga) a continuous monitoring requirement;
 (h) a compliance monitoring requirement.”

- (6) In paragraph 9(3) –
- (a) after paragraph (c) there is inserted –
 - “(ca) subsection (3) of section 215A (electronic monitoring requirements: common provisions),”; and
 - (b) in paragraph (d) for “subsection (4)” there is substituted “subsections (4) and (9)”. 5
- (7) Paragraph 9(6) shall cease to have effect.
- 20 In Schedule 14 (persons to whom copies of requirements to be provided in particular cases), in the entry relating to an electronic monitoring requirement, for “215(3)” there is substituted “215A(2)”. 10
- 21 Nothing in this Schedule affects a relevant order (within the meaning of Part 12 of the Criminal Justice Act 2003 (c. 44)) made in relation to an offence committed before the commencement of this Schedule.

SCHEDULE 9

Section 53

ELECTRONIC MONITORING OF PERSONS RELEASED ON BAIL ETC 15

Electronic monitoring of persons released on bail

- 1 The Bail Act 1976 (c. 63) is amended as follows.
- 2 In section 3 (general provisions) for subsection (6ZAA) there is substituted –
- “(6ZAA) The requirements which may be imposed under subsection (6) include electronic monitoring requirements. 20
The imposition of electronic monitoring requirements is subject to section 3AA (in the case of a child or young person), section 3AB (in the case of an adult) and section 3AC (in all cases).
- (6ZAB) In this section and sections 3AA to 3AC “electronic monitoring requirements” means requirements imposed for the purpose of 25
securing the electronic monitoring of a person’s compliance with any other requirement imposed on him as a condition of bail.”
- 3 (1) Section 3AA (electronic monitoring of compliance with bail conditions) is amended as follows.
- (2) In the sidenote, for “of compliance with bail conditions” there is substituted 30
“requirements: children and young persons”.
- (3) For subsection (1) there is substituted –
- “(1) A court may not impose electronic monitoring requirements on a child or young person unless each of the following conditions is satisfied.” 35
- (4) For subsection (4) there is substituted –
- “(4) The third condition is that –
- (a) the court has been notified by the Secretary of State that electronic monitoring arrangements for children and young

- persons are available in each local justice area which is a relevant area; and
- (b) the court is satisfied that the necessary provision for dealing with the person concerned can be made under the arrangements currently available.” 5
- (5) In subsection (5), for “such a requirement” there is inserted “electronic monitoring requirements”.
- (6) Subsections (6) to (10) and (12) (which are superseded by section 3AC) shall cease to have effect.
- 4 After section 3AA there is inserted – 10
- “3AB Electronic monitoring requirements: adults**
- (1) A court may not impose electronic monitoring requirements on a person who has attained the age of seventeen unless each of the following conditions is satisfied.
- (2) The first condition is that the court is satisfied that without the electronic monitoring requirements the person would be refused bail. 15
- (3) The second condition is that –
- (a) the court has been notified by the Secretary of State that electronic monitoring arrangements for adults are available in each local justice area which is a relevant area; and 20
- (b) the court is satisfied that the necessary provision for dealing with the person can be made under the arrangements currently available.
- (4) The third condition is that an officer of a local probation board has informed the court that in his opinion the imposition of electronic monitoring requirements will be suitable in the person’s case. 25
- 3AC Electronic monitoring: general provisions**
- (1) Where a court imposes electronic monitoring requirements as a condition of bail, the requirements must include provision for making a person responsible for the monitoring. 30
- (2) A person may not be made responsible for the electronic monitoring of a person on bail unless he is of a description specified in an order made by the Secretary of State.
- (3) The Secretary of State may make rules for regulating – 35
- (a) the electronic monitoring of persons on bail;
- (b) without prejudice to the generality of paragraph (a), the functions of persons made responsible for such monitoring.
- (4) The rules may make different provision for different cases.
- (5) The power to make an order or rules under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (6) For the purposes of section 3AA or 3AB a local justice area is a relevant area in relation to a proposed electronic monitoring

requirement if the court considers that it will not be practicable to secure the electronic monitoring in question unless electronic monitoring arrangements are available in that area.”

Electronic monitoring of persons remanded to local authority accommodation

- 5 In Section 23AA of the Children and Young Persons Act 1969 (electronic monitoring of remand conditions) is amended as follows- 5
- (a) in subsection (4)(b), for “those arrangements” there is substituted “the arrangements currently available”; and
 - (b) in subsection (8) for ““Subsections (8) to (10) of section 3AA” there is substituted “Subsections (4) to (6) of section 3AC”. 10

SCHEDULE 10

Section 55

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Prison Act 1952 (c. 52)	In section 6(2), the words from “of whom” to the end.	15
Bail Act 1976 (c. 63)	Section 3AA(6) to (10) and (12).	
Race Relations Act 1976 (c.74)	In Part 2 of Schedule 1A, the entry relating to a board of visitors for a prison.	
Criminal Justice Act 1991 (c. 53)	In section 85, in subsection (2) the words “Subject to subsection (3) below” and subsection (3).	20
Criminal Justice and Public Order Act 1994 (c. 33)	Section 97(3). In Schedule 10, paragraph 68.	
Freedom of Information Act 2000 (c. 36)	In Part 6 of Schedule 1, the entry relating to a board of visitors for a prison.	25
Criminal Justice and Court Services Act 2000 (c. 43)	Section 2.	
Criminal Justice Act 2003 (c. 44)	Section 215(2) and (3). In section 221(2), the words “aged under 25”. In Schedule 9, paragraphs 2(5) and 4(6). In Schedule 11, paragraphs 7(4) and 13(5). In Schedule 13, paragraphs 4(5) and 9(6).	30

Management of Offenders and Sentencing Bill

[HL]

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B I L L

To make further provision with respect to the management of offenders, the functions of local probation boards and prisons; to provide for the appointment and functions of Her Majesty's Commissioner for Offender Management and Prisons; to make provision about fines and other matters relating to sentencing; to make provision for the electronic monitoring of persons on bail; and for connected purposes.

The Baroness Scotland of Asthal

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