



**Law  
Commission**  
Reforming the law

Unfitness to Plead  
Volume 2: Draft Legislation

**50  
YEARS**

# **The Law Commission**

(LAW COM No 364)

## **UNFITNESS TO PLEAD VOLUME 2: DRAFT LEGISLATION**

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# THE LAW COMMISSION

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are:

The Right Honourable Lord Justice Bean, *Chairman*  
Professor Nick Hopkins  
Stephen Lewis  
Professor David Ormerod QC  
Nicholas Paines QC

The Chief Executive of the Law Commission is Elaine Lorimer.

The Law Commission is located at 1st Floor, Tower, 52 Queen Anne's Gate, London SW1H 9AG.

The terms of this report were agreed on 18 December 2015.

**The text of this report is available on the Law Commission's website at <http://www.lawcom.gov.uk>.**

# THE LAW COMMISSION

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# Criminal Procedure (Lack of Capacity) Bill

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A  
**B I L L**

TO

Amend the law relating to unfitness to plead; to make provision about intermediaries; to make provision about the giving of evidence by vulnerable defendants; and for connected purposes.

**B**E 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 CROWN COURT

*Lack of capacity to participate effectively*

**1 Determination of capacity**

- |                                                                                                                                                               |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| (1) This section applies in relation to a defendant if—                                                                                                       | 5  |
| (a) the defendant has been sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998,                                      |    |
| (b) a bill of indictment has been preferred against the defendant by the direction of the Court of Appeal (see section 7 of the Criminal Appeal Act 1968), or | 10 |
| (c) a bill of indictment has been preferred against the defendant by the direction of, or with the consent of, the High Court.                                |    |
| (2) The defendant may not be tried for the offence or offences charged if the defendant lacks capacity to participate effectively in the trial.               |    |
| (3) The defendant is to be regarded as having that capacity unless and until the court determines under this section that the defendant lacks that capacity.  | 15 |
| (4) An application to the court for a determination that the defendant lacks capacity to participate effectively in the trial may only be made by—            |    |
| (a) the defendant, or                                                                                                                                         |    |
| (b) the prosecutor.                                                                                                                                           | 20 |

- (5) The court may of its own motion determine that the defendant lacks capacity to participate effectively in the trial.
- (6) An application may be made or the court may raise the question –
- (a) before the trial, or
  - (b) during the trial but –
    - (i) where evidence is given before a verdict is given, only until the time immediately following the giving of that evidence, or
    - (ii) where evidence is not so given, only before a verdict is given.
- (7) Subject to section 4, if an application is made or the question is raised during the trial, the court must determine whether or not the defendant lacks the capacity to participate effectively in the trial before the trial proceeds further.
- (8) A determination that the defendant lacks, or does not lack, the capacity to participate effectively in the trial is to be made by the court without a jury.
- (9) If the court determines under this section that the defendant lacks capacity to participate effectively in the trial, the defendant is to be treated in the proceedings on the offence as lacking that capacity unless and until –
- (a) the court determines under section 8 that the defendant no longer lacks that capacity,
  - (b) the alternative finding procedure (including the making of any disposal) is concluded, or
  - (c) an order is made under section 22.

## 2 Evidence

- (1) The court may not determine that a defendant lacks capacity to participate effectively in a trial except on the written or oral evidence of two or more persons –
- (a) one of whom must be a duly approved registered medical practitioner, and
  - (b) one of whom must be a qualified person or a second duly approved registered medical practitioner.
- (2) The burden of proving that the defendant lacks capacity to participate effectively in the trial falls on –
- (a) the party who applies under section 1 for a determination that the defendant lacks that capacity, or
  - (b) the prosecutor, if the court raises the question;
- and the standard of proof is the balance of probabilities only if the determination is made on an application by the defendant or the court has raised the question.
- (3) If a defendant or a prosecutor obtains a report that –
- (a) is prepared by a duly approved registered medical practitioner or a qualified person, and
  - (b) states that the defendant lacks capacity to participate effectively in the trial,
- the defendant or the prosecutor must serve copies of the report on the court, and on the prosecutor or the defendant (as the case may be), as soon as practicable.

- (4) On the first occasion that the court is served with a copy of a report under subsection (3), it must, unless it would be contrary to the interests of justice to do so, direct—
- (a) the person who served that copy, and
  - (b) the defendant or the prosecutor (as the case may be),
- to give joint instructions for the preparation of a second report on the defendant’s capacity to participate effectively in the trial. 5
- (5) If the defendant and the prosecutor do not agree who is to be instructed, the court may select, or give directions about the selection of, the person to be instructed. 10
- (6) In this section “qualified person” means—
- (a) a registered medical practitioner,
  - (b) a registered psychologist, or
  - (c) a person who has a qualification specified by the Secretary of State by regulations. 15
- (7) Regulations under this section are to be made by statutory instrument.
- (8) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

### 3 Capacity to participate effectively in a trial

- (1) This section has effect for the purposes of section 1. 20
- (2) A defendant is to be regarded as lacking the capacity to participate effectively in a trial if the defendant’s relevant abilities are not, taken together, sufficient to enable the defendant to participate effectively in the proceedings on the offence or offences charged.
- (3) In determining that question, the court must take into account the assistance available to the defendant as regards the proceedings. 25
- (4) The following are relevant abilities—
- (a) an ability to understand the nature of the charge;
  - (b) an ability to understand the evidence adduced as evidence of the commission of the offence; 30
  - (c) an ability to understand the trial process and the consequences of being convicted;
  - (d) an ability to give instructions to a legal representative;
  - (e) an ability to make a decision about whether to plead guilty or not guilty; 35
  - (f) an ability to make a decision about whether to give evidence;
  - (g) an ability to make other decisions that might need to be made by the defendant in connection with the trial;
  - (h) an ability to follow the proceedings in court on the offence;
  - (i) an ability to give evidence; 40
  - (j) any other ability that appears to the court to be relevant in the particular case.
- (5) For the purposes of subsection (4)(e) to (g), an ability to make a decision is to be regarded as consisting of—
- (a) an ability to understand information relevant to the decision, 45

- (b) an ability to retain that information,
  - (c) an ability to use and to weigh the information when making the decision, and
  - (d) an ability to communicate the decision.
- (6) For the purposes of this section, so much of any proceedings as consists of a court proceeding under section 6 of the Proceeds of Crime Act 2002 (making of a confiscation order) is not to be treated as proceedings on an offence. 5

#### 4 Postponement of determination

- (1) The court must, before making a determination under section 1, consider whether it would be in the interests of justice to adjourn the proceedings for a determination under section 1. 10
- (2) In considering whether it would be in the interests of justice to adjourn the proceedings for a determination under section 1, the court must take into account in particular –
- (a) whether there is a real prospect that, after a period of adjournment, the defendant would have the capacity to participate effectively in the trial, and 15
  - (b) whether it is reasonable to delay the trial or the alternative finding procedure.
- (3) If the court considers that it would be in the interests of justice to adjourn the proceedings, the court may adjourn the proceedings accordingly. 20
- (4) An order under subsection (3) must specify the date before which –
- (a) the adjourned proceedings for a determination under section 1 must start, or
  - (b) the trial or the new trial must start, if no determination is made. 25
- (5) Except in exceptional circumstances, the date specified may not be later than the relevant date.
- (6) The relevant date, in relation to a defendant charged with an offence, is the anniversary of the day on which the court first makes an order under subsection (3) in relation to that person and that offence. 30

#### 5 Determination of capacity to plead guilty

- (1) If the court has determined under section 1 that the defendant lacks capacity to participate effectively in the trial, the defendant may apply to the court for a determination –
- (a) that the defendant has the capacity to plead guilty, or 35
  - (b) if the determination under section 1 is made after the defendant has entered (or has been treated as having entered) a plea of not guilty, that the defendant has the capacity to change the plea to a plea of guilty.
- (2) An application under subsection (1) may only be made immediately after the determination under section 1 that the defendant lacks capacity to participate effectively in the trial. 40
- (3) The question in subsection (1)(a) or (b) is to be determined by the court without a jury.

- (4) The court may not determine the question in subsection (1)(a) or (b) except on the written or oral evidence of two or more persons –
- (a) one of whom must be a duly approved registered medical practitioner, and
  - (b) one of whom must be a qualified person or a second duly approved registered medical practitioner. 5

## 6 Capacity to plead guilty

- (1) This section has effect for the purposes of section 5.
- (2) A defendant is to be regarded as having the capacity to plead guilty, or to change a plea to a plea of guilty, if the defendant’s relevant abilities are, taken together, sufficient to enable the defendant to participate effectively in –
- (a) the hearing in which the defendant pleads guilty or changes a plea (as the case may be), and
  - (b) any subsequent proceedings on the offence or offences in question.
- (3) In determining that question, the court must take into account the assistance available to the defendant as regards the proceedings. 15
- (4) The following are relevant abilities –
- (a) an ability to understand the nature of the charge;
  - (b) an ability to understand the evidence adduced as evidence of the commission of the offence; 20
  - (c) an ability to understand what it means to plead guilty and the consequences of a plea of guilty;
  - (d) an ability to give instructions to a legal representative;
  - (e) an ability to make a decision about whether to plead guilty or not guilty or to change a plea (as the case may be); 25
  - (f) an ability to make other decisions that might need to be made by the defendant in connection with the plea of guilty;
  - (g) an ability to follow the proceedings in court on the offence;
  - (h) any other ability that appears to the court to be relevant in the particular case. 30
- (5) For the purposes of subsection (4)(e) and (f), an ability to make a decision is to be regarded as consisting of –
- (a) an ability to understand information relevant to the decision,
  - (b) an ability to retain that information,
  - (c) an ability to use and to weigh the information when making the decision, and 35
  - (d) an ability to communicate the decision.
- (6) For the purposes of this section, so much of any proceedings as consists of a court proceeding under section 6 of the Proceeds of Crime Act 2002 (making of a confiscation order) is not to be treated as proceedings on an offence. 40

## 7 Effect on co-defendant

- (1) This section applies if the court determines in accordance with section 1 that a defendant lacks capacity to participate effectively in a trial.

- 
- (2) This section does not apply if the court has made an order under section 22 as regards subjecting the defendant to the alternative finding procedure.
- (3) If the defendant was to be, or was being, tried with one or more other defendants, the alternative finding procedure applicable to the defendant must proceed separately, unless the court determines – 5
- (a) of its own motion, or
- (b) on application by any party,
- that it is in the interests of justice for the alternative finding procedure and the trial of the other defendant or defendants to proceed together.
- (4) In considering whether it is in the interests of justice for the alternative finding procedure and the trial of the other defendant or defendants to proceed together, the court must take into account how proceeding together rather than separately is likely to affect – 10
- (a) the interests of the defendant in relation to whom the determination under section 1 was made (including any interest in making an election under section 12), 15
- (b) the interests of the other defendant or defendants,
- (c) witnesses in the proceedings,
- (d) persons, other than witnesses, who are affected by the offence or offences charged, and 20
- (e) the public interest.
- (5) The court is not prevented by subsection (4) from taking other matters into account.
- 8 Redetermination of capacity**
- (1) This section applies if – 25
- (a) the court has determined under section 1 that a defendant lacks capacity to participate effectively in a trial, and
- (b) the defendant is subject to the alternative finding procedure.
- (2) An application for the court to determine that the defendant no longer lacks that capacity may only be made by – 30
- (a) the defendant, or
- (b) the prosecutor.
- (3) The court may of its own motion determine that the defendant no longer lacks that capacity.
- (4) An application may be made or the court may decide to make a determination – 35
- (a) before the alternative finding procedure starts, or
- (b) during the procedure but –
- (i) where evidence is given before a finding is made or a verdict is given, only until the time immediately following the giving of that evidence, or 40
- (ii) where evidence is not so given, before a finding is made or a verdict is given.
- (5) If the question is raised, the court must determine it before the alternative finding procedure proceeds further. 45



- (6) The determination is to be made by the court without a jury.
- (7) The burden of proving that the defendant no longer lacks capacity to participate effectively in the trial falls on –
  - (a) the party who applies for a determination under this section, or
  - (b) the prosecution, if the question is raised by the court;and the standard of proof is the balance of probabilities in any case. 5
- (8) If the court determines that the defendant no longer lacks capacity to participate effectively in a trial, the defendant is no longer subject to the alternative finding procedure and may be tried for the offence or offences in question. 10
- (9) Sections 2(1) and (2) and 3 apply for the purposes of a determination under this section as they apply for the purposes of a determination under section 1.

*Alternative finding procedure*

**9 Alternative finding procedure**

- (1) If the court determines in accordance with section 1 that a defendant lacks capacity to participate effectively in a trial – 15
  - (a) the defendant may not be tried or may not continue to be tried, but
  - (b) the defendant is subject to the procedure described in this section and sections 10 and 11 (“the alternative finding procedure”).
- (2) Subsection (1)(b) does not apply if – 20
  - (a) the court determines in accordance with section 5 that the defendant has the capacity to plead guilty, and
  - (b) the defendant afterwards enters a plea of guilty or changes plea to a plea of guilty.
- (3) A jury must determine whether they are satisfied, in relation to the count or each of the counts on which the defendant was to be, or was being, tried, that the prosecution has proved the matter alleged against the defendant. 25
- (4) If, as regards the count or any of the counts on which the defendant was to be, or was being, tried, the jury are satisfied as mentioned in subsection (3), the jury must make a finding that the matter alleged is proved against the defendant in relation to that count. 30
- (5) If, as regards the count or any of the counts on which the defendant was to be, or was being, tried, the jury are not satisfied as mentioned in subsection (3), the jury must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion. 35

**10 Cases involving a special verdict**

- (1) Section 9(3) to (5) do not apply in respect of the count or one of the counts on which the defendant was to be, or was being, tried if a jury is asked to determine whether they are satisfied in relation to that count that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions. 40
- (2) The prosecution, the defendant or the court (acting of its own motion) may raise the issue of such a determination.

- 
- (3) A jury must determine in relation to that count –
- (a) whether they are satisfied that the prosecution have proved the matter alleged against the defendant, and
  - (b) if they are satisfied as mentioned in paragraph (a), whether they are satisfied that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions. 5
- (4) If as regards that count the jury are satisfied as mentioned in subsection (3)(a) and (b), the jury must return a special verdict that the defendant is not guilty by reason of insanity. 10
- (5) If as regards that count the jury are satisfied as mentioned in subsection (3)(a) but not as mentioned in subsection (3)(b), the jury must make a finding that the matter alleged is proved against the defendant in relation to that count.
- (6) If as regards that count the jury are not satisfied as mentioned in subsection (3)(a), the jury must determine in relation to that count – 15
- (a) whether they are satisfied that the defendant did the act or made the omission being charged against the defendant as the offence, and
  - (b) if they are satisfied as mentioned in paragraph (a), whether they are satisfied that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions. 20
- (7) If as regards that count the jury –
- (a) are not satisfied as mentioned in subsection (6)(a), or
  - (b) are satisfied as mentioned in subsection (6)(a) but not as mentioned in subsection (6)(b), 25
- the jury must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.
- (8) If as regards that count the jury are satisfied as mentioned in subsection (6)(a) and (b), the jury must return a special verdict that the defendant is not guilty by reason of insanity. 30
- 11 Sections 9 and 10: supplementary**
- (1) The jury must make a determination mentioned in section 9(3) or 10(3) or (6) –
- (a) on the evidence (if any) already given in the trial,
  - (b) on such evidence as may be adduced or further adduced during the alternative finding procedure by the prosecution, and 35
  - (c) on such evidence as may be adduced during the alternative finding procedure by the person appointed or selected to put the case for the defence.
- (2) If the court makes a determination under section 1 after a jury has been sworn to consider the issue of guilt, a determination mentioned in section 9(3) or 10(3) or (6) is to be made by the jury by whom the defendant was being tried. 40
- (3) The jury may not determine under section 10 that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved. 45

- (4) The following partial defences to murder are not available in the case of a defendant who is subject to the alternative finding procedure –
- (a) the defence of diminished responsibility (see section 2(1) of the Homicide Act 1957),
  - (b) the defence of acting in pursuance of a suicide pact (see section 4 of the Homicide Act 1957), and
  - (c) the defence of loss of control (see section 54 of the Coroners and Justice Act 2009);
- and references in sections 9 and 10 to proving the matter alleged against a defendant are to be read accordingly.
- (5) For the purposes of sections 9 and 10, a reference to the prosecution proving the matter alleged against a defendant in relation to a count on which the defendant was to be, or was being, tried is a reference to –
- (a) the prosecution proving such facts and matters, and to such standard, as would have been required to prove the commission of the offence in question if the defendant had not been determined to lack capacity to participate effectively in the trial of that offence, and
  - (b) where the defendant raises a defence that would have required the defendant to prove particular facts and matters to a particular standard if the defendant had not been determined to lack capacity to participate effectively in the trial of that offence, the defendant failing to prove such facts and matters to such standard.
- (6) Sections 9 and 10 are subject to –
- (a) section 12 (election to proceed without a jury), and
  - (b) section 22 (power to disapply alternative finding procedure).

## 12 Election for procedure without a jury

- (1) A defendant subject to the alternative finding procedure may elect for –
- (a) the issues to be tried by a judge without a jury, and
  - (b) the finding under section 9(4) or 10(5) or the verdict under section 9(5), 10(4), (7) or (8) to be given by the judge.
- (2) Subsection (1) does not apply if –
- (a) the court has determined under section 7 that the alternative finding procedure is proceeding together with the trial of another defendant or other defendants, and
  - (b) that trial is a trial with a jury.

## 13 Representation

- (1) If a defendant is subject to the alternative finding procedure, the court must appoint a person –
- (a) to put the case for the defence,
  - (b) to exercise any rights of appeal, and
  - (c) to put the defendant’s case on any appeal.
- (2) If a person is already representing the defendant in the proceedings, the court must appoint that person, unless the court considers that the person is not suitable to undertake these functions.

- (3) In appointing a person, the court must take into account the defendant's views, so far as they can be identified.
- (4) The court may –
- (a) revoke a person's appointment, and
  - (b) appoint another person in that person's place. 5
- (5) If the court determines under section 8 that the defendant no longer lacks capacity to participate effectively in a trial, any appointment by the court under this section comes to an end.
- (6) A person appointed under this section must, in relation to the alternative finding procedure and any appeal – 10
- (a) act in the defendant's best interests, and
  - (b) subject to paragraph (a), give effect to the defendant's instructions, so far as they can be identified.
- (7) Where an appeal is made against a finding made or verdict given in the alternative finding procedure, the Court of Appeal may – 15
- (a) revoke an appointment made by the court or an earlier appointment made by the Court of Appeal under paragraph (b), and
  - (b) appoint another person in that person's place.
- (8) In appointing a person, the Court of Appeal must take into account the defendant's views, so far as they can be identified. 20

#### 14 Rules of evidence

The fact that a person may not be convicted while subject to the alternative finding procedure does not prevent the proceedings being criminal proceedings in relation to which the strict rules of evidence apply.

*Resumption of proceedings where capacity* 25

#### 15 Prosecution application

- (1) This section applies where –
- (a) in proceedings using the alternative finding procedure –
    - (i) a finding has been made under section 9(4) or 10(5) that the matter alleged is proved against a person, and 30
    - (ii) the offence to which the finding relates is a specified offence, or
  - (b) in proceedings using the alternative finding procedure –
    - (i) a special verdict under section 10(4) or (8) has been returned against a person, and
    - (ii) the offence to which the verdict relates is murder or an offence under Part 2 of the Serious Crime Act 2007 in relation to which murder is the offence (or one of the offences) which the person intended or believed would be committed. 35
- (2) The appropriate prosecutor may apply to the Crown Court for permission to resume the prosecution of the person for – 40
- (a) that offence,

- (b) any other offence charged in the indictment in respect of which there was a finding under section 9(4) or 10(5) or a special verdict under section 10(4) or (8), and
- (c) any offence charged in the indictment –
  - (i) in respect of which there was no finding, acquittal or special verdict under section 9 or 10, and 5
  - (ii) all the elements of which are elements of an offence falling within paragraph (a) or (b).
- (3) An application, and the court’s permission, must relate to all the offences falling within subsection (2). 10
- (4) The court may grant permission only if –
  - (a) the court is satisfied that the prosecution has reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and
  - (b) the court determines that it is in the interests of justice that the person should be tried. 15
- (5) In determining whether it is in the interests of justice that the person should be tried, the court must take into account –
  - (a) the seriousness of the offence or offences allegedly committed;
  - (b) the alleged impact of the offence or offences; 20
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or offences were, allegedly committed;
  - (d) the views of witnesses, their availability and their willingness to give evidence;
  - (e) how much time has passed since the alleged offence was or offences were committed; 25
  - (f) the fact that the person was subject to the alternative finding procedure;
  - (g) how much time has passed since the finding was made under section 9(4) or 10(5) or the verdict given under section 10(4) or (8);
  - (h) the order or orders made under section 57(2) in respect of the person; 30
  - (i) the sentence that is likely to be imposed if the person is convicted of the offence or offences.
- (6) The court is not prevented by subsection (5) from taking other matters into account.
- (7) In this section – 35
  - “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the person in question for the offence or offences charged;
  - “specified offence” has the meaning given by section 224 of the Criminal Justice Act 2003. 40

## 16 Defendant’s application

- (1) This section applies where, in respect of an offence with which a person was charged –
  - (a) a finding has been made under section 9(4) or 10(5) that the matter alleged is proved against the person, or 45

- 
- (b) a special verdict under section 10(4) or (8) has been returned against the person.
- (2) The person may apply to the Crown Court for an order that the appropriate prosecutor resume the prosecution of the person for –
- (a) that offence, 5
  - (b) any other offence charged in the indictment in respect of which there was a finding under section 9(4) or 10(5) or special verdict under section 10(4) or (8), and
  - (c) any offence charged in the indictment –
    - (i) in respect of which there was no finding, acquittal or special verdict under section 9 or 10, and 10
    - (ii) all the elements of which are elements of an offence falling within paragraph (a) or (b).
- (3) An application, and the order of the court, must relate to all the offences falling within subsection (2). 15
- (4) The court may make such an order only if –
- (a) the court is satisfied that there are reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and
  - (b) the court determines that it is in the interests of justice that the person should be tried. 20
- (5) In determining whether it is in the interests of justice that the person should be tried, the court must take into account –
- (a) the seriousness of the offence or offences allegedly committed;
  - (b) the alleged impact of the offence or offences; 25
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or offences were, allegedly committed;
  - (d) the views of witnesses, their availability and their willingness to give evidence;
  - (e) how much time has passed since the alleged offence was, or offences were, committed; 30
  - (f) how much time has passed since the finding was made under section 9(4) or 10(5) or the special verdict under section 10(4) or (8) was returned;
  - (g) the order or orders made under section 57(2) in respect of the person; 35
  - (h) any delay in making an application under this section and the reason for it.
- (6) The court is not prevented by subsection (5) from taking other matters into account.
- (7) In this section “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the applicant for the offence or offences in question. 40
- 17 Section 16: reinstatement of proceedings**
- (1) This section applies where – 45

- (a) the Crown Court makes an order under section 16 as regards the appropriate prosecutor, and
  - (b) the order applies to an offence in respect of which a special verdict under section 10(4) or (8) was returned.
- (2) The order constitutes permission to institute fresh proceedings for that offence. 5
- (3) The fresh proceedings are to be instituted by preferring a bill of indictment.
- (4) If prosecution of the offence requires the consent of any person, that consent is to be regarded as having been given for the purposes of fresh proceedings under this section if it was given in respect of the earlier proceedings.
- (5) Where fresh proceedings are instituted, anything done in relation to the original proceedings is to be treated as done in relation to the fresh proceedings, if the court so directs. 10
- (6) Where a person is convicted in fresh proceedings under this section, the institution of those proceedings may not be called into question in any appeal against that conviction. 15

## 18 Effect on a finding, verdict or order

- (1) Notwithstanding the granting of permission under section 15 or the making of an order under section 16, a finding under section 9(4) or 10(5) or a special verdict under section 10(4) or (8) that was made or given in the proceedings in relation to an offence continues to have effect unless and until, in further proceedings on the offence – 20
- (a) a verdict is given or entered or a further finding under section 9(4) or 10(5) is made in respect of –
    - (i) the offence, or
    - (ii) an alternative offence, or 25
  - (b) where the defendant is sent to a magistrates' court for trial, a magistrates' court convicts or acquits the defendant of, or makes a determination under section 38 or 39 in respect of –
    - (i) the offence, or
    - (ii) an alternative offence. 30
- (2) An order mentioned in subsection (3) that was made in consequence of that finding or special verdict continues to have effect accordingly.
- (3) The orders referred to in subsection (2) are –
- (a) a hospital order (with or without a restriction order);
  - (b) a supervision order; 35
  - (c) any other order that may be made where there is a finding under section 9(4) or 10(5) or a special verdict under section 10(4) or (8).
- (4) If the Crown Court grants permission under section 15 or makes an order under section 16 –
- (a) the Crown Court may revoke an order to which subsection (2) applies, where the person subject to the order has not, or has not yet, been sent to a magistrates' court for trial, or 40
  - (b) a magistrates' court may revoke an order to which subsection (2) applies, where the person subject to the order has been sent to a magistrates' court for trial. 45

- (5) Subsection (2) does not affect the powers of the Crown Court or a magistrates' court to remand a person in custody before or during trial.
- (6) Subsection (2) is subject to section 21 (power to revoke etc).
- (7) Where a finding under section 9(4) or 10(5) has been made or a special verdict under section 10(4) or (8) has been given in relation to an offence charged in an indictment, there may not be further proceedings on the offence or offences that were charged in the indictment unless permission is granted or an order made under section 15 or 16. 5

## 19 Provision about resumed proceedings

- (1) This section applies where the Crown Court – 10
- (a) grants permission under section 15, or
  - (b) makes an order under section 16,
- in order that a person may be tried.
- (2) Schedule 3 to the Crime and Disorder Act 1998 (procedure where persons are sent for trial under section 51 or 51A of that Act) has effect in relation to the person as if – 15
- (a) a reference to the Crown Court sitting in a place specified in a notice under section 51D(1) of the Crime and Disorder Act 1998 were a reference to the Crown Court sitting in the place where the person is to be tried, 20
  - (b) a reference to a person who is sent for trial under section 51 or 51A of the Crime and Disorder Act 1998 on any charge or charges were a reference to the person who is sent for trial because of the permission granted or order made under section 15 or 16,
  - (c) a reference to an offence for which a person is sent for trial under section 51 or 51A of the Crime and Disorder Act 1998 were a reference to an offence to which the permission or order under section 15 or 16 relates, 25
  - (d) a reference to a main offence were a reference to an offence triable only on indictment, and 30
  - (e) a reference to a magistrates' court acting for the place where a person was sent to the Crown Court for trial were a reference to a magistrates' court acting for the place where the person was sent to the Crown Court for trial in the original proceedings on the offence or offences in question. 35
- (3) If the person is remitted for trial to a magistrates' court under paragraph 10 or 13 of Schedule 3 to the Crime and Disorder Act 1998, a finding or verdict to which section 18(1) applies continues to have effect unless and until, in further proceedings on the offence in a magistrates' court, a determination is made in respect of – 40
- (a) the offence, or
  - (b) an alternative offence.
- (4) If the person is remitted for trial to a magistrates' court under paragraph 10 or 13 of Schedule 3 to the Crime and Disorder Act 1998, an order to which section 18(2) applies (including a restriction order) continues to have effect accordingly. 45



## 20 Lack of capacity as regards renewed trial

- (1) This section applies where –
  - (a) a person is being, or is to be, tried because permission was granted under section 15 or an order was made under section 16, and
  - (b) the Crown Court determines in accordance with section 1 that the person lacks capacity to participate effectively in the trial. 5
- (2) Where this section applies, section 9(1)(b) is subject to subsection (3).
- (3) The person is to be subject to the alternative finding procedure only if the court considers that it is in the interests of justice that the person should be subject to that procedure. 10

## 21 Disposals where same finding etc

- (1) This section applies if –
  - (a) the Crown Court determines in accordance with section 1 that a person who is being, or is to be, tried because of permission granted under section 15 or an order made under section 16 lacks the capacity to participate effectively in the trial, 15
  - (b) the person is then subject to the alternative finding procedure,
  - (c) in those proceedings, in relation to an offence –
    - (i) a finding is made under section 9(4) or 10(5) that the matter alleged is proved in relation to the person, or 20
    - (ii) a special verdict under section 10(4) or (8) is returned that the person is not guilty by reason of insanity, and
  - (d) that finding or verdict is the same finding or verdict as was made or given in relation to that offence in the earlier proceedings conducted using the alternative finding procedure. 25
- (2) Subject to subsection (3), an order imposed in the earlier proceedings is to continue to have effect.
- (3) The court may –
  - (a) revoke any order imposed in the earlier proceedings;
  - (b) amend a supervision order imposed in the earlier proceedings, if it has not already come to an end; 30
  - (c) make a hospital order (with or without a restriction order).
- (4) Subsection (5) to (7) apply if –
  - (a) a magistrates' court determines in accordance with section 30 that a person who is being, or is to be, tried because the Crown Court granted permission under section 15 or made an order under section 16 lacks the capacity to participate effectively in the trial, 35
  - (b) the person is then subject to the alternative finding procedure,
  - (c) in those proceedings, in relation to an offence, the court makes a determination under section 38(4) or 39(4), (5) or (8), and 40
  - (d) that determination corresponds to a finding or verdict made or returned under section 9 or 10 in relation to that offence in the earlier proceedings in the Crown Court.
- (5) Subject to subsections (6) and (7), an order imposed in the earlier proceedings is to continue to have effect. 45

- (6) The court may –
- (a) revoke any order imposed in the earlier proceedings;
  - (b) amend a supervision order imposed in the earlier proceedings, if it has not already come to an end;
  - (c) make a hospital order. 5
- (7) A restriction order imposed in the earlier proceedings ceases to have effect.

*Alternative finding procedure disapplied*

**22 Alternative finding procedure disapplied**

- (1) This section applies if the Crown Court determines in accordance with section 1 that a defendant lacks capacity to participate effectively in a trial. 10
- (2) If the court considers it to be in the interests of justice to do so, the court may order that –
- (a) the defendant is not to be subject to the alternative finding procedure, and
  - (b) no other step may be taken in the proceedings against the defendant on the offence or offences charged except as provided in sections 23 and 24. 15
- (3) The court may make an order under subsection (2) –
- (a) on application made by the defendant, or
  - (b) of its own motion. 20
- (4) The matters to be considered by the court when deciding whether to make an order under subsection (2) include –
- (a) the seriousness of the offence or offences charged;
  - (b) the effect of the order on those affected by the offence or offences charged; 25
  - (c) the arrangements made to reduce the risk (if any) that the defendant would commit an offence in future;
  - (d) the arrangements made to support and assist the defendant;
  - (e) the views of the defendant or the prosecutor as regards the making of the order. 30
- (5) The court is to assume, when deciding whether to make an order under subsection (2), that the matter alleged against the defendant would be proved in the case of the count, or each of the counts, on which the defendant was to be, or was being, tried.
- (6) If – 35
- (a) the court determines under section 5 that the defendant has the capacity to plead guilty, or to change a plea to a plea of guilty, as regards an offence charged, and
  - (b) the defendant enters a plea of guilty, or changes a plea to a plea of guilty, as regards that offence before an order is made under subsection (2), 40
- an order under subsection (2) does not affect the proceedings as regards that offence.

## 23 Prosecution application to resume proceedings

- (1) This section applies where –
  - (a) the Crown Court has made an order under section 22 in relation to a defendant, and
  - (b) the offence charged, or one of the offences charged, was a specified offence. 5
- (2) The appropriate prosecutor may apply to the Crown Court for permission to resume the prosecution of the person for the offence or offences charged.
- (3) The court may grant permission only if –
  - (a) the court is satisfied that the prosecution has reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and 10
  - (b) the court determines that it is in the interests of justice that the person should be tried.
- (4) In determining whether it is in the interests of justice that the person should be tried, the court must take into account –
  - (a) the seriousness of the offence or offences allegedly committed;
  - (b) the alleged impact of the offence or offences;
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or the offences were, allegedly committed; 20
  - (d) the views of witnesses, their availability and their willingness to give evidence;
  - (e) how much time has passed since the alleged offence was, or offences were, committed;
  - (f) the sentence that is likely to be imposed if the person is convicted of the offence or offences. 25
- (5) The court is not prevented by subsection (4) from taking other matters into account.
- (6) In this section –
  - “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the person in question for the offence or offences charged; 30
  - “specified offence” has the meaning given by section 224 of the Criminal Justice Act 2003. 35

## 24 Defendant’s application to resume proceedings

- (1) This section applies where the Crown Court has made an order under section 22 in relation to a defendant.
- (2) The defendant may apply to the Crown Court for an order that the appropriate prosecutor resume the prosecution of the person for the offence or offences charged. 40
- (3) The court may make such an order only if –
  - (a) the court is satisfied that there are reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and 45

- (b) the court determines that it is in the interests of justice that the person should be tried.
- (4) In determining whether it is in the interests of justice that the person should be tried for the offence, the court must take into account –
- (a) the seriousness of the offence or offences allegedly committed; 5
  - (b) the alleged impact of the offence or offences;
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or the offences were, allegedly committed;
  - (d) the views of witnesses, their availability and their willingness to give evidence; 10
  - (e) how much time has passed since the alleged offence was, or offences were, committed;
  - (f) any delay in making an application under this section and the reason for it.
- (5) The court is not prevented by subsection (4) from taking other matters into account. 15
- (6) In this section “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the applicant for the offence or offences charged. 20

### *Bail*

## **25 Bail and custody before hearing**

- (1) If an application is made under section 15 or 23 by the appropriate prosecutor, the Crown Court may, on application by the appropriate prosecutor –
- (a) issue a summons requiring the person to appear before the court at the hearing of the application under section 15 or 23, or 25
  - (b) issue a warrant for the person’s arrest.
- (2) A warrant under subsection (1)(b) may be issued at any time even though a summons has previously been issued.
- (3) Where a summons is issued under subsection (1)(a), the time and place at which the person must appear may be specified –
- (a) in the summons, or
  - (b) in a subsequent direction of the court. 30
- (4) The time or place specified may be varied from time to time by a direction of the court. 35
- (5) A person arrested under a warrant under subsection (1)(b) must be brought before the court as soon as practicable and in any event within 48 hours after the person’s arrest, and section 81(5) of the Senior Courts Act 1981 does not apply.
- (6) If a person is brought before the court under subsection (5), the court must either –
- (a) remand the person in custody to be brought before the court at the hearing of the application under section 15 or 23, or
  - (b) grant bail for the person to appear before the court at the hearing. 40

- (7) If bail is granted under subsection (6)(b), the court may revoke the bail and remand the person in custody as referred to in subsection (6)(a).
- (8) For the purpose of calculating the period referred to in subsection (5), the following are to be disregarded –
- (a) Saturday, 5
  - (b) Sunday,
  - (c) Christmas Day,
  - (d) Good Friday, and
  - (e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales. 10
- (9) In this section “the appropriate prosecutor” has the meaning given by section 15 or 23, as the case may be.

## 26 Bail and custody during hearing

- (1) The Crown Court may, at any adjournment of the hearing of an application under section 15 or 23 made by the appropriate prosecutor – 15
- (a) remand the person to whom the application relates on bail, or
  - (b) remand the person in custody.
- (2) If the court dismisses the application and –
- (a) the court also gives the appropriate prosecutor leave to appeal against its decision, or 20
  - (b) the appropriate prosecutor gives notice that the prosecutor intends to apply for leave to appeal against its decision,
- the court may make such order as it sees fit for the custody or bail of the person to whom the application relates, pending determination of the appeal.
- (3) For the purpose of subsection (2), the determination of an appeal is pending – 25
- (a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;
  - (b) if leave to appeal is granted, until the appeal is disposed of.
- (4) Section 4 of the Bail Act 1976 applies in relation to the grant of bail under this section as if in section 4(2) a reference to proceedings for an offence included a reference to proceedings on an application under section 15 or 23. 30
- (5) The court may at any time, as it sees fit –
- (a) revoke bail granted under this section and remand the person in custody;
  - (b) vary an order under subsection (2). 35
- (6) In this section “the appropriate prosecutor” has the meaning given by section 15 or 23, as the case may be.

## 27 Revocation of bail

- (1) Where –
- (a) the Crown Court revokes a person’s bail under section 25 or 26, and 40
  - (b) that person is not before the court when bail is revoked,
- the court must order the person to surrender himself or herself forthwith to the custody of the court.

- (2) Where a person surrenders himself or herself into the custody of the court in compliance with an order under subsection (1), the court must remand the person in custody.
- (3) A person who has been ordered to surrender to custody under subsection (1) may be arrested without a warrant by an officer if the person fails without reasonable cause to surrender to custody in accordance with the order. 5
- (4) A person arrested under subsection (3) must be brought as soon as practicable and, in any event, not more than 24 hours after the person is arrested, before the court and the court must remain the person in custody.
- (5) For the purpose of calculating the period referred to in subsection (4), the following are to be disregarded – 10
- (a) Saturday,
  - (b) Sunday,
  - (c) Christmas Day,
  - (d) Good Friday, and 15
  - (e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

*Powers of the Court of Appeal*

**28 Power to order proceedings using the alternative finding procedure**

In section 16 of the Criminal Appeal Act 1968 (disposal of appeals under section 15), after subsection (4) insert – 20

- “(5) If it appears to the Court that the interests of justice so require, they may order that proceedings be taken against the appellant using the alternative finding procedure as if, in a pre-trial hearing, a determination had been made as regards the appellant under section 1 of the Criminal Procedure (Lack of Capacity) Act 2015. 25
- (6) The Court may not under subsection (5) order that a person be proceeded against for any offence other than –
- (a) the offence in respect of which the person’s appeal under section 15 is allowed, 30
  - (b) an offence of which a person could have been convicted on an indictment for the offence mentioned in paragraph (a), or
  - (c) an offence that was charged in the alternative but in respect of which no finding under section 9(4) or 10(5) of the Criminal Procedure (Lack of Capacity) Act 2015 was made, because such a finding was made in respect of the offence mentioned in paragraph (a). 35
- (7) If the prosecution do not take steps to subject the person to the alternative finding procedure before the end of two months from the date of the order under subsection (5), the person may apply to the Court of Appeal – 40
- (a) to set aside the order, and
  - (b) to direct the court of trial to enter a judgment and verdict of acquittal of the offence which is the subject of the order.

- (8) The Court of Appeal may refuse the application if they are satisfied that –
- (a) the prosecution has acted with all due expedition, and
  - (b) there is a good and sufficient cause to subject the person to the alternative finding procedure in spite of the lapse of time since the order under subsection (5) was made. 5
- (9) Section 8(2) to (3B) and paragraph 1 of Schedule 2 apply in relation to a person subject to an order under subsection (5) as they apply in relation to a person subject to an order under section 7.”

**PART 2** 10

MAGISTRATES’ COURTS

*Allocation of either-way offences*

**29 Allocation of offences triable on indictment or summarily**

- (1) The Magistrates’ Courts Act 1980 is amended as follows.
- (2) In section 17A (accused to indicate intention as to plea before initial procedure under sections 18 to 23), after subsection (9) insert – 15
- “(9A) If the court has reasonable grounds for believing that the accused’s capacity to participate effectively in the trial would fall to be determined under section 30 of the Criminal Procedure (Lack of Capacity) Act 2015 if the proceedings continued – 20
- (a) subsections (4) to (8) and section 17B do not apply, and
  - (b) for the purposes of this section and section 18(1), the accused is to be taken to indicate that the accused would plead not guilty.”
- (3) In section 18 (initial procedure on information or written charge against adult for offence triable either way), after subsection (5) insert – 25
- “(6) Subsection (5) is subject to sections 30(7) and 34(4) of the Criminal Procedure (Lack of Capacity) Act 2015 (requirements that decisions on capacity be taken by a magistrates’ court composed of a District Judge (Magistrates’ Courts) sitting alone).”
- (4) In section 20 (procedure where summary trial appears more suitable), in subsection (1), after “by section” insert “20B(4) or”. 30
- (5) After section 20A (provision supplementary to section 20) insert –
- “20B Procedure where summary trial appears more suitable: accused lacks capacity to participate effectively in trial**
- (1) Subsection (2) applies if – 35
- (a) the court decides under section 19 that the offence appears to it suitable for summary trial, and
  - (b) before the court puts the question under section 20(6) or (9) – 40
    - (i) the accused or the prosecutor applies to the court under section 30 of the 2015 Act for a determination that the accused lacks capacity to participate effectively in the trial, or

- (ii) the court raises of its own motion under section 30 of the 2015 Act the question of the accused's lack of capacity to participate effectively in the trial.
- (2) Where this subsection applies, the court must –
- (a) determine under section 30 of the 2015 Act whether or not the accused lacks the capacity to participate effectively in the trial, and 5
- (b) if the court determines that the accused lacks that capacity, determine any application under section 34 of the 2015 Act (lack of capacity to plead guilty), 10
- before proceeding further.
- (3) Subsection (2) is subject to section 33 of the 2015 Act (power to postpone determination).
- (4) If in a case where subsection (2) applies the court determines under section 34 of the 2015 Act that the accused lacks the capacity described in section 34(1)(a) or the accused does not make an application under section 34 of the 2015 Act – 15
- (a) section 20 ceases to apply to the accused,
- (b) the accused may not be tried, and
- (c) the accused is subject to the alternative finding procedure in a magistrates' court (see sections 38 to 41 of the 2015 Act), unless an order is made under section 50 of the 2015 Act (alternative finding procedure disapplied). 20
- (5) In this section “the 2015 Act” means the Criminal Procedure (Lack of Capacity) Act 2015.” 25
- (6) In section 22 (certain either-way offences to be triable summarily if the value involved is small), after subsection (6) insert –
- “(6A) If the court has reasonable grounds for believing that the accused's capacity to participate effectively in a trial would fall to be determined under section 30 of the Criminal Procedure (Lack of Capacity) Act 2015 if the proceedings continued – 30
- (a) subsections (5) and (6) do not apply, and
- (b) the court is to proceed in accordance with section 19 in the ordinary way without further regard to the provisions of this section.” 35
- (7) In section 23 (power of court, with consent of legally-represented accused, to proceed in accused's absence), after subsection (4) insert –
- “(4A) Subsection (4B) applies if before the court proceeds as described in subsection (4)(a) or (b) –
- (a) the accused or the prosecutor applies to the court under section 30 of the 2015 Act for a determination that the accused lacks capacity to participate effectively in the trial, or 40
- (b) the court raises of its own motion under section 30 of the 2015 Act the question of the accused's lack of capacity to participate effectively in the trial. 45
- (4B) Where this subsection applies, the court must –



- (a) determine under section 30 of the 2015 Act whether or not the accused lacks the capacity to participate effectively in the trial, and
  - (b) if the court determines that the accused lacks that capacity, determine any application under section 34 of the 2015 Act (lack of capacity to plead guilty),  
before proceeding further. 5
- (4C) Subsection (4B) is subject to section 33 of the 2015 Act (power to postpone determination).
- (4D) If in a case where subsection (4B) applies the court determines under section 34 of the 2015 Act that the accused lacks the capacity described in section 34(1)(a) or the accused does not make an application under section 34 of the 2015 Act – 10
  - (a) section 20 ceases to apply to the accused,
  - (b) the accused may not be tried, and 15
  - (c) the accused is subject to the alternative finding procedure in a magistrates’ court (see sections 38 to 41 of the 2015 Act), unless an order is made under section 50 of the 2015 Act (alternative finding procedure disapplied).”
- (8) In section 23, after subsection (5) insert – 20
  - “(6) In this section “the 2015 Act” means the Criminal Procedure (Lack of Capacity) Act 2015.”

*Lack of capacity to participate effectively*

**30 Determination of capacity**

- (1) If a person is charged before a magistrates’ court with an offence, the person may not be tried summarily for the offence if the person lacks capacity to participate effectively in the trial. 25
- (2) The defendant is to be regarded as having that capacity unless and until the court determines under this section that the defendant lacks that capacity.
- (3) An application to a magistrates’ court for a determination that the defendant lacks capacity may only be made by – 30
  - (a) the defendant, or
  - (b) the prosecutor.
- (4) The court may of its own motion determine that the defendant lacks capacity to participate effectively in the trial. 35
- (5) An application may be made or the court may raise the question at any time before, but not after, the defendant is convicted.
- (6) Subject to section 33, if an application is made or the question is raised during the summary trial, the court must determine whether or not the defendant lacks capacity to participate effectively in the trial before the trial proceeds further. 40
- (7) A determination that the defendant lacks, or does not lack, the capacity to participate effectively in the trial is to be made by a magistrates’ court composed of a District Judge (Magistrates’ Courts) sitting alone.

- (8) If—
- (a) an application is made or the question is raised after the defendant's summary trial has started, and
  - (b) the court is not composed of a District Judge (Magistrates' Courts) sitting alone by virtue of the Courts Act 2003,
- the court must adjourn the trial in order that a magistrates' court composed of a District Judge (Magistrates' Courts) sitting alone may make a determination under this section (and act under section 33, 34 or 50, if it applies). 5
- (9) If—
- (a) an application is made or the question is raised after the defendant's summary trial has started, and
  - (b) the defendant is being tried with one or more other defendants,
- the court may order that the trial is to continue so far as it relates to the other defendant or defendants. 10
- (10) If a magistrates' court determines under this section that a defendant lacks capacity to participate effectively in a trial, the defendant is to be treated in the proceedings on the offence as lacking that capacity unless and until— 15
- (a) a magistrates' court determines under section 37 that the defendant no longer lacks that capacity,
  - (b) the alternative finding procedure (including the making of any disposal) is concluded, or
  - (c) an order is made under section 50. 20

### 31 Evidence

- (1) A magistrates' court may not determine that a defendant lacks capacity to participate effectively in a trial except on the written or oral evidence of two or more persons— 25
- (a) one of whom must be a duly approved registered medical practitioner, and
  - (b) one of whom must be a qualified person or a second duly approved registered medical practitioner. 30
- (2) The burden of proving that the defendant lacks capacity to participate effectively in the trial falls on—
- (a) the party who applies under section 30 for a determination that the defendant lacks that capacity, or
  - (b) the prosecutor, if the court raises the question; 35
- and the standard of proof is the balance of probabilities only if the determination is made on an application by the defendant or the court has raised the question.
- (3) If a defendant or a prosecutor obtains a report that— 40
- (a) is prepared by a duly approved registered medical practitioner or a qualified person, and
  - (b) states that the defendant lacks capacity to participate effectively in the trial,
- the defendant or the prosecutor must serve copies of the report on the court and on the prosecutor or the defendant (as the case may be), as soon as practicable. 45

- (4) On the first occasion that a magistrates' court is served with a copy of a report under subsection (3), it must, unless it would be contrary to the interests of justice to do so, direct—
- (a) the person who served that copy, and
  - (b) the defendant or the prosecutor (as the case may be),
- to give joint instructions for the preparation of a second report on the defendant's capacity to participate effectively in the trial. 5
- (5) If the defendant and the prosecutor do not agree who is to be instructed, the court may select, or give directions about the selection of, the person to be instructed. 10

### 32 Capacity to participate effectively in a trial

- (1) This section has effect for the purposes of section 30.
- (2) A defendant is to be regarded as lacking the capacity to participate effectively in a trial if the defendant's relevant abilities are not, taken together, sufficient to enable the defendant to participate effectively in the proceedings on the offence or offences in question. 15
- (3) In determining that question, the court must take into account the assistance available to the defendant as regards the proceedings.
- (4) The following are relevant abilities—
- (a) an ability to understand the nature of the charge; 20
  - (b) an ability to understand the evidence adduced as evidence of the commission of the offence;
  - (c) an ability to understand the trial process and the consequences of being convicted;
  - (d) an ability to give instructions to a legal representative; 25
  - (e) an ability to make a decision about electing for summary trial or trial on indictment, if the proceedings involve such an election and the election has yet to be made;
  - (f) an ability to make a decision about whether to plead guilty or not guilty; 30
  - (g) an ability to make a decision about whether to give evidence;
  - (h) an ability to make other decisions that might need to be made by the defendant in connection with the trial;
  - (i) an ability to follow the proceedings in court on the offence;
  - (j) an ability to give evidence; 35
  - (k) any other ability that appears to the court to be relevant in the particular case.
- (5) For the purposes of subsection (4)(e) to (h), an ability to make a decision is to be regarded as consisting of—
- (a) an ability to understand information relevant to the decision, 40
  - (b) an ability to retain that information,
  - (c) an ability to use and to weigh the information when making the decision, and
  - (d) an ability to communicate the decision.

- (6) For the purposes of this section, so much of any proceedings as consists of a court proceeding under section 6 of the Proceeds of Crime Act 2002 (making of a confiscation order) is not to be treated as proceedings on an offence.

### 33 Postponement of determination

- (1) A magistrates' court not composed of a District Judge (Magistrates' Courts) sitting alone may, before adjourning in order that proceedings for a determination under section 30 may take place before a magistrates' court so composed, consider whether it would be in the interests of justice to postpone the proceedings for a determination under section 30. 5
- (2) A magistrates' court must, before making a determination under section 30, consider whether it would be in the interests of justice to adjourn the proceedings for a determination under section 30. 10
- (3) In considering whether it would be in the interests of justice to postpone or adjourn the proceedings for a determination, the court must take into account in particular – 15
- (a) whether there is a real prospect that, after the period of postponement or adjournment, the defendant would have the capacity to participate effectively in the trial, and
- (b) whether it is reasonable to delay the trial or the alternative finding procedure. 20
- (4) If the court determines that it would be in the interests of justice to postpone or adjourn the proceedings, the court may postpone or adjourn the proceedings accordingly.
- (5) An order under subsection (4) must specify the date before which – 25
- (a) the postponed or adjourned proceedings for a determination under section 30 must start, or
- (b) the trial or the new trial must start, if no determination is made.
- (6) Except in exceptional circumstances, the date specified may not be later than the relevant date.
- (7) The relevant date, in relation to a defendant charged with an offence, is the anniversary of the day on which the court first makes an order under this section in relation to that person and that offence. 30

### 34 Determination of capacity to plead guilty

- (1) If a magistrates' court has determined under section 30 that a defendant lacks capacity to participate effectively in a trial, the defendant may apply to the court for a determination – 35
- (a) that the defendant has the capacity to plead guilty, or
- (b) if the determination under section 30 is made after the defendant has entered (or has been treated as having entered) a plea of not guilty, that the defendant has the capacity to change the plea to a plea of guilty. 40
- (2) An application under subsection (1) may only be made immediately after the determination under section 30 that the defendant lacks capacity to participate effectively in the trial.

- (3) The court may not determine the question in subsection (1)(a) or (b) except on the written or oral evidence of two or more persons –
  - (a) one of whom must be a duly approved registered medical practitioner, and
  - (b) one of whom must be a qualified person or a second duly approved registered medical practitioner. 5
- (4) The question in subsection (1)(a) or (b) is to be determined by a magistrates' court composed of a District Judge (Magistrates' Courts) sitting alone.

### 35 Capacity to plead guilty

- (1) This section has effect for the purposes of section 34. 10
- (2) A defendant is to be regarded as having the capacity to plead guilty, or to change a plea to a plea of guilty, if the defendant's relevant abilities are, taken together, sufficient to enable the defendant to participate effectively in –
  - (a) the hearing in which the defendant pleads guilty or changes a plea (as the case may be), and 15
  - (b) any subsequent proceedings on the offence or offences in question.
- (3) In determining that question, the court must take into account the assistance available to the defendant as regards the proceedings.
- (4) The following are relevant abilities –
  - (a) an ability to understand the nature of the charge; 20
  - (b) an ability to understand the evidence adduced as evidence of the commission of the offence;
  - (c) an ability to understand what it means to plead guilty and the consequences of a plea of guilty;
  - (d) an ability to give instructions to a legal representative; 25
  - (e) an ability to make a decision about whether to plead guilty or not guilty or to change a plea (as the case may be);
  - (f) an ability to make other decisions that might need to be made by the defendant in connection with the plea of guilty;
  - (g) an ability to follow the proceedings in court on the offence; 30
  - (h) any other ability that appears to the court to be relevant in the particular case.
- (5) For the purposes of subsection (4)(e) and (f), an ability to make a decision is to be regarded as consisting of –
  - (a) an ability to understand information relevant to the decision, 35
  - (b) an ability to retain that information,
  - (c) an ability to use and to weigh the information when making the decision, and
  - (d) an ability to communicate the decision.
- (6) For the purposes of this section, so much of any proceedings as consists of a court proceeding under section 6 of the Proceeds of Crime Act 2002 (making of a confiscation order) is not to be treated as proceedings on an offence. 40

**36 Effect on co-defendant**

- (1) This section applies if a magistrates' court determines in accordance with section 30 that a defendant lacks capacity to participate effectively in a trial.
- (2) This section does not apply if a magistrates' court makes an order under section 50 as regards not subjecting the defendant to the alternative finding procedure. 5
- (3) If the defendant was to be, or was being, tried with one or more other defendants, the alternative finding procedure applicable to the defendant must proceed separately, unless the court determines – 10
- (a) of its own motion, or
- (b) on application by any party,
- that it is in the interests of justice for the alternative finding procedure and the trial of the other defendant or defendants to proceed together.
- (4) In considering whether it is in the interests of justice for the alternative finding procedure and the trial of the other defendant or defendants to proceed together, the court must take into account how proceeding together rather than separately is likely to affect – 15
- (a) the interests of the defendant in relation to whom the determination under section 30 was made,
- (b) the interests of the other defendant or defendants, 20
- (c) witnesses in the proceedings,
- (d) persons, other than witnesses, who are affected by the offence or offences charged, and
- (e) the public interest.
- (5) The court is not prevented by subsection (4) from taking other matters into account. 25
- (6) The question in subsection (3) is to be determined –
- (a) if the trial has started before a determination is made under section 30, by the court of trial, and
- (b) in any other case, by a magistrates' court composed of a District Judge (Magistrates' Courts) sitting alone. 30

**37 Redetermination of capacity**

- (1) This section applies if – 35
- (a) a magistrates' court has determined under section 30 that a defendant lacks capacity to participate effectively in a trial, and
- (b) the defendant is subject to the alternative finding procedure.
- (2) An application for the court to determine that the defendant no longer lacks that capacity may only be made by – 40
- (a) the defendant, or
- (b) the prosecutor.
- (3) The court may of its own motion determine that the defendant no longer lacks that capacity.
- (4) An application may be made or the court may decide to make a determination –

- (a) before the alternative finding procedure starts, or
  - (b) during the procedure but before a determination under section 38(4) or 39(4), (5) or (8) is made.
- (5) If the question is raised, the court must determine it before the alternative finding procedure proceeds further. 5
- (6) The burden of proving that the defendant no longer lacks capacity to participate effectively in the trial falls on—
- (a) the party who applies for a determination under this section, or
  - (b) the prosecution if the question is raised by the court;
- and the standard of proof is the balance of probabilities in any case. 10
- (7) If the court determines that the defendant no longer lacks capacity to participate effectively in a trial, the defendant is no longer subject to the alternative finding procedure and may be tried for the offence or offences in question.
- (8) References in this section to a magistrates’ court are to a magistrates’ court composed of a District Judge (Magistrates’ Courts) sitting alone. 15
- (9) Sections 31(1) and (2) and 32 apply for the purposes of a determination under this section as they apply for the purposes of a determination under section 30.

*Alternative finding procedure*

- 38 Alternative finding procedure** 20
- (1) If a magistrates’ court determines in accordance with section 30 that a defendant lacks capacity to participate effectively in a trial—
- (a) the defendant may not be tried or may not continue to be tried, but
  - (b) the defendant is subject to the procedure described in this section and sections 39 and 40 (“the alternative finding procedure”). 25
- (2) Subsection (1)(b) does not apply if—
- (a) the court determines in accordance with section 34 that the defendant has the capacity to plead guilty, and
  - (b) the defendant afterwards enters a plea of guilty or changes plea to a plea of guilty. 30
- (3) The court must determine whether it is satisfied, in relation to the offence or each of the offences for which the defendant was to be, or was being, tried, that the prosecution has proved the matter alleged against the defendant.
- (4) If, as regards the offence or any of the offences for which the defendant was to be, or was being, tried, the court is satisfied as mentioned in subsection (3), the court must determine that the matter alleged is proved against the defendant in relation to that offence. 35
- (5) If, as regards the offence or any of the offences for which the defendant was to be, or was being, tried, the court is not satisfied as mentioned in subsection (3), the court must acquit the defendant as if on the offence in question the trial had proceeded to a conclusion. 40

**39 Cases involving a special determination**

- (1) Section 38(3) to (5) do not apply in respect of the offence or one of the offences on which the defendant was to be, or was being, tried if the court is required to determine whether it is satisfied in relation to that offence that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions. 5
- (2) The prosecution, the defendant or the court (acting of its own motion) may raise the issue of such a determination.
- (3) Where the court is required to determine whether it is satisfied as regards the matter mentioned in subsection (1), the court must – 10
- (a) determine in relation to that offence whether it is satisfied that the prosecution have proved the matter alleged against the defendant, and
- (b) if it is satisfied as mentioned in paragraph (a), determine in relation to that offence whether it is satisfied that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions. 15
- (4) If as regards that offence the court is satisfied as mentioned in subsection (3)(a) and (b), the court must make a determination that the defendant is not guilty by reason of insanity (a “special determination”).
- (5) If as regards that offence the court is satisfied as mentioned in subsection (3)(a) but not as mentioned in subsection (3)(b), the court must make a determination that the matter alleged is proved against the defendant in relation to that offence. 20
- (6) If as regards that offence the court is not satisfied as mentioned in subsection (3)(a), the court must determine in relation to that offence – 25
- (a) whether it is satisfied that the defendant did the act or made the omission being charged against the defendant as the offence, and
- (b) if it is satisfied as mentioned in paragraph (a), whether it is satisfied that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions. 30
- (7) If as regards that offence the court –
- (a) is not satisfied as mentioned in subsection (6)(a), or
- (b) is satisfied as mentioned in subsection (6)(a) but not as mentioned in subsection (6)(b), 35
- the court must acquit the defendant as if on the offence in question the trial had proceeded to a conclusion.
- (8) If as regards that offence the court is satisfied as mentioned in subsection (6)(a) and (b), the court must make a special determination as regards the defendant.

**40 Sections 38 and 39: supplementary**

- (1) The court must make a determination mentioned in section 38(3) or 39(3) or (6) – 40
- (a) on the evidence (if any) already given in the trial,
- (b) on such evidence as may be adduced or further adduced during the alternative finding procedure by the prosecution, and 45



- (c) on such evidence as may be adduced during the alternative finding procedure by the person appointed or selected to put the case for the defence.
- (2) The court may not determine under section 39 that the defendant was, at the time of the act or omission charged as the offence, insane so as not to be responsible according to law for his or her actions except on the written or oral evidence of two or more registered medical practitioners at least one of whom is duly approved. 5
- (3) For the purposes of sections 38 and 39, a reference to the prosecution proving the matter alleged against a defendant in relation to an offence for which the defendant was to be, or was being, tried is a reference to – 10
  - (a) the prosecution proving such facts and matters, and to such standard, as would have been required to prove the commission of the offence in question, if the defendant had not been determined to lack capacity to participate effectively in the trial of that offence, and 15
  - (b) where the defendant raises a defence that would have required the defendant to prove particular facts and matters to a particular standard if the defendant had not been determined to lack capacity to participate effectively in the trial of that offence, the defendant failing to prove such facts and matters to such standard. 20
- (4) The alternative finding procedure, whether it proceeds alone or together with the trial of one or more other defendants, must be conducted by a magistrates' court composed of a District Judge (Magistrates' Courts) sitting alone.
- (5) Sections 38 and 39 are subject to section 50 (power to disapply alternative finding procedure). 25

#### 41 Representation

- (1) If a defendant is subject to the alternative finding procedure, the court must appoint a person –
  - (a) to put the case for the defence,
  - (b) to exercise any rights of appeal, and 30
  - (c) to put the defendant's case on any appeal.
- (2) If a person is already representing the defendant in the proceedings, the court must appoint that person, unless the court considers that the person is not suitable to undertake those functions.
- (3) In appointing a person, the court must take into account the defendant's views, so far as they can be identified. 35
- (4) The court may –
  - (a) revoke a person's appointment, and
  - (b) appoint another person in that person's place.
- (5) If the court determines under section 37 that the defendant no longer lacks capacity to participate effectively in a trial, any appointment by the court under this section comes to an end. 40
- (6) A person appointed under this section must, in relation to the alternative finding procedure and any appeal –
  - (a) act in the defendant's best interests, and 45

- (b) subject to paragraph (a), give effect to the defendant's instructions, so far as they can be identified.
- (7) Where an appeal is made against a determination made under section 38(4) or 39(4), (5) or (8), the Crown Court may –
- (a) revoke an appointment made by a magistrates' court or an earlier appointment made by the Crown Court under paragraph (b), and
- (b) appoint another person in that person's place. 5
- (8) In appointing a person, the Crown Court must take into account the defendant's views, so far as they can be identified.
- 42 Rules of evidence 10**
- The fact that a person may not be convicted while subject to the alternative finding procedure does not prevent the proceedings being criminal proceedings in relation to which the strict rules of evidence apply.
- 43 Adjournment**
- (1) A magistrates' court may at any time, whether before or after the alternative finding procedure begins, adjourn the alternative finding procedure. 15
- (2) A magistrates' court may adjourn under this section when composed of a single justice.
- (3) The court may when adjourning –
- (a) fix the time and place at which the alternative finding procedure is to be resumed, or
- (b) unless it remands the defendant, leave the time and place to be determined later by the court. 20
- (4) If the court leaves the time and place to be determined later, the alternative finding procedure may not be resumed at the time and place so determined unless the court is satisfied that the parties have had adequate notice of the resumption. 25
- (5) A magistrates' court may, for the purpose of enabling inquiries to be made or of determining the most suitable method of dealing with the case, adjourn –
- (a) after making a determination under section 38(4) or 39(4), (5) or (8), and
- (b) before making a disposal under section 57 in respect of the defendant. 30
- (6) An adjournment under subsection (5) –
- (a) may not be for more than four weeks at a time where the court remands the defendant on bail, and
- (b) may not be for more than three weeks at a time where the court remands the defendant in custody. 35
- (7) On adjourning the alternative finding procedure the court may remand the defendant (in custody or on bail) and, where the defendant has attained the age of 18 years, must do so if the offence is triable either way and –
- (a) on the occasion on which the defendant first appeared or was brought before the court to answer to the information he was in custody or, having been released on bail, surrendered to the custody of the court; or
- (b) the defendant has been remanded at any time in the course of proceedings on the information. 40

- (8) Where the court remands the defendant under subsection (7), the time fixed for the resumption of the procedure is that at which the defendant is required to appear or be brought before the court in pursuance of the remand or would be required to be brought before the court but for section 128(3A) of the Magistrates’ Courts Act 1980. 5
- (9) Where this section applies in relation to qualifying proceedings using the alternative finding procedure –
- (a) subsection (7)(a) is to be treated as if it referred to a first appearance or bringing before the court after permission was granted under section 44 or 51 or an order was made under section 45 or 52, and 10
  - (b) subsection (7)(b) is to be treated as if it referred to a remand occurring at any time after that permission was granted or order was made.
- (10) Proceedings on an offence using the alternative finding procedure are qualifying proceedings if they take place after –
- (a) proceedings on the offence are resumed or reinstated because of permission granted under section 44 or 51 or an order made under section 45 or 52, and 15
  - (b) in connection with the resumed or reinstated proceedings, a magistrates’ court determines in accordance with section 30 that the person lacks capacity to participate effectively in a trial. 20
- (11) Sections 128 to 135 of, and Schedule 5 to, the Magistrates’ Courts Act 1980 (remand in custody or on bail) have effect in relation to adjournment under subsection (1) or (5) of this section as they have effect in relation to adjournment under subsection (1) or, as the case may be, subsection (3) of section 10 of the Magistrates’ Courts Act 1980. 25
- (12) References in this section to an information (within the meaning of section 1 of the Magistrates’ Courts Act 1980) are to be read as including a reference to a written charge under section 29 of the Criminal Justice Act 2003.

*Resumption of proceedings where capacity*

**44 Prosecution application** 30

- (1) This section applies where –
- (a) in proceedings using the alternative finding procedure, a magistrates’ court has made a determination under section 38(4) or 39(5) that the matter alleged is proved against a person, and
  - (b) the offence to which the determination relates is a specified offence. 35
- (2) The appropriate prosecutor may apply to a magistrates’ court for permission to resume the prosecution of the person for –
- (a) that offence,
  - (b) any other offence charged in the proceedings in respect of which there was a determination under section 38(4) or 39(5), and 40
  - (c) any offence charged in the proceedings –
    - (i) in respect of which there was no determination or acquittal under section 38 or 39, and
    - (ii) all the elements of which are elements of an offence falling within paragraph (a) or (b). 45

- (3) An application, and the court's permission, must relate to all the offences falling within subsection (2).
- (4) The court may grant permission only if –
- (a) the court is satisfied that the prosecution has reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and 5
  - (b) the court determines that it is in the interests of justice that the person should be tried.
- (5) In determining whether it is in the interests of justice that the person should be tried, the court must take into account – 10
- (a) the seriousness of the offence or offences allegedly committed;
  - (b) the alleged impact of the offence or offences;
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or offences were, allegedly committed;
  - (d) the views of witnesses, their availability and their willingness to give evidence; 15
  - (e) how much time has passed since the alleged offence was or offences were committed;
  - (f) the fact that the person was subject to the alternative finding procedure;
  - (g) how much time has passed since the finding was made under section 38(4) or 39(5); 20
  - (h) the order or orders made under section 57(4) in respect of the person;
  - (i) the sentence that is likely to be imposed if the person is convicted of the offence or offences.
- (6) The court is not prevented by subsection (5) from taking other matters into account. 25
- (7) In this section –
- “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the person in question for the offence or offences charged; 30
  - “specified offence” has the meaning given by section 224 of the Criminal Justice Act 2003.

#### 45 Defendant's application

- (1) This section applies where, in respect of an offence with which a person was charged, a magistrates' court has made – 35
- (a) a determination under section 38(4) or 39(5) that the matter alleged is proved against the person, or
  - (b) a special determination under section 39(4) or (8).
- (2) The person may apply to a magistrates' court for an order that the appropriate prosecutor resume the prosecution of the person for – 40
- (a) that offence,
  - (b) any other offence charged in the proceedings in respect of which there was a determination under section 38(4) or 39(4), (5) or (8), and
  - (c) any offence charged in the proceedings – 45

- (i) in respect of which there was no determination or acquittal under section 38 or 39, and
    - (ii) all the elements of which are elements of an offence falling within paragraph (a) or (b).
  - (3) An application, and the order of the court, must relate to all the offences falling within subsection (2). 5
  - (4) The court may make such an order only if –
    - (a) the court is satisfied that there are reasonable grounds for believing that the person that the person would have the capacity to participate effectively in a trial of the offence or offences, and 10
    - (b) the court determines that it is in the interests of justice that the person should be tried.
  - (5) In determining whether it is in the interests of justice that the person should be tried, the court must take into account –
    - (a) the seriousness of the offence or offences allegedly committed; 15
    - (b) the alleged impact of the offence or offences;
    - (c) the views of the person or persons against whom or in relation to whom the offence was, or offences were, allegedly committed;
    - (d) the views of witnesses, their availability and their willingness to give evidence; 20
    - (e) how much time has passed since the alleged offence was, or offences were, committed;
    - (f) how much time has passed since the determination was made under section 38(4) or 39(4), (5) or (8);
    - (g) the order or orders made under section 57(4) in respect of the person; 25
    - (h) any delay in making an application under this section and the reason for it.
  - (6) The court is not prevented by subsection (5) from taking other matters into account.
  - (7) In this section “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the applicant for the offence or offences in question. 30
- 46 Section 45: reinstatement of proceedings**
- (1) This section applies where – 35
    - (a) a magistrates' court makes an order under section 45 as regards the appropriate prosecutor, and
    - (b) the order applies to an offence in respect of which a special determination under section 39(4) or (8) was made.
  - (2) The order constitutes permission to institute fresh proceedings for that offence. 40
  - (3) The fresh proceedings are to be instituted by –
    - (a) laying an information, or
    - (b) if the appropriate prosecutor may not lay an information, issuing a written charge.

- (4) If prosecution of the offence requires the consent of any person, that consent is to be regarded as having been given for the purposes of fresh proceedings under this section if it was given in respect of the earlier proceedings.
- (5) The requirement in section 127(1) of the Magistrates' Courts Act 1980 (time limit for the institution of proceedings) is to be regarded as satisfied for the purposes of fresh proceedings under this section if it was satisfied in relation to the earlier proceedings. 5
- (6) Where fresh proceedings are instituted, anything done in relation to the original proceedings is to be treated as done in relation to the fresh proceedings, if the court so directs. 10
- (7) Where a person is convicted in fresh proceedings under this section, the institution of those proceedings may not be called into question in any appeal against that conviction.

#### 47 Effect on a determination or order

- (1) Notwithstanding the granting of permission under section 44 or the making of an order under section 45, a determination made under section 38(4) or 39(4), (5) or (8) ("the first determination") continues to have effect unless and until, in further proceedings on the offence in question – 15
- (a) a magistrates' court convicts or acquits the defendant of, or makes another determination under section 38 or 39 in respect of – 20
- (i) the offence, or
- (ii) an alternative offence, or
- (b) where the defendant is sent to the Crown Court for trial, the defendant is acquitted or convicted of, or a finding or special verdict under section 9(4) or 10(4), (5) or (8) is made or returned in respect of – 25
- (i) the offence, or
- (ii) an alternative offence.
- (2) An order mentioned in subsection (3) that was made in consequence of the first determination continues to have effect accordingly.
- (3) The orders referred to in subsection (2) are – 30
- (a) a hospital order;
- (b) a supervision order;
- (c) any other order that may be made where there is a determination under section 38(4) or 39(4), (5) or (8).
- (4) If a magistrates' court grants permission under section 44 or makes an order under section 45 – 35
- (a) a magistrates' court may revoke an order to which subsection (2) applies, where the person subject to the order has not, or has not yet, been sent to the Crown Court for trial, or
- (b) the Crown Court may revoke an order to which subsection (2) applies, where the person subject to the order has been sent to the Crown Court for trial. 40
- (5) Subsection (2) does not affect the powers of a magistrates' court or the Crown Court to remand a person in custody before or during trial.
- (6) Subsection (2) is also subject to section 49 (power to revoke etc). 45

- (7) Where a magistrates' court makes a determination under section 38(4) or 39(4), (5) or (8) in respect of an offence charged in proceedings, there may not be further proceedings on the offence or offences that were charged in the proceedings unless permission is granted or an order made under section 44 or 45. 5

#### 48 Lack of capacity as regards renewed trial

- (1) Subsection (2) applies where –
- (a) permission was granted under section 44 or an order was made under section 45 in relation to a person,
  - (b) the person is being, or is to be, tried by a magistrates' court, and 10
  - (c) a magistrates' court determines in accordance with section 30 that the person lacks capacity to participate effectively in the trial.
- (2) The person is to be subject to the alternative finding procedure only if a magistrates' court considers that it is in the interests of justice that the person should be subject to that procedure (notwithstanding section 38(1)(b)). 15
- (3) Subsection (4) applies where –
- (a) permission was granted under section 44 or an order was made under section 45 in relation to a person,
  - (b) the person is being, or is to be, tried by the Crown Court, and
  - (c) the Crown Court determines in accordance with section 1 that the person lacks capacity to participate effectively in the trial. 20
- (4) The person is to be subject to the alternative finding procedure only if the Crown Court considers that it is in the interests of justice that the person should be subject to that procedure (notwithstanding section 9(1)(b)).

#### 49 Disposals where same determination etc 25

- (1) Subsection (2) and (3) apply if –
- (a) a magistrates' court determines in accordance with section 30 that a person who is being, or is to be, tried because of permission granted under section 44 or an order made under section 45 lacks the capacity to participate effectively in the trial, 30
  - (b) the person is then subject to the alternative finding procedure,
  - (c) in those proceedings, in relation to an offence, the court makes a determination under section 38(4) or 39(4), (5) or (8), and
  - (d) that determination is the same determination as was made in relation to that offence in the earlier proceedings conducted using the alternative finding procedure. 35
- (2) Subject to subsection (3), an order imposed in the earlier proceedings is to continue to have effect.
- (3) The court may –
- (a) revoke any order imposed in the earlier proceedings; 40
  - (b) amend a supervision order imposed in the earlier proceedings, if it has not already come to an end;
  - (c) make a hospital order.
- (4) Subsection (5) and (6) apply if –

- (a) the Crown Court determines in accordance with section 1 that a person who is being, or is to be, tried because a magistrates' court granted permission under section 44 or made an order under section 45 lacks the capacity to participate effectively in the trial,
- (b) the person is then subject to the alternative finding procedure, 5
- (c) in those proceedings, in relation to an offence –
- (i) a finding is made under section 9(4) or 10(5) that the matter alleged is proved in relation to the person, or
- (ii) a special verdict under section 10(4) or (8) is returned that the person is not guilty by reason of insanity, and 10
- (d) that finding or verdict corresponds to the determination under section 38(4) or 39(4), (5) or (8) made in respect of that offence in the earlier proceedings in a magistrates' court.
- (5) Subject to subsection (6), an order imposed in the earlier proceedings is to continue to have effect. 15
- (6) The Crown Court may –
- (a) revoke any order imposed in the earlier proceedings;
- (b) amend a supervision order imposed in the earlier proceedings, if it has not already come to an end;
- (c) make a hospital order (with or without a restriction order). 20

*Alternative finding procedure disapplied*

**50 Alternative finding procedure disapplied**

- (1) This section applies if a magistrates' court determines in accordance with section 30 that a defendant lacks capacity to participate effectively in a trial.
- (2) If the court considers it to be in the interests of justice to do so, the court may order that – 25
- (a) the defendant is not to be subject to the alternative finding procedure, and
- (b) no other step may be taken in the proceedings against the defendant on the offence or offences charged except as provided in section 51 or 52. 30
- (3) The court may make an order under subsection (2) –
- (a) on application made by the defendant, or
- (b) of its own motion.
- (4) The matters to be considered by the court when deciding whether to make an order under subsection (2) include – 35
- (a) the seriousness of the offence or offences charged;
- (b) the effect of the order on those affected by the offence or offences charged;
- (c) the arrangements made to reduce the risk (if any) that the defendant would commit an offence in future; 40
- (d) the arrangements made to support and assist the defendant;
- (e) the views of the defendant or the prosecutor as regards the making of the order.
- (5) The court is to assume, when deciding whether to make an order under subsection (2), that the matter alleged against the defendant would be proved 45



in the case of the offence, or each of the offences, on which the defendant was to be, or was being, tried.

- (6) If—
- (a) a magistrates’ court determines under section 34 that the defendant has the capacity to plead guilty, or to change a plea to a plea of guilty, as regards an offence charged, and 5
  - (b) the defendant enters a plea of guilty, or changes a plea to a plea of guilty, as regards that offence before an order is made under subsection (2),
- an order under subsection (2) does not affect the proceedings as regards that offence. 10
- (7) References in this section to a magistrates’ court are to a magistrates’ court composed of a District Judge (Magistrates’ Courts) sitting alone.

## 51 Prosecution application to resume proceedings

- (1) This section applies where— 15
- (a) a magistrates’ court has made an order under section 50 in relation to a defendant, and
  - (b) the offence charged, or one of the offences charged, was a specified offence.
- (2) The appropriate prosecutor may apply to a magistrates’ court for permission to resume the prosecution of the person for the offence or offences charged. 20
- (3) The court may grant permission only if—
- (a) the court is satisfied that the prosecution has reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and 25
  - (b) the court determines that it is in the interests of justice that the person should be tried.
- (4) In determining whether it is in the interests of justice that the person should be tried, the court must take into account— 30
- (a) the seriousness of the offence or offences allegedly committed;
  - (b) the alleged impact of the offence or offences;
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or the offences were, allegedly committed;
  - (d) the views of witnesses, their availability and their willingness to give evidence; 35
  - (e) how much time has passed since the alleged offence was, or offences were, committed;
  - (f) the sentence that is likely to be imposed if the person is convicted of the offence or offences.
- (5) The court is not prevented by subsection (4) from taking other matters into account. 40
- (6) In this section—
- “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the person in question for the offence or offences charged; 45

“specified offence” has the meaning given by section 224 of the Criminal Justice Act 2003.

## 52 Defendant’s application to resume proceedings

- (1) This section applies where a magistrates’ court has made an order under section 50 in relation to a defendant. 5
- (2) The defendant may apply to a magistrates’ court for an order that the appropriate prosecutor resume the prosecution of the person for the offence or offences charged.
- (3) The court may make such an order only if –
  - (a) the court is satisfied that there are reasonable grounds for believing that the person would have the capacity to participate effectively in a trial of the offence or offences, and 10
  - (b) the court determines that it is in the interests of justice that the person should be tried.
- (4) In determining whether it is in the interests of justice that the person should be tried for the offence, the court must take into account –
  - (a) the seriousness of the offence or offences allegedly committed; 15
  - (b) the alleged impact of the offence or offences;
  - (c) the views of the person or persons against whom or in relation to whom the offence was, or the offences were, allegedly committed; 20
  - (d) the views of witnesses, their availability and their willingness to give evidence;
  - (e) how much time has passed since the alleged offence was, or offences were, committed;
  - (f) any delay in making an application under this section and the reason for it. 25
- (5) The court is not prevented by subsection (4) from taking other matters into account.
- (6) In this section “the appropriate prosecutor”, in relation to an application under this section, means the individual or the body who or which, from time to time, has conduct of the proceedings against the applicant for the offence or offences charged. 30

### *Procedure*

## 53 Provision about resumed proceedings

- (1) This section applies where –
  - (a) a magistrates’ court grants permission or makes an order under section 44, 45, 51 or 52 in respect of an offence, and 35
  - (b) proceedings for the offence are resumed or reinstated under section 46.
- (2) Sections 17A to 26 of the Magistrates’ Courts Act 1980 have effect as regards the offence, and any earlier application of those sections to that offence is to be disregarded. 40

*Bail*

**54 Bail and custody before hearing**

- (1) If an application is made under section 44 or 51 by the appropriate prosecutor, a magistrates’ court may, on application by the appropriate prosecutor –
  - (a) issue a summons requiring the person to appear before the court at the hearing of the application under section 44 or 51, or 5
  - (b) issue a warrant for the person’s arrest.
- (2) A warrant under subsection (1)(b) may be issued at any time even though a summons has previously been issued.
- (3) Where a summons is issued under subsection (1)(a), the time and place at which the person must appear may be specified –
  - (a) in the summons, or 10
  - (b) in a subsequent direction of the court.
- (4) The time or place specified may be varied from time to time by a direction of the court. 15
- (5) A person arrested under a warrant under subsection (1)(b) must be brought before the court as soon as practicable and in any event within 48 hours after the person’s arrest.
- (6) If a person is brought before the court under subsection (5), the court must either –
  - (a) remand the person in custody to be brought before the court at the hearing of the application under section 44 or 51, or 20
  - (b) grant bail for the person to appear before the court at the hearing.
- (7) If bail is granted under subsection (6)(b), the court may revoke the bail and remand the person in custody as referred to in subsection (6)(b). 25
- (8) For the purpose of calculating the period referred to in subsection (5), the following are to be disregarded –
  - (a) Saturday,
  - (b) Sunday,
  - (c) Christmas Day, 30
  - (d) Good Friday, and
  - (e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.
- (9) In this section “the appropriate prosecutor” has the meaning given by section 44 or 51, as the case may be. 35

**55 Bail and custody during hearing**

- (1) A magistrates’ court may, at any adjournment of the hearing of an application under section 44 or 51 made by the appropriate prosecutor –
  - (a) remand the person to whom the application relates on bail, or
  - (b) remand the person in custody. 40
- (2) If the court dismisses the application and –

- (a) the court also gives the appropriate prosecutor leave to appeal against its decision, or
- (b) the appropriate prosecutor gives notice that the prosecutor intends to apply for leave to appeal against its decision,
- the court may make such order as it sees fit for the custody or bail of the person to whom the application relates, pending determination of the appeal. 5
- (3) For the purpose of subsection (2), the determination of an appeal is pending –
- (a) until any application for leave to appeal is disposed of, or the time within which it must be made expires;
- (b) if leave to appeal is granted, until the appeal is disposed of. 10
- (4) Section 4 of the Bail Act 1976 applies in relation to the grant of bail under this section as if in section 4(2) a reference to proceedings for an offence included a reference to proceedings on an application under section 44 or 51.
- (5) The court may at any time, as it sees fit –
- (a) revoke bail granted under this section and remand the person in custody; 15
- (b) vary an order under subsection (2).
- (6) In this section “the appropriate prosecutor” has the meaning given by section 44 or 51, as the case may be.
- 56 Revocation of bail** 20
- (1) Where –
- (a) a magistrates' court revokes a person's bail under section 54 or 55, and
- (b) that person is not before the court when bail is revoked,
- the court must order the person to surrender himself or herself forthwith to the custody of the court. 25
- (2) Where a person surrenders himself or herself into the custody of the court in compliance with an order under subsection (1), the court must remand the person in custody.
- (3) A person who has been ordered to surrender to custody under subsection (1) may be arrested without a warrant by an officer if the person fails without reasonable cause to surrender to custody in accordance with the order. 30
- (4) A person arrested under subsection (3) must be brought as soon as practicable and, in any event, not more than 24 hours after the person is arrested, before the court and the court must remain the person in custody.
- (5) For the purpose of calculating the period referred to in subsection (4), the following are to be disregarded – 35
- (a) Saturday,
- (b) Sunday,
- (c) Christmas Day,
- (d) Good Friday, and 40
- (e) any day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

**PART 3**

DISPOSALS

**57 Powers after an adverse finding or verdict**

- (1) Subsection (2) applies where –
  - (a) a finding has been made under section 9(4) or 10(5) that the matter alleged is proven against a person, or 5
  - (b) a special verdict under section 10(4) or (8) is returned that a person is not guilty by reason of insanity.
- (2) The Crown Court must make in respect of the person –
  - (a) a hospital order (with or without a restriction order), 10
  - (b) a supervision order, or
  - (c) an order for the person’s absolute discharge.
- (3) Subsection (4) applies where –
  - (a) a magistrates’ court has made a determination under section 38(4) or 39(5) that the matter alleged is proven against a person, or 15
  - (b) a magistrates’ court has made a special determination under section 39(4) or (8) that a person is not guilty by reason of insanity.
- (4) A magistrates’ court must make in respect of the person –
  - (a) a hospital order,
  - (b) a supervision order, or 20
  - (c) an order for the person’s absolute discharge.
- (5) A magistrates’ court may not make a hospital order under subsection (4) unless the determination relates to an imprisonable offence.
- (6) In this section “imprisonable offence” means an offence which, in the case of a person aged 18 or over, is punishable by imprisonment. 25

**58 Hospital orders**

- (1) In relation to the making of an order by virtue of section 57(2)(a) or (4)(a), section 37 of the 1983 Act (hospital orders etc) has effect as if –
  - (a) the reference in section 37(1) to a person being convicted before the Crown Court included a reference to the case where section 57(2) applies, 30
  - (b) in subsection (1), the words “other than an offence the sentence for which is fixed by law” were omitted,
  - (c) the reference in section 37(1) to a person being convicted by a magistrates’ court included a reference to the case where section 57(4) applies, and 35
  - (d) for subsections (4) and (5) there were substituted –
    - “(4) Where an order is made under this section requiring a person to be admitted to a hospital (“a hospital order”), it shall be the duty of the managers of the hospital specified in the order to admit him in accordance with it.” 40
- (2) In relation to a case where section 57(2) or (4) applies but the court has not yet made one of the disposals mentioned in section 57(2) or (4) –

<ul style="list-style-type: none"> <li>(a) section 35 of the 1983 Act has effect with the omission of the words after paragraph (b) of subsection (3),</li> <li>(b) references in sections 35 and 36 of the 1983 Act to a defendant are to be construed as including a person in whose case this subsection applies, and</li> <li>(c) section 38 of the 1983 Act has effect as if – <ul style="list-style-type: none"> <li>(i) the reference in subsection (1) to a person being convicted before the Crown Court included a reference to the case where section 57(2) applies,</li> <li>(ii) in subsection (1), the words “(other than an offence the sentence for which is fixed by law)” were omitted, and</li> <li>(iii) the reference in subsection (1) to a person being convicted by a magistrates’ court included a reference to the case where section 57(4) applies.</li> </ul> </li> </ul> <p>(3) In relation to the making of any order under the 1983 Act by virtue of this Part, references in the 1983 Act to an offender shall be construed as including references to a person in whose case section 57(2) or (4) applies, and references to an offence shall be construed accordingly.</p> <p>(4) In this section “the 1983 Act” means the Mental Health Act 1983.</p>	<p>5</p> <p>10</p> <p>15</p>
<b>59 Supervision orders</b>	20
Schedule 1 contains provision about supervision orders.	
<b>60 Order for absolute discharge</b>	
Section 12(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (absolute and conditional discharge) has effect in relation to the making of an order under section 57(2)(c) or (4)(c) as if –	
<ul style="list-style-type: none"> <li>(a) the reference in section 12(1) to a person being convicted by or before a court of such an offence as is mentioned in section 12(1) included a reference to a case where section 57(2) or (4) applies, and</li> <li>(b) the reference in section 12(1) to the court being of opinion that it is inexpedient to inflict punishment included a reference to it thinking that an order for absolute discharge would be most suitable in all the circumstances of the case.</li> </ul>	<p>25</p> <p>30</p>
<b>PART 4</b>	
MISCELLANEOUS AND FINAL	
<i>Intermediaries</i>	
<b>61 Intermediaries</b>	
(1) If in proceedings for an offence the court is satisfied that –	
<ul style="list-style-type: none"> <li>(a) the condition in subsection (2) is met, and</li> <li>(b) the condition in subsection (3) or (4) is met,</li> </ul> <p>the court may, on the application of the defendant or of its own motion, direct that a person approved by the court for the purpose (an “intermediary”) assist the defendant during or in connection with a hearing in the proceedings.</p>	<p>40</p>

- (2) The condition in this subsection is that the court is satisfied that the defendant’s ability to participate effectively in the proceedings is likely to be diminished to the extent that making a direction under subsection (1) is necessary for a fair trial.
- (3) The condition in this subsection is that the defendant is under the age of 18 – 5  
(a) when the application is made, or  
(b) where the court gives a direction of its own motion, when the direction is given.
- (4) The condition in this subsection is that the court considers that the ability of the defendant to participate effectively in the proceedings is likely to be diminished because the defendant – 10  
(a) suffers from mental disorder (as defined in section 1(2) of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social functioning, or  
(b) has a physical disability or is suffering from a physical disorder. 15
- (5) A direction under subsection (1) must provide only for such assistance as is necessary for a fair trial.
- (6) A direction under subsection (1) may, in particular, specify –  
(a) the matters as regards which, and the times when, the defendant may be assisted by an intermediary; 20  
(b) the types of assistance that an intermediary may provide.
- (7) The assistance which an intermediary may provide by virtue of being specified in a direction under subsection (1) includes (subject to subsection (5)) –  
(a) facilitating the defendant’s ability to participate in the proceedings;  
(b) assisting the defendant to understand the proceedings; 25  
(c) assisting the defendant to provide instructions to his or her legal representatives.
- (8) The assistance which an intermediary may provide by virtue of being specified in a direction under subsection (1) does not include assistance which may be given by virtue of a direction under section 33BA(3) of the Youth Justice and Criminal Evidence Act 1999 (direction for examination of defendant to be conducted through an interpreter or other approved person). 30
- (9) The Lord Chancellor may by regulations make provision for the payment out of central funds of such sums as appear to the court to be reasonably necessary to cover the proper expenses of a person who assists a defendant in accordance with a direction under subsection (1). 35
- (10) Regulations under this section are to be made by statutory instrument.
- (11) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

*Evidence from vulnerable defendants* 40

## 62 Use of live link

- (1) In Part 2 of the Youth Justice and Criminal Evidence Act 1999 (giving of evidence or information for purposes of criminal proceedings), section 33A (live link directions) is amended as follows.

- (2) For subsection (2) substitute –
- “(2) The court may, on the application of the accused, give a live link direction if it is satisfied that it is in the interests of justice for the accused to give evidence through a live link and –
- (a) the accused is under the age of 18 when the application is made, 5  
or
- (b) the court considers that the ability of the accused to participate effectively in the proceedings as a witness giving oral evidence in court is likely to be diminished by reason of any of the circumstances falling within subsection (5).” 10
- (3) Omit subsection (4).
- (4) For subsection (5) substitute –
- “(5) The circumstances falling within this subsection are –
- (a) that the accused –
- (i) suffers from mental disorder (as defined in section 1(2) 15  
of the Mental Health Act 1983), or
- (ii) otherwise has a significant impairment of intelligence and social functioning;
- (b) that the accused has a physical disability or is suffering from a physical disorder.” 20

### 63 Examination through an intermediary

- (1) In Part 2 of the Youth Justice and Criminal Evidence Act 1999, section 33BA (examination of accused through an intermediary) is amended as follows.
- (2) For subsection (2) substitute –
- “(2) The court may, on the application of the accused or of its own motion, 25  
give a direction under subsection (3) if it is satisfied that making the direction is necessary in order to ensure that the accused receives a fair trial and –
- (a) the accused is under the age of 18 –
- (i) when the application is made, or 30  
(ii) where the court gives a direction of its own motion, when the direction is given, or
- (b) the court considers that the ability of the accused to participate effectively in the proceedings as a witness giving oral evidence in court is likely to be diminished by reason of any of the circumstances falling within subsection (6).” 35
- (3) Omit subsection (5).
- (4) For subsection (6) substitute –
- “(6) The circumstances falling within this subsection are –
- (a) that the accused – 40  
(i) suffers from mental disorder (as defined in section 1(2) of the Mental Health Act 1983), or
- (ii) otherwise has a significant impairment of intelligence and social functioning;



- (b) that the accused has a physical disability or is suffering from a physical disorder.”

*Remand before conviction*

**64 Remand to hospital for report**

- (1) Section 35 of the Mental Health Act 1983 (remand to hospital for a report on the accused’s mental condition) is amended as follows. 5
- (2) In subsection (2)(a) (meaning of “accused person” in relation to the Crown Court) –
- (a) for “Court, any” substitute “Court –
- (i) any”; 10
- (b) for the words from “imprisonment” to the end substitute “imprisonment, or
- (ii) any person whose trial before the court for such an offence has begun but who has not been sentenced or otherwise dealt with for that offence;” 15
- (3) In subsection (2)(b) (meaning of “accused person” in relation to a magistrates’ court), for the words from “court,” to the end substitute “court –
- (i) any person charged with an offence punishable on summary conviction with imprisonment who has not been sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 and whose trial before a magistrates’ court has yet to start, or 20
- (ii) subject to subsection (2A), any person whose trial before the court for such an offence has begun but who has not been sentenced or otherwise dealt with for that offence.” 25
- (4) After subsection (2) insert –
- “(2A) In subsection (2) –
- (a) a reference to trial includes a reference to the alternative finding procedure, and 30
- (b) a reference to sentencing or otherwise dealing with a person for an offence includes a reference to making an order as regards a person under section 57 of the Criminal Procedure (Lack of Capacity) Act 2015.”

**65 Remand to hospital for treatment**

- (1) Section 36 of the Mental Health Act 1983 (remand of accused person to hospital for treatment) is amended as follows. 35
- (2) In subsection (1) (power to remand accused person), after “Crown Court” insert “or a magistrates’ court”.
- (3) For subsection (2) (meaning of “accused person”) substitute – 40
- “(2) For the purposes of this section an accused person is –
- (a) in relation to the Crown Court –

- (i) any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment, or
  - (ii) any person who at any time before sentence is in custody in the course of a trial before that court for an offence punishable with imprisonment other than an offence the sentence for which is fixed by law; 5
- (b) in relation to a magistrates' court –
  - (i) any person charged with an offence punishable on summary conviction with imprisonment who is in custody before being sent to the Crown Court for trial under section 51 or 51A of the Crime and Disorder Act 1998 for that offence or before being tried before a magistrates' court for that offence, or 10
  - (ii) any person who at any time before sentence is in custody in the course of a trial before a magistrates' court for such an offence." 15
- (4) After subsection (2) insert –
  - “(2A) In subsection (2) –
    - (a) a reference to trial includes a reference to the alternative finding procedure, and 20
    - (b) a reference to imposing a sentence includes a reference to making an order under section 57 of the Criminal Procedure (Lack of Capacity) Act 2015.”
- (5) In subsection (6) (time limit) – 25
  - (a) for “28 days” substitute “12 weeks”;
  - (b) for “12 weeks in all” substitute “one year in all, if remanded by the Crown Court, or six months in all, if remanded by a magistrates' court”.

*Protection from harassment*

- 66 Restraining orders** 30
- (1) The Protection from Harassment Act 1997 is amended as follows.
  - (2) After section 5A insert –
    - “5B Restraining orders: persons lacking capacity to participate effectively in trial**
    - (1) A court dealing with a relevant defendant may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order. 35
    - (2) In subsection (1) “relevant defendant” means –
      - (a) if the court is the Crown Court, a person in relation to whom there is a finding under section 9(4) or 10(5) of the Criminal Procedure (Lack of Capacity) Act 2015 that the matter alleged is proved against the person; 40
      - (b) if the court is a magistrates' court, a person in relation to whom there is a finding under section 38(4) or 39(5) of the Criminal 45

- Procedure (Lack of Capacity) Act 2015 that the matter alleged is proved against the person.
- (3) Where the Court of Appeal substitute a finding that the matter alleged is proved against a defendant (see section 6 or 14 of the Criminal Appeal Act 1968), they may remit the defendant’s case to the Crown Court to consider whether to proceed under this section. 5
- (4) Where –
- (a) a case is remitted to the Crown Court under subsection (3), or
  - (b) the Crown Court substitutes a finding that the matter alleged is proved against a defendant (see section 108 of the Magistrates’ Courts Act 1980),
- the Crown Court may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.
- (5) Subsections (3) to (7) of section 5 apply to an order under this section as they apply to an order under section 5. 15
- (6) A person made subject to an order under this section has the same right of appeal against the order as if –
- (a) the person had been convicted of the offence in question before the court which made the order, and
  - (b) the order had been made under section 5.”
- 20
- (3) In section 7 (interpretation), in subsection (1), for “5A” substitute “5B”.

*Arrangements relating to certain offenders*

**67 Arrangements for assessment of risks etc posed by certain offenders**

- (1) In section 327 of the Criminal Justice Act 2003 (meaning of “relevant sexual or violent offender” etc), subsection (4) is amended as follows. 25
- (2) In paragraph (a), for the words from “to be” to “against” substitute “it is found that the person lacks capacity to participate effectively in the trial and that the matter alleged is proved against”.
- (3) In paragraph (b), at the end of sub-paragraph (i) omit “or”. 30
- (4) In paragraph (b)(ii), at the end insert “or
- (iii) a supervision order under section 57 of the Criminal Procedure (Lack of Capacity) Act 2015.”

*Final*

**68 Interpretation**

- (1) In this Act – 35
- “alternative finding procedure” –
  - (a) in relation to the Crown Court, has the meaning given by section 9;
  - (b) in relation to a magistrates’ court, has the meaning given by section 38; 40

- “duly approved” in relation to a registered medical practitioner, means approved for the purposes of section 12 of the Mental Health Act 1983 by the Secretary of State, or by another person by virtue of section 12ZA or 12ZB of that Act, as having special experience in the diagnosis or treatment of mental disorder; 5
- “hospital order” has the meaning given by section 37 of the Mental Health Act 1983;
- “mental disorder” has the meaning given by section 1(2) of the Mental Health Act 1983;
- “qualified person” has the meaning given by section 2; 10
- “registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise;
- “registered psychologist” means a person registered in the part of the register maintained under the Health and Social Work Professions Order 2001 which relates to practitioner psychologists; 15
- “restriction order” has the meaning given by section 41 of the Mental Health Act 1983;
- “special determination” has the meaning given by section 39(4);
- “supervision order” has the meaning given by Schedule 1.
- (2) In this Act, references to acquittal of a person do not include a reference to— 20
- (a) a special verdict under section 10(4) or (8) being found in relation to a person, or
- (b) a special determination under section 39(4) or (8) being made in relation to a person.
- (3) For the purposes of this Act an alternative offence is an offence of which a person may be found guilty on a trial for another offence. 25
- (4) Section 54(2) to (3) of the Mental Health Act 1983 have effect with respect to proof of a person’s mental condition for the purposes of—
- (a) sections 1, 5, 8, 15, 16, 23 and 24 of Part 1, and
- (b) sections 30, 34, 37, 44, 45, 51 and 52 of Part 2, 30
- as they have effect with respect to proof of a person’s mental condition for the purposes of section 37(2)(a) of the Mental Health Act 1983.
- 69 Consequential amendments**
- (1) Schedule 2 contains consequential amendments.
- (2) The Lord Chancellor may by regulations make such amendments of enactments as the Lord Chancellor considers to be necessary or expedient in consequence of any provision of this Act. 35
- (3) Regulations under this section are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40
- 70 Extent, commencement and short title**
- (1) Subject to subsections (2) and (3), this Act extends to England and Wales only.

- (2) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.
- (3) Section 69 and this section extend to England and Wales, Scotland and Northern Ireland.
- (4) This section comes into force on the day this Act is passed. 5
- (5) The other provisions of this Act come into force on such day or days as regulations made by the Lord Chancellor by statutory instrument may appoint.
- (6) Regulations under this section may appoint different days for different purposes. 10
- (7) Regulations under this section may make such transitional or transitory provision or savings as the Lord Chancellor considers necessary or expedient in connection with the coming into force of the provisions to which they relate.
- (8) This Act may be cited as the Criminal Procedure (Lack of Capacity) Act 2015.

## SCHEDULES

## SCHEDULE 1

Section 59

## SUPERVISION ORDERS

## PART 1

## PRELIMINARY

5

*Supervision order*

- 1 (1) In this Schedule “supervision order” means an order which requires the person in respect of whom it is made (“the supervised person”) to be under the supervision of an officer of a local authority (“the supervising officer”) for a period specified in the order of not more than three years. 10
- (2) Parts 3 and 4 make further provision about the effects of a supervision order and the requirements that may be imposed by or under it.
- (3) If the supervised person has attained the age of 18, the officer who supervises the person must be a social worker.
- (4) If the supervised person has not attained the age of 18, the officer of a local authority who supervises the person must be – 15
- (a) a social worker who is not a member of a youth offending team established by the authority, or
- (b) a person who is a member of a youth offending team established by the authority and – 20
- (i) in the case of an authority for an area in England, a person with experience of social work in relation to children nominated by the director of children’s services appointed by the local authority under section 18 of the Children Act 2004, or 25
- (ii) in the case of an authority for an area in Wales, a social worker.
- (5) The court making a supervision order in respect of a person who has not attained the age of 18 may specify in the order that, in the case of an authority for an area in England, the supervising officer must be – 30
- (a) an officer such as is described in sub-paragraph (4)(a), or
- (b) an officer such as is described in sub-paragraph (4)(b).
- 2 It is the duty of a local authority for an area specified in a supervision order to make arrangements in accordance with the order.

- 3 (1) The Secretary of State may by regulations amend paragraph 1(1) by substituting, for the period for the time being specified there, such period as may be specified in the regulations.
- (2) Regulations under this paragraph may make such amendment of paragraph 26(2) as the Secretary of State thinks necessary in consequence of any amendment of paragraph 1(1) made by the regulations. 5
- (3) Regulations under this paragraph are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament. 10

## PART 2

### MAKING OF ORDERS

#### *Circumstances in which orders may be made*

- 4 (1) The court may not make a supervision order unless it is satisfied that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the defendant. 15
- (2) The court may not make a supervision order that includes a requirement under paragraph 10 unless it is satisfied that the supervising officer is able to make such arrangements as are necessary to give effect to the requirement intended to be specified in the order. 20
- (3) The court may not make a supervision order that includes a requirement under paragraph 11 or 12 unless it is satisfied that arrangements have been made for the treatment intended to be specified in the order.

#### *Procedure*

- 5 (1) Before making a supervision order, the court must explain to the supervised person in ordinary language – 25
  - (a) the effect of the order (including any requirements proposed to be included in the order in accordance with Part 4 and any provision for periodic review by the court under paragraph 21),
  - (b) that the court has power under paragraphs 24 to 26 to review the order on the application either of the supervised person or of the supervising officer, and 30
  - (c) that the court has power under paragraph 34 to impose sanctions if the supervised person fails to comply with the order or provision made in accordance with the order. 35
- (2) After making a supervision order, the court must give copies of the order to –
  - (a) an officer of a local probation board assigned to the court, or
  - (b) an officer of a provider of probation services acting at the court.
- (3) That officer must give a copy to – 40
  - (a) the supervised person, and
  - (b) the supervising officer.
- (4) Sub-paragraph (5) applies if –

- 
- (a) the supervision order is made by a magistrates' court,
  - (b) the supervision order is made by the Crown Court and includes such provision as is described in paragraph 20(1), or
  - (c) the supervision order is made by the Court of Appeal and includes such provision as is described in paragraph 20(2). 5
- (5) After making a supervision order, the court must send to the designated officer for the local justice area in which the supervised person resides or will reside (“the local justice area concerned”) –
- (a) a copy of the order, and
  - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order. 10
- (6) In this paragraph “local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000. 15

*Requirement to avoid conflict*

- 6 (1) The court must ensure, so far as practicable, that any requirement imposed is such as to avoid –
- (a) conflict with supervised person’s religious beliefs;
  - (b) interference with the times, if any, at which the supervised person normally works or attends an educational establishment. 20
- (2) A supervising officer must ensure, so far as practicable, that an instruction given or requirement imposed by the officer in pursuance of the supervision order is such as to avoid the conflict or interference mentioned in sub-paragraph (1). 25
- (3) The Secretary of State may by regulations provide that sub-paragraph (1) or (2) is to have effect with such additional restrictions as may be specified in the regulations.
- (4) Regulations under this paragraph are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament. 30

PART 3

GENERAL REQUIREMENTS

- 7 A supervision order must – 35
- (a) specify the local authority area in which the supervised person resides or will reside, and
  - (b) require the person to be under the supervision of an officer of the local authority for that area.
- 8 Where a supervision order is made, the supervised person must – 40
- (a) keep in touch with the supervising officer in accordance with such instructions as the person may from time to time be given by the supervising officer, and
  - (b) notify the supervising officer of any change of address.



- 9 (1) Where a supervision order is made, the supervising officer must arrange meetings for the supervised person.
- (2) The supervised person must attend meetings at times and places specified by the supervising officer.
- (3) The meetings must serve one or more of the following purposes – 5
- (a) to support the supervised person;
  - (b) to prevent any repetition of the conduct that led to the making of the supervision order;
  - (c) to prevent involvement in conduct which poses a risk of harm to the supervised person or others. 10
- (4) The meetings may be with the supervising officer or a person specified by the supervising officer.

#### PART 4

##### SPECIFIC REQUIREMENTS

*Requirement as to constructive support* 15

- 10 (1) A supervision order may include a requirement that the supervised person must act in accordance with arrangements made by the supervising officer with a view to dealing with the person's needs.
- (2) The court may impose such a requirement only if it is satisfied that it is desirable in the interests of – 20
- (a) supporting the supervised person,
  - (b) preventing any repetition of the conduct that led to the making of the supervision order, or
  - (c) preventing involvement in conduct which poses a risk of harm to the supervised person or others. 25
- (3) The needs to which the arrangements may relate include (but are not limited to) needs relating to –
- (a) education;
  - (b) training;
  - (c) employment; 30
  - (d) accommodation.
- (4) A requirement to act in accordance with arrangements made by the supervising officer may entail (but is not limited to) the following –
- (a) participating in activities specified by the supervising officer;
  - (b) presenting himself or herself at a place or places at a time or times specified by the supervising officer; 35
  - (c) complying with arrangements for education or training specified by the supervising officer.
- (5) The requirement may be imposed –
- (a) for the whole of the period specified in the order, or 40
  - (b) for such part of that period as may be so specified.

*Requirements as to medical treatment*

- 11 (1) A supervision order may, if the court is satisfied as mentioned in sub-paragraph (2), include a requirement that the supervised person must submit –
- (a) during the whole of the period specified in the order, or 5
  - (b) during such part of that period as may be so specified,
- to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the person’s mental condition.
- (2) The court may impose such a requirement only if satisfied on the written or oral evidence of two or more registered medical practitioners, at least one of whom is duly registered, that the mental condition of the supervised person –
- (a) is such as requires and may be susceptible to treatment, but 10
  - (b) is not such as to warrant the making of a hospital order within the meaning of the Mental Health Act 1983. 15
- (3) The treatment required under this paragraph by any such order must be such one of the following kinds of treatment as may be specified in the order, that is to say –
- (a) treatment as a non-resident patient at such institution or place as may be specified in the order, and 20
  - (b) treatment by or under the direction of such registered medical practitioner as may be so specified;
- but the nature of the treatment may not be specified in the order except as mentioned in paragraph (a) or (b).
- 12 (1) This paragraph applies where the court is satisfied on the written or oral evidence of two or more registered medical practitioners that –
- (a) because of the person’s medical condition, other than the person’s mental condition, the supervised person is likely to pose a risk to himself or herself or to others, and 25
  - (b) the condition may be susceptible to treatment. 30
- (2) The supervision order may (whether or not it includes a requirement under paragraph 11) include a requirement that the supervised person must submit –
- (a) during the whole of the period specified in the order, or
  - (b) during such part of that period as may be so specified, 35
- to treatment by or under the direction of a registered medical practitioner with a view to the improvement of the condition.
- (3) The treatment required under this paragraph by any such order must be such one of the following kinds of treatment as may be specified in the order, that is to say –
- (a) treatment as a non-resident patient at such institution or place as may be specified in the order, and 40
  - (b) treatment by or under the direction of such registered medical practitioner as may be so specified;
- but the nature of the treatment may not be specified in the order except as mentioned in paragraph (a) or (b). 45

- 13 (1) Where the medical practitioner by whom or under whose direction the supervised person is being treated in pursuance of a requirement under paragraph 11 or 12 is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which –
- (a) is not specified in the order, and 5
  - (b) is one in or at which the treatment of the supervised person will be given by or under the direction of a registered medical practitioner, the medical practitioner may, with the consent of the supervised person, make arrangements for the supervised person to be treated accordingly.
- (2) Such arrangements may provide for the supervised person to receive part of the supervised person’s treatment as a resident patient in an institution or place of any description. 10
- (3) Where any such arrangements are made for the treatment of a supervised person –
- (a) the medical practitioner by whom the arrangements are made must give notice in writing to the supervising officer, specifying the institution or place in or at which the treatment is to be carried out; and 15
  - (b) the treatment provided for by the arrangements is to be deemed to be treatment to which the supervised person is required to submit in pursuance of the supervision order. 20
- 14 While the supervised person is under treatment as a resident patient in pursuance of arrangements under paragraph 13, the supervising officer may carry out the supervision to such extent only as may be necessary for –
- (a) the purpose of preparing a report under paragraph 21(1)(d), or 25
  - (b) the purpose of the revocation or amendment of the order.

*Requirements as to residence*

- 15 (1) A supervision order may include requirements as to the residence of the supervised person.
- (2) Before making a supervision order containing any such requirement, the court must consider the home surroundings of the supervised person. 30

*Prohibited activity requirement*

- 16 (1) A supervision order may include a requirement that the supervised person refrain from participating in activities specified in the order –
- (a) on a day or days so specified, or 35
  - (b) during a period so specified.
- (2) The court may impose such a requirement only if it is satisfied that it is necessary in the interests of –
- (a) supporting the supervised person,
  - (b) preventing any repetition of the conduct that led to the making of the supervision order, or 40
  - (c) preventing involvement in conduct which poses a risk of harm to the supervised person or others.

- (3) The requirements that may be included in a supervision order because of this paragraph include a requirement that the supervised person does not possess, use or carry a firearm within the meaning of the Firearms Act 1968.

*Exclusion requirement*

- 17 (1) A supervision order may include a requirement that prohibits the supervised person from entering a place specified in the order for a period so specified. 5
- (2) The court may impose such a requirement only if it is satisfied that it is necessary in the interests of –
- (a) supporting the supervised person, 10
  - (b) preventing any repetition of the conduct that led to the making of the supervision order, or
  - (c) preventing involvement in conduct which poses a risk of harm to the supervised person or others.
- (3) The supervision order may not specify a period of more than two years. 15
- (4) The supervision order may –
- (a) provide for the prohibition to operate only during the periods specified in the order, and
  - (b) specify different places for different periods or days.
- (5) In this paragraph “place” includes an area. 20

*Curfew requirement*

- 18 (1) A supervision order may include a requirement that the supervised person remain, for periods specified in the order, at a place so specified.
- (2) The court may impose such a requirement only if it is acting under paragraph 34(3) or (4). 25
- (3) The court may impose such a requirement only if it is satisfied that it is necessary in the interests of –
- (a) supporting the supervised person,
  - (b) preventing any repetition of the conduct that led to the making of the supervision order, 30
  - (c) preventing involvement in conduct which poses a risk of harm to the supervised person or others, or
  - (d) promoting compliance with the supervision order.
- (4) A supervision order including such a requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than 16 hours in any day. 35
- (5) A supervision order may not specify periods which fall outside the period of 12 months beginning with the day on which this requirement is imposed.
- (6) Before making a supervision order that includes such a requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the supervised person). 40

*Electronic monitoring requirement*

- 19 (1) A supervision order may include a requirement that obliges the supervised person to submit to one or both of the following –
- (a) electronic monitoring of the supervised person’s compliance with other requirements imposed by the order during a period – 5
    - (i) specified in the supervision order, or
    - (ii) determined by the supervising officer in accordance with the supervision order, and
  - (b) electronic monitoring of the supervised person’s whereabouts (otherwise than for the purpose described in paragraph (a)). 10
- (2) The court may impose such a requirement only if it is acting under paragraph 34(3) or (4).
- (3) The court may impose such a requirement only if it is satisfied that it is necessary in the interests of –
- (a) supporting the supervised person, 15
  - (b) preventing any repetition of the conduct that led to the making of the supervision order,
  - (c) preventing involvement in conduct which poses a risk of harm to the supervised person or others, or
  - (d) promoting compliance with the supervision order. 20
- (4) Where –
- (a) it is proposed to include such a requirement in a supervision order, but
  - (b) there is a person (other than the supervised person) without whose co-operation it will not be practicable to secure the monitoring, 25
- the requirement may not be included in the order without that other person’s consent.
- (5) A supervision order which includes such a requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in regulations made by the Secretary of State. 30
- (6) Where such a requirement is required to take effect during a period determined by the supervising officer in accordance with the supervision order, the supervising officer must, before the beginning of that period, notify – 35
- (a) the supervised person,
  - (b) the person responsible for the monitoring, and
  - (c) any person falling within sub-paragraph (4)(b),
- of the time when the period is to begin.
- (7) Where a supervision order includes such a requirement, the supervised person must (in particular) – 40
- (a) submit, as required from time to time by the supervising officer or the person responsible for the monitoring, to –
    - (i) being fitted with, or installation of, any necessary apparatus, and 45
    - (ii) inspection or repair of any apparatus fitted or installed for the purposes of the monitoring,

- (b) not interfere with, or with the working of, any apparatus fitted or installed for the purposes of the monitoring, and
- (c) take any steps required by the supervising officer, or the person responsible for the monitoring, for the purpose of keeping in working order any apparatus fitted or installed for the purposes of the monitoring. 5
- (8) A code of practice issued under section 215A(1) of the Criminal Justice Act 2003 (data from electronic monitoring: code of practice) must include provision for data gathered in the course of electronic monitoring of persons under requirements under this paragraph. 10
- (9) Regulations under this paragraph are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

## PART 5 15

## PERIODIC REVIEW, REVOCATION AND AMENDMENT

*The supervising court*

- 20 (1) If the court making a supervision order is the Crown Court, the Crown Court may specify in the order that the functions of the court under paragraphs 21 to 34 are to be exercisable by a magistrates' court acting for the local justice area concerned and not by the Crown Court. 20
- (2) If the court making a supervision order is the Court of Appeal, the Court of Appeal may specify in the order that the functions of the court under paragraphs 21 to 34 are to be exercisable by a magistrates' court acting for the local justice area concerned and not by the Crown Court. 25
- (3) Section 16B(5) of the Criminal Appeal Act 1968 (powers in paragraphs 21 to 34 to be exercisable as if a supervision order had been made by the Crown Court) is subject to sub-paragraph (2).
- (4) The Crown Court may amend a supervision order made by – 30
- (a) the Crown Court, or
- (b) the Court of Appeal,
- so as to specify that the functions of the court under paragraphs 21 to 34 are to be exercisable by a magistrates' court acting for the local justice area concerned and not by the Crown Court.

*Periodic review* 35

- 21 (1) A supervision order may –
- (a) provide for the supervision order to be reviewed periodically at specified intervals,
- (b) provide for each periodic review to be made at a hearing held for the purpose by the court (a "review hearing"), 40
- (c) require the supervised person to attend a review hearing,
- (d) provide for the supervising officer to provide to the court, before each periodic review, a report on the supervised person, including

- the person’s compliance with the requirements imposed by or under the order,
- (e) if the supervision order requires the supervised person to submit to treatment by or under the direction of a registered medical practitioner, provide for the registered medical practitioner to provide to the court reports on the supervised person’s treatment, and 5
  - (f) if the supervision order requires the supervising officer or the registered medical practitioner to provide reports under paragraph (d) or (e), provide for the supervising officer or the registered medical practitioner to provide copies of the reports to the appropriate prosecutor. 10
- (2) A supervision order may under sub-paragraph (1)(e) provide for a report to be provided—
- (a) if requested by the supervising officer or the court, or 15
  - (b) if the registered medical practitioner thinks fit.
- (3) In this paragraph “the appropriate prosecutor”, in relation to a person subject to a supervision order in respect of an offence, means the individual or the body who or which, from time to time, has conduct of the proceedings against the person for the offence in question. 20
- 22 (1) At a review hearing the court may amend the order so as to provide for each subsequent periodic review to be made without a review hearing, if it considers that it would be appropriate to do so in the circumstances of the case.
- (2) If at a periodic review that is made without a review hearing the court considers that it would be appropriate to do so, the court may require the supervised person to attend a hearing of the court at a specified time and place. 25
  - (3) At that hearing the court may amend the order so as to provide for each subsequent periodic review to be made at a review hearing. 30
  - (4) Before exercising the power in sub-paragraph (1), (2) or (3), the court must consider—
    - (a) the report of the supervising officer provided in accordance with paragraph 21(1)(d), and
    - (b) if the supervision order requires the supervised person to submit to treatment by or under the direction of a registered medical practitioner, any report provided by the registered medical practitioner in accordance with paragraph 21(1)(e). 35
  - (5) At a review hearing the court may amend the supervision order so as to vary the intervals specified under paragraph 21(1)(a). 40
- 23 (1) Subject to sub-paragraph (2), the functions of the court under paragraphs 20(4), 24, 25 and 26 may be exercised at a periodic review.
- (2) The functions of the court under paragraphs 24(2), 25 and 26 may only be exercised at a review hearing.

### *Revocation*

- 24 (1) Where a supervision order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to the court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order. 5
- (2) The court may of its own motion revoke the order if, having regard to circumstances which have arisen since the order was made, it considers that it would be inappropriate for the order to continue. 10

### *Amendment because of change of residence*

- 25 (1) This paragraph applies where, at any time while a supervision order is in force in respect of any person, the court is satisfied that the supervised person proposes to change, or has changed, the person's residence from the local authority area specified in the order to another local authority area. 15
- (2) Subject to sub-paragraph (3), the court may, and on the application of the supervising officer must, amend the supervision order by substituting the other area for the area specified in the order.
- (3) The court may not amend under this paragraph a supervision order which contains requirements which, in the opinion of the court, cannot be complied with unless the supervised person continues to reside in the area specified in the order unless, in accordance with paragraph 26, it either – 20
- (a) cancels those requirements, or
  - (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area. 25

### *Amendment of requirements*

- 26 (1) Without prejudice to the provisions of paragraph 25, but subject to sub-paragraph (2), the court may, on the application of the supervised person or the supervising officer, by order amend a supervision order – 30
- (a) by cancelling any of the requirements of the order, or
  - (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.
- (2) The power of the court under sub-paragraph (1) does not include power to amend an order by extending the period specified in it beyond the end of three years from the day of the original order. 35

### *Amendments of requirements because of medical report*

- 27 (1) Where the medical practitioner by whom or under whose direction the supervised person is being treated for the person's mental condition in pursuance of any requirement of a supervision order – 40
- (a) is of the opinion mentioned in sub-paragraph (2), or
  - (b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,



the medical practitioner must make a report in writing to that effect to the supervising officer and the supervising officer must apply under paragraph 26 to the court for the variation or cancellation of the requirement.

- (2) The opinion referred to in sub-paragraph (1) is –
- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision order, 5
  - (b) that the supervised person needs different treatment, being treatment of a kind to which the person could be required to submit in pursuance of such an order,
  - (c) that the supervised person is not susceptible to treatment, or 10
  - (d) that the supervised person does not require further treatment.

### Supplemental

- 28 (1) On the making under paragraph 24 of an order revoking a supervision order –
- (a) the Crown Court, or 15
  - (b) the designated officer for the local justice area concerned (as the case may be),
- must give copies of the revoking order to the supervising officer.
- (2) A supervising officer to whom in accordance with sub-paragraph (1) copies of a revoking order are given must give a copy to – 20
- (a) the supervised person, and
  - (b) the person in charge of any institution in which the supervised person is residing.
- 29 (1) If the Crown Court makes an order under paragraph 20(4), 22, 25 or 26 amending a supervision order, the Crown Court must give copies of the amending order to the supervising officer. 25
- (2) If the Crown Court makes an order under paragraph 20(4) amending a supervision order, the Crown Court must send to the designated officer for the local justice area in which the supervised person resides or will reside – 30
- (a) a copy of the supervision order,
  - (b) a copy of the amending order, and
  - (c) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
- (3) If a magistrates' court makes an order under paragraph 22, 25 or 26 amending a supervision order, the designated officer for the local justice area concerned must – 35
- (a) if the order amends the supervision order otherwise than as described in paragraph (b), give copies of the amending order to the supervising officer; 40
  - (b) if the order amends the supervision order by substituting a new local authority area which falls within a different local justice area, send to the designated officer for the new local justice area concerned –
    - (i) copies of the amending order, and
    - (ii) such documents and information relating to the case as the designated officer for the old local justice area concerned considers likely to be of assistance to a magistrates' court 45

- acting for the new local justice area concerned in exercising its functions in relation to the order;
- and in a case falling within paragraph (b), the designated officer for the new local justice area concerned must give copies of the amending order to the supervising officer. 5
- (4) Where the designated officer for the court making the order is also the designated officer for the new local justice area –
- (a) sub-paragraph (3)(b) does not apply, but
  - (b) the designated officers must give copies of the amending order to the supervising officer. 10
- (5) Where in accordance with sub-paragraph (3) or (4) copies of an order are given to the supervising officer, the supervising officer must give a copy to –
- (a) the supervised person, and
  - (b) the person in charge of any institution in which the supervised person is or was residing. 15

## PART 6

### FAILURE TO COMPLY

#### *Procedure*

- 30 (1) This paragraph applies where a supervision order is in force in respect of any person. 20
- (2) The court must hold a hearing if the supervising officer gives notice that the supervising officer considers that the supervised person has wilfully and without reasonable excuse –
- (a) failed to comply with a requirement in the supervision order, 25
  - (b) failed to attend an appointment made in accordance with a requirement under paragraph 9, or
  - (c) failed to act in accordance with arrangements made in accordance with a requirement under paragraph 10.
- (3) The notice must be accompanied by a report on the supervised person, including particulars of the supervised person’s compliance, or failure to comply, with the requirements imposed by or under the order. 30
- (4) Subject to sub-paragraph (5), the court may comply with sub-paragraph (2) by considering the supervising officer’s notice at a review hearing.
- (5) If the court proposes to comply with sub-paragraph (2) in the manner described in sub-paragraph (4), the court must adjourn consideration of the notice if at the time appointed for the review hearing –
- (a) the supervised person is not present,
  - (b) the supervised person is present but does not agree that the court may deal with the matter to which the notice relates at that time, or 40
  - (c) the supervised person is present but no legal representative appears for the supervised person.

*Lack of capacity*

- 31 (1) A supervised person may not be subjected to –
- (a) a hearing relating to a supervising officer’s notice under paragraph 30, or
  - (b) so much of a review hearing as relates to a supervising officer’s notice under paragraph 30, 5
- if the supervised person lacks capacity to participate effectively in that hearing or that part of the review hearing.
- (2) The supervised person is to be regarded as having that capacity unless and until the court determines under this paragraph that the supervised person lacks that capacity. 10
- (3) An application to the court for a determination that the supervised person lacks capacity to participate effectively in the paragraph 30 hearing may only be made by the supervised person.
- (4) The court may of its own motion determine that the supervised person lacks capacity to participate effectively in the paragraph 30 hearing. 15
- (5) An application may be made or the court may raise the question at any time before, but not after, the court determines whether or not the supervised person has wilfully and without reasonable excuse failed to comply, attend or act as described in the supervising officer’s notice under paragraph 30. 20
- (6) If an application is made or the question is raised during the paragraph 30 hearing, the court must determine whether or not the supervised person lacks the capacity to participate effectively in the paragraph 30 hearing before the paragraph 30 hearing proceeds further.
- (7) In this paragraph and paragraphs 32 and 33 “paragraph 30 hearing” means – 25
- (a) a hearing relating to a supervising officer’s notice under paragraph 30, or
  - (b) if a supervising officer’s notice under paragraph 30 is considered at a review hearing, so much of the review hearing as relates to that notice. 30

*Evidence*

- 32 (1) The court may not determine that a supervised person lacks capacity to participate effectively in a paragraph 30 hearing except on the written or oral evidence of two or more persons – 35
- (a) one of whom must be a duly approved registered medical practitioner, and
  - (b) one of whom must be a qualified person or a second duly approved registered medical practitioner.
- (2) The burden of proving that the supervised person lacks capacity to participate effectively in the paragraph 30 hearing falls on – 40
- (a) the supervised person, if the supervised person applies under paragraph 31 for a determination that the defendant lacks that capacity, or
  - (b) the supervising officer, if the court raises the question, 45
- and the standard of proof is the balance of probabilities.

- 
- (3) If the supervised person or the supervising officer obtains a report that –
- (a) is prepared by a duly approved registered medical practitioner or a qualified person, and
  - (b) states that the supervised person lacks capacity to participate effectively in the paragraph 30 hearing,
- 5
- the supervised person or the supervising officer must serve copies of the report on the court and on the supervising officer or the supervised person (as the case may be) as soon as practicable.
- (4) On the first occasion that the court is served with a copy of a report under sub-paragraph (3), it must, unless it would be contrary to the interests of justice to do so, direct –
- (a) the person who served that copy, and
  - (b) the supervised person or the supervising officer (as the case may be),
- to give joint instructions for the preparation of a second report on the supervised person’s capacity to participate effectively in the paragraph 30 hearing.
- 10  
15
- (5) If the supervised person and the supervising officer do not agree who is to be instructed, the court may select, or give directions about the selection of, the person to be instructed.
- Capacity to participate effectively in a paragraph 30 hearing* 20
- 33 (1) This paragraph has effect for the purposes of paragraph 31.
- (2) A supervised person is to be regarded as lacking the capacity to participate effectively in a paragraph 30 hearing if the supervised person’s relevant abilities are not, taken together, sufficient to enable the supervised person to participate effectively in the proceedings relating to the failure or failures alleged in the supervising officer’s notice under paragraph 30.
- 25
- (3) In determining that question, the court must take into account the assistance available to the supervised person as regards the proceedings.
- (4) The following are relevant abilities –
- (a) an ability to understand the nature of the failure or failures alleged;
  - (b) an ability to understand the evidence adduced as evidence of the failure or failures alleged;
  - (c) an ability to understand the paragraph 30 hearing process and the consequences of being found to have failed to comply, attend or act as alleged;
  - (d) an ability to give instructions to a legal representative;
  - (e) an ability to make a decision about whether to admit or deny the failure or failures alleged;
  - (f) an ability to make a decision about whether to give evidence;
  - (g) an ability to make other decisions that might need to be made by the supervised person in connection with the paragraph 30 hearing;
  - (h) an ability to follow the proceedings in court relating to the failure or failures alleged;
  - (i) an ability to give evidence;
  - (j) any other ability that appears to the court to be relevant in the particular case.
- 30  
35  
40  
45

- (5) For the purposes of sub-paragraph (4)(e) to (g), an ability to make a decision is to be regarded as consisting of –
- (a) an ability to understand information relevant to the decision,
  - (b) an ability to retain that information,
  - (c) an ability to use and to weigh the information when making the decision, and 5
  - (d) an ability to communicate the decision.

*Sanctions*

- 34 (1) This paragraph applies if, at a hearing to consider a supervising officer's notice under paragraph 30, the court is satisfied beyond reasonable doubt that the supervised person has wilfully and without reasonable excuse – 10
- (a) failed to comply with a requirement in the supervision order,
  - (b) failed to attend an appointment made in accordance with a requirement under paragraph 9, or
  - (c) failed to act in accordance with arrangements made in accordance with a requirement under paragraph 10. 15
- (2) A person is not to be treated for the purposes of this paragraph as having failed to comply with a requirement under paragraph 11 or 12 on the ground only that the person had refused to undergo any surgical, electrical or other treatment required by that requirement if, in the opinion of the court, the refusal was reasonable in the circumstances. 20
- (3) If the court is the Crown Court, the court may –
- (a) amend the supervision order by adding a requirement under paragraph 18 (curfew requirement);
  - (b) amend the supervision order by adding a requirement under paragraph 19 (electronic monitoring requirement); 25
  - (c) order the supervised person to pay a fine of an amount not exceeding £10,000, if the supervised person has attained the age of 18;
  - (d) order the supervised person to be committed to prison, if the supervised person has attained the age of 21; 30
  - (e) make a detention and training order in respect of the supervised person, if the supervised person has attained the age of 18 but has not attained the age of 21;
  - (f) revoke the supervision order and make a relevant order in respect of the supervised person, if – 35
    - (i) the supervised person has not attained the age of 18, and
    - (ii) the offence or one of the offences by virtue of which the supervision order is made is an imprisonable offence.
- (4) If the court is a magistrates' court, the court may –
- (a) amend the supervision order by adding a requirement under paragraph 18 (curfew requirement); 40
  - (b) amend the supervision order by adding a requirement under paragraph 19 (electronic monitoring requirement);
  - (c) order the supervised person to pay a fine of an amount not exceeding £10,000, if the supervised person has attained the age of 18; 45
  - (d) revoke the supervision order and make a relevant order in respect of the supervised person, if –
    - (i) the supervised person has not attained the age of 18, and

- 
- (ii) the offence or one of the offences by virtue of which the supervision order is made is an imprisonable offence;
- (e) refer the matter to the Crown Court.
- (5) The court may make an order under – 5
- (a) sub-paragraph (3)(d), (e) or (f), or
- (b) sub-paragraph (4)(d),
- only if the court has, at a hearing to consider an earlier notice under paragraph 30, warned the supervised person that such an order may be imposed in future.
- (6) The court may make an order under – 10
- (a) sub-paragraph (3)(f), or
- (b) sub-paragraph (4)(d),
- only if the supervised person’s failure as regards the supervision order is wilful and persistent.
- (7) A magistrates’ court may make an order under sub-paragraph (4)(e) only if – 15
- (a) the supervision order in question was made by the Crown Court or the Court of Appeal, and
- (b) the court considers that the sanctions available to a magistrates’ court are not sufficient. 20
- (8) Where a magistrates’ court makes an order under sub-paragraph (4)(e), the Crown Court must hold a hearing under paragraph 30(2) as if the supervising officer had given notice to the Crown Court.
- (9) The period for which a person may be committed to prison by the Crown Court under sub-paragraph (3)(d) may not exceed the lesser of – 25
- (a) two years, or
- (b) the maximum term that the court could impose for the offence or any one of the offences in relation to which the supervision order was imposed on the person.
- (10) The term of a detention and training order imposed by the Crown Court under sub-paragraph (3)(e) may not exceed the lesser of – 30
- (a) two years, or
- (b) the maximum term that the court could impose for the offence or any one of the offences in relation to which the supervision order was imposed on the person. 35
- (11) Sub-paragraphs (3) and (4) do not prevent the court dealing with the supervised person’s failure by revoking or otherwise amending the supervision order under paragraph 24 or 26.
- (12) In this paragraph “relevant order” means an order imposing on a supervised person one or more of the requirements that may be imposed on a person by a youth rehabilitation order with intensive supervision and surveillance (see section 1 of, and Schedule 1 to, the Criminal Justice and Immigration Act 2008). 40
- (13) Parts 1, 2, 5 and 6 of Schedule 2 to the Criminal Justice and Immigration Act 2008 have effect in relation to a supervised person subject to a relevant order as if – 45

- (a) the supervised person were a person subject to a youth rehabilitation order with intensive supervision and surveillance, and
- (b) the Crown Court’s power under paragraph 6(2)(c) were the power described in paragraph 6(15).

Appeals

5

- 35 (1) The supervised person may appeal to the Crown Court against –
- (a) a finding by a magistrates’ court that the supervised person failed as described in paragraph 34(1);
  - (b) an order made by a magistrates’ court under paragraph 34(4);
  - (c) an order revoking or amending the supervision order made by a magistrates’ court under paragraph 24 or 26 in consequence of such finding as is described in paragraph 34(1). 10
- (2) If on the appeal the Crown Court considers that the supervised person should be dealt with differently it may –
- (a) quash any order which is the subject of the appeal, and 15
  - (b) make such order, whether by substitution for the original order or by variation of or addition to it, as it thinks appropriate for the case and as the court below had power to make.

PART 7

INTERPRETATION

20

- 36 (1) In Parts 1 to 6 of this Schedule, “the court” means –
- (a) in relation to Parts 1 to 4 –
    - (i) the Crown Court, if the Crown Court is making the supervision order in question,
    - (ii) a magistrates’ court, if a magistrates’ court is making the supervision order in question, or 25
    - (iii) the Court of Appeal, if the Court of Appeal are making the supervision order in question (see section 16B of the Criminal Appeal Act 1968);
  - (b) in relation to Parts 5 and 6 (except paragraph 20) – 30
    - (i) the Crown Court, if the Crown Court or the Court of Appeal made the supervision order in question and the powers in paragraph 20 have not been exercised, or
    - (ii) a magistrates’ court acting for the local justice area concerned for the time being exercising the powers in question. 35
- (2) But, in relation to a periodic review made without a review hearing, a reference in Part 5 or 6 to the court is to be read –
- (a) if the reference would but for this sub-paragraph be a reference to the Crown Court, as a reference to a judge of the Crown Court;
  - (b) if the reference would but for this sub-paragraph be a reference to a magistrates’ court acting for a local justice area, as a reference to a District Judge (Magistrates’ Courts) acting for that area. 40
- (3) In Parts 1 to 4, in a case where the Court of Appeal make the supervision order in question, a reference to a defendant is to be read as a reference to an appellant. 45

- 37 In this Schedule –
- “imprisonable offence” means an offence which, in the case of a person aged 18 or over, is punishable by imprisonment;
- “local authority” means –
- (a) in relation to England, a county council, a district council whose district does not form part of an area that has a county council, a London borough council, or the Common Council of the City of London; 5
  - (b) in relation to Wales, a county council or a county borough council. 10

## SCHEDULE 2

Section 69

## CONSEQUENTIAL AMENDMENTS

*Administration of Justice (Miscellaneous Provisions) Act 1933 (c. 36)*

- 1 (1) Section 2 of the Administration of Justice (Miscellaneous Provisions) Act 1933 (procedure for indictment of offenders) is amended as follows. 15
- (2) In subsection (2), after paragraph (c) insert “; or
- (d) the bill is preferred under section 17 of the Criminal Procedure (Lack of Capacity) Act 2015:”.

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

- 2 The Criminal Procedure (Insanity) Act 1964 is amended as follows. 20
- 3 Section 4 (finding of unfitness to plead) is repealed.
- 4 Section 4A (finding that accused did the act or made the omission) is repealed.
- 5 (1) Section 5 (powers to deal with persons not guilty by reason of insanity or unfit to plead etc) is amended as follows. 25
- (2) In the heading, omit “or unfit to plead etc”.
  - (3) In subsection (1), omit paragraph (b) and the “or” preceding it.
  - (4) In subsection (3)(a), for “or the findings relate” substitute “relates”.
- 6 In section 5A (provision about orders under section 5), omit subsection (4) (power of Secretary of State to remit a person for trial). 30
- 7 (1) Section 8 (interpretation etc) is amended as follows.
- (2) In subsection (2) (interpretation) –
    - (a) omit the definition of “duly approved”;
    - (b) omit the definition of “registered medical practitioner”;
    - (c) omit the definition of “under disability”. 35
  - (3) Omit subsection (2A).



*Criminal Appeal Act 1968 (c. 19)*

- 8 The Criminal Appeal Act 1968 is amended as follows.
- 9 (1) Section 15 (right of appeal against finding of disability) is amended as follows.
- (2) In the heading, for “disability” substitute “lack of capacity”. 5
- (3) For subsection (1) substitute –
- “(1) Where there has been –
- (a) a determination under section 1 of the Criminal Procedure (Lack of Capacity) Act 2015 that a person lacks capacity to participate effectively in a trial, 10
- (b) a refusal of an application under section 5 of that Act (application for determination that have capacity to plead guilty), or
- (c) a finding or verdict under section 9 or 10 of that Act (alternative finding procedure) (other than a verdict of acquittal), 15
- the person may appeal to the Court of Appeal against that determination, refusal, finding or verdict.”
- (4) In subsection (2)(b), for “the finding that the accused did the act or made the omission charged” substitute “the finding or verdict under section 9 or 10 of the Criminal Procedure (Lack of Capacity) Act 2015”. 20
- 10 (1) Section 16 (disposal of appeal under section 15) is amended as follows.
- (2) In subsection (1) –
- (a) for “a finding” substitute “a finding or verdict under section 9 or 10 of the Criminal Procedure (Lack of Capacity) Act 2015 (other than a verdict of acquittal)”; 25
- (b) for “the finding” substitute “the finding or verdict”.
- (3) In subsection (3), for “a finding that the appellant is under a disability” substitute “a determination under section 1 of the Criminal Procedure (Lack of Capacity) Act 2015 that the appellant lacks capacity to participate effectively in the trial or a refusal of an application by the appellant under section 10 of that Act”. 30
- (4) In subsection (4) –
- (a) for “a finding that the appellant did the act or made the omission charged against him” substitute “a finding or verdict under section 9 or 10 of the Criminal Procedure (Lack of Capacity) Act 2015 (other than a verdict of acquittal)”; 35
- (b) for the words from “the Court” to the end substitute “the Court may –
- (a) quash the finding or verdict, and 40
- (b) unless the Court gives an order under subsection (5), direct a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity).”
- 11 (1) Section 16B (disposal of appeal under section 16A) is amended as follows.

(2) For subsection (4) substitute –

“(4) The fact that an appeal is pending against a supervision order under section 57(2) of the Criminal Procedure (Lack of Capacity) Act 2015 does not affect –

- (a) the powers of the court below under Parts 5 and 6 of Schedule 1 to the Criminal Procedure (Lack of Capacity) Act 2015, or 5
- (b) the powers of a magistrates’ court under Parts 5 and 6 of Schedule 1 to the Criminal Procedure (Lack of Capacity) Act 2015, in a case where the Crown Court has exercised the power in paragraph 20(4) of that Schedule (power to specify that functions under Parts 5 and 6 are exercisable by a magistrates’ court).” 10

(3) In subsection (5), for “the power of amending or revoking it” substitute “the powers under Part 5 or 6 of Schedule 1 to the Criminal Procedure (Lack of Capacity) Act 2015”. 15

*Juries Act 1974 (c. 23)*

12 In section 23 of the Juries Act 1974 (short title, interpretation etc), after subsection (1) insert –

“(1A) A reference in this Act to trying a person for an offence on indictment includes a reference to proceeding against a person using the alternative finding procedure (see sections 9 to 14 of the Criminal Procedure (Lack of Capacity) Act 2015).” 20

*Magistrates’ Courts Act 1980 (c. 43)*

13 In section 108 of the Magistrates’ Courts Act 1980 (right of appeal to the Crown Court), after subsection (1) insert – 25

“(1ZA) A person –

- (a) who is the subject of a determination under section 30 of the Criminal Procedure (Lack of Capacity) Act 2015 (capacity to participate effectively in a trial, or
- (b) whose application under section 34 of that Act (capacity to plead guilty) is refused, 30

may appeal to the Crown Court against that determination or refusal.

(1ZB) A person against whom a determination is made under section 38(4) or 39(4), (5) or (8) of the Criminal Procedure (Lack of Capacity) Act 2015 may appeal to the Crown Court – 35

- (a) against the determination, or
- (b) against the disposal.”

*Mental Health Act 1983 (c. 20)*

14 The Mental Health Act 1983 is amended as follows. 40

15 In section 37 (powers of court to order hospital admission or guardianship), omit subsection (3) (power of magistrates’ court after a finding that a person did the act or made the omission charged).

- 16 In section 43 (power of magistrates' courts to commit for restriction order), in subsection (1), after "imprisonment" insert "or who is the subject of a determination under section 38(4) or 39(4), (5) or (8) of the Criminal Procedure (Lack of Capacity) Act 2015 in respect of such an offence".

*Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (c. 25)*

5

- 17 The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 is amended as follows.

18 Section 2 is repealed.

19 In Schedule 3, paragraph 1 is repealed.

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

10

- 20 The Powers of Criminal Courts (Sentencing) Act 2000 is amended as follows.

21 Section 11 (remand by magistrates' courts for medical examination) is repealed.

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