

Country Code:	BB 2002 Cum. Supp. To 1971 Rev. CAP. 137
Title:	MINORS OFFENCES ACT
Country:	BARBADOS
Date of entry into force:	February 5, 1998
Date of Amendment:	50/1998 (by 3 rd Sch.)
Subject:	Children – Law - Barbados
Key words:	Loitering; Minor offences; Offensive behaviour
Notes:	Includes amendments in the Penal System Reform Act, 50/1998 as an attachment

CHAPTER 137

MINOR OFFENCES

ARRANGEMENT OF SECTIONS

SECTION

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CHAPTER 137

MINOR OFFENCES

1998-1

An Act to revise the law in relation to certain minor offences.

Commencement

[5th February, 1998]

Short title

1. This Act may be cited as the *Minor Offences Act*.

Disorderly behaviour

2. (1) Any person who
 - (a) applies for relief to the Chief Welfare Officer or to any person or body acting on his behalf and at the time of the application is the owner of any money or property of which, on enquiry by the Chief Welfare Officer or the person or body acting on his behalf, he does not make correct and complete disclosure;
 - (b) being able, either by labour or by other lawful means, to maintain himself or herself or his wife or his or her child or children wilfully refuses or neglects to do so and thereby becomes burdensome or renders his wife or his or her child or children burdensome upon national assistance or other public funds set apart for the relief of the poor;
 - (c) wanders in the public streets or highways or in any place of public resort and behaves in a riotous or indecent manner;
 - (d) in any street, highway or public place accosts a passenger and offers to take him to the house or residence of a prostitute;
 - (e) loiters in any street or highway and importunes passengers for the purpose of prostitution;
 - (f) in any street, highway or public place, including a beach, without lawful authority or excuse (the proof whereof shall lie on the person accused), accosts, molests, threatens or harasses any person or follows him about;
 - (g) loitering in any highway, yard or other place, is unable to give a satisfactory account of himself or whom there is cause to suspect of being about to commit an offence; or
 - (h) for the purpose of obtaining relief from national assistance, for himself or for any other person, wilfully gives a false name or makes or uses a false statement to the Chief Welfare Officer or any

person or body acting on his behalf,

commits an offence and is liable on conviction before a magistrate to a penalty of \$2 500 or to imprisonment for 2 years or to both.

(2) For the purposes of this section "harass" means to

- (a) use words, gestures and actions that annoy, alarm or abuse a person;
- (b) insult, taunt or challenge a person in a manner likely to offend;
- (c) use obscene and profane language to intimidate a person; or
- (d) disturb or irritate especially by continued and repeated acts.

Offensive behaviour.

3. (1) Any person who

- (a) commits an offence under section 2, having previously been convicted of an offence under that section;
- (b) wilfully exposes or causes to be exposed to view in any street, road, highway or public place or in the window or other part of any shop or other building situate in any street, road, highway or public place or in any building or any place, whether opened or covered, which the public are permitted to enter any obscene print, picture or other indecent exhibition; or
- (c) wilfully, openly, lewdly and obscenely exposes his person in any street, public road or highway or in the view thereof or in any place of public resort;
- (e) endeavours to procure charitable contributions under any false or fraudulent pretence; has in his custody or possession any pick-lock, key, crowbar, jack, bit or other implement with intent to break into any dwelling-house, warehouse, store, shop or outbuilding;
- (f) is armed with any gun, pistol, cutlass, bludgeon or other offensive weapon or has upon him any instrument with intent to commit an arrestable offence;
- (g) is found in or upon any dwelling-house, warehouse, stable or outhouse or in any enclosed yard, garden or area and is there for purpose of committing an arrestable offence, either in that place or at some other place; or
- (h) being a suspected person or reputed thief, frequents or loiters in or about any highway or any place, public or private, with intent to commit an arrestable offence,

commits an offence and is liable on conviction before a magistrate to a fine of \$3 500 or to imprisonment for 2 years or both.

(2) Every gun, pistol, cutlass, bludgeon or other offensive weapon referred to in paragraph (f) of subsection (1) shall on the conviction of the offender be forfeited.

(3) In proving the intent to commit an arrestable offence, referred to in paragraphs (e) and (f) of subsection (1), it shall not be necessary to show that the person suspected was guilty of any particular act or acts tending to show his purpose or intent, and he may be convicted if from the circumstances of the case and from his known character, as proved to the court, it appears to the court that his intent was to commit an arrestable offence.

Second or subsequent offender.

4. Any person

- (a) who commits any offence under section 3, having previously been convicted of an offence under that section; or
- (b) who, having previously been convicted of an offence under section 3 is apprehended for the commission of a further offence under that section and violently resists any constable or other peace officer so apprehending him,

is guilty of an offence and is liable on conviction before a magistrate to a fine of \$5 000 or to imprisonment for 3 years or both.

Arrest of persons found committing offences.

5. A police officer or parish constable may arrest any person who is found committing an offence under this Act and shall immediately take him before a magistrate to be dealt with in the manner prescribed by this Act.

Warrants for arrest of persons having committed or suspected of committing offences.

6. Upon oath being made before a magistrate that a person has committed or is suspected to have committed any offence under this Act, the magistrate may issue a warrant to apprehend that person and bring that person before him or some other magistrate and the person so charged shall be dealt with in the manner prescribed by this Act.

Search warrants.

7. Where it is alleged upon information on oath before a magistrate that a person who has been convicted of an offence under section 2, 3 or 4 is reasonably suspected to be harboured or concealed in any house or place, the magistrate may issue a warrant authorising any constable or other person to enter at any time into that house or place and arrest and bring before him or any other magistrate any person so convicted as is found there, and that person shall be dealt with in the manner prescribed by this Act.

Exemption of Pari-Mutuel

8. This Act shall not apply to the operations and transactions of the Pari-Mutuel conducted under the authority and control of the Barbados Turf Club at any race meeting which may be held in Barbados by the Barbados Turf Club nor to any person employed or authorised by the Barbados Turf Club or who assists in conducting the operations and transactions of the Pari-Mutuel so conducted.

9.

Country Code: BB 1998 ACT 50
Title: PENAL SYSTEM REFORM ACT
Country: BARBADOS
Date of entry into force:
Date of Amendment:
Subject:
Key words:

PENAL SYSTEM REFORM ACT, 1998 - 50

Arrangement of Sections

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FIRST SCHEDULE

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THIRD SCHEDULE

I assent

C. STRAUGHN HUSBANDS

Governor-General

23rd December, 1998.

1998-50

An Act to enlarge the powers of the criminal courts to pass in proper cases sentences other than sentences of imprisonment; to enable certain offences to be dealt with by civil mediation instead of criminal prosecution; to lay down certain principles to be followed by courts when exercising their powers of sentencing; by an amendment to the Juvenile Offenders Act to raise the age of criminal responsibility; and for connected and incidental purposes.

Commencement

(By Proclamation)

ENACTED by the Parliament of Barbados as follows:

Part I

Preliminary

Short title

1. This Act may be cited as the *Penal System Reform Act, 1998*.

Interpretation

2. In this Act,

"attendance centre" and "attendance centre order" have the meanings given by sections 9 and 10;

"combination order" has the meaning given by section 17(2);

"community order" means any of the following orders, namely

- (a) an attendance centre order;
- (b) a combination order;
- (c) a community service order;
- (d) a curfew order;
- (e) a probation order;

"community sentence" has the meaning given by section 33(1);

"community service order" has the meaning given by section 13(1);

"curfew order" has the meaning given by section 15(2);

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"custodial sentence" means a sentence of imprisonment or of detention in a School established under the *Reformatory and Industrial Schools Act*;

"the Minister" means the Minister responsible for Penal Administration

"pre-sentence report" has the meaning given by section 37(5);

Cap. 146

"probation officer" and "probation order" have the meanings that those expressions have in the *Probation of Offenders Act*;

"the responsible officer" means

- (a) in relation to an offender who is subject to a probation order, the probation officer responsible for that offender's supervision;
- (b) in relation to an offender• who is subject to a community service order, the probation officer mentioned in section 13(8);
- (c) in relation to an offender who is subject to a curfew order, the probation officer who is

required by section 15(5) to be responsible for monitoring the offender's whereabouts during the curfew periods specified in the curfew order;

"sentence of imprisonment" does not include a committal or attachment for contempt of court;

Cap. 154

"sexual offence" means an offence under the *Sexual Offences Act*;

"violent offence" means an offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall under this definition).

(2) For the purposes of this Act, an offence ("the ,b) associated offence") is associated with another offence ("the primary offence") if

- (a) the offender is convicted of the associated offence in the proceedings in which the offender is convicted of the primary offence or, although convicted of the associated offence in earlier proceedings, is sentenced for the associated offence at the same time as the offender is sentenced for the primary offence; or
- (b) the offender admits the commission of the associated offence in the proceedings in which the offender is sentenced for the primary offence

and requests the court to take the associated offence into consideration in passing sentence for the primary offence.

ADDITIONAL POWERS OF CRIMINAL COURTS

Discharge and binding over

Absolute and conditional discharge

3. (1) Where a court by or before which a person is convicted of an offence (not being an offence the sentence for which is fixed by law) is of opinion, having regard to the circumstances, including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate, the court may make an order discharging the offender.

(2) Such an order may discharge the offender absolutely or, if the court thinks fit, may discharge the offender subject to the condition that the offender commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order; and in this Act an order of the latter is referred to as an "order for conditional discharge" and the period specified in an order for conditional discharge is referred to as "the period of conditional discharge".

(3) Before making an order for conditional discharge the court shall explain to the offender in ordinary language that, if the offender commits another offence during the period of conditional discharge, the offender will be liable to be sentenced for the original offence.

(4) Where, under the provisions of this Part, a person conditionally discharged under this section is sentenced for the offence in respect of which the order for conditional discharge was made, the order for conditional discharge ceases to have effect.

(5) The Minister may by order amend subsection (2) by substituting, for the maximum period specified in that subsection as originally enacted or as previously amended under this subsection, such period as may be specified in the order.

Commission of further offence by person conditionally discharged

4. (1) If it appears to a Judge or a magistrate that a person in whose case an order for conditional discharge has been made has been convicted in Barbados of an offence committed during the period of conditional discharge and has been dealt with in respect of that offence, then, subject to subsection (2), the Judge or magistrate may issue a summons requiring that person to appear at the time and place specified in the summons or may issue a warrant for that person's arrest.

(2) A magistrate shall not issue such a summons except on information, and shall not issue such a warrant except on information in writing and on oath.

(3) a summons or warrant issued under subsection (1) shall direct that the person to whom it relates appear or be brought before the court that made the order for conditional discharge.

(4) If a person in whose case an order for conditional discharge has been made by the High Court is convicted in a magistrate's court of an offence committed during the period of conditional discharge the magistrate may either commit the offender to custody, or may release the offender on bail, until the offender can be brought before the High Court; and if the magistrate does so, the magistrate shall send to the High Court a copy of the record of the conviction entered in the register of the magistrate's court, signed by the clerk of that court.

(5) Where it is proved to the satisfaction of the court that made an order for conditional discharge that the offender in whose case the order was made has been convicted of an offence committed during the period of conditional discharge, the court may deal with the offender, for the offence for which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before that court of that offence.

(6) If a person in whose case an order for conditional discharge has been made by a magistrate's court

- (a) is convicted before the High Court of an offence committed during the period of conditional discharge; or
- (b) is dealt with by the High Court for any such offence in respect of which the offender was committed for sentence to the High Court,

the High Court may deal with the offender, for the offence for which the order was made, in any manner in which the magistrate's court could deal with the offender if it had just convicted the offender of that offence.

Breach of conditional discharge by young offenders

5. Where an order for conditional discharge has been made by a magistrate's court in the case of an offender under 17 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable by that or any other court under subsection (5) or (6) of section 4 in respect of the offender after the offender has attained the age of 17 years shall be those which would be exercisable if that offence were a summary offence.

Suspended sentences

6. (1) A court which passes a sentence of imprisonment on an offender for a term of not more than three years **for** an offence may suspend the sentence by ordering that the sentence shall not take effect unless

- (a) during a period specified in the order, being not less than twelve months nor more than three years from the date of the order, (in this Act referred to as "the operational period") the offender commits in Barbados another offence punishable with imprisonment for a period exceeding six months (hereafter in this section and sections 7 and 8 referred to as a "subsequent offence"); and
- (b) thereafter a court having power to do so orders under section 7 that the original sentence shall take effect.

(2) An offence shall not be suspended under subsection (1) if it involved the use, or the illegal possession of a firearm or imitation firearm.

(3) A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of power to suspend such a sentence by an order under subsection (1).

(4) A court which passes a suspended sentence on an offender for an offence shall not make a probation order in the offender's case in respect of another offence of which the offender is convicted by or before the court.

(5) Where a court passes a suspended sentence on an offender in respect of an offence and also a term of imprisonment in respect of another offence, the court shall direct that the suspended sentence be concurrent with the term of imprisonment.

(6) On passing a suspended sentence the court shall explain to the offender in ordinary language the offender's liability under section 7, if the offender should commit a subsequent offence during the operational period.

Subsequent offence during operational period

7. (1) Subject to subsection (3), where an offender is convicted of a subsequent offence committed during the operational period of a suspended sentence, the court by or before which the offender is convicted of the subsequent offence may order that the suspended sentence shall take effect with the original term unaltered; or the court may substitute a lesser term of imprisonment for the original term.

(2) Where a court deals with an offender in respect of a suspended sentence passed by another court, the former court shall notify the latter court of the manner in which the offender was dealt with.

(3) Where a magistrate's court convicts of an offence an offender in respect of whom a suspended sentence passed by the High Court is in operation, the magistrate's court shall forward to the Registrar of the High Court a Certificate signed by the magistrate and under the seal of the magistrate's court certifying that the offender has been convicted of a subsequent offence, together with such other particulars of the case as the magistrate may consider desirable; whereupon a Judge of the High Court before whom the offender is brought may, without prejudice to the order of the magistrate with respect to the subsequent offence, order that the suspended sentence shall take effect either with the original term unaltered or with the substitution of a lesser term for the original term.

Discovery of further offence

8. (1) Where a person has been convicted by or before a court of a subsequent offence committed during the operational period of a suspended sentence but that court was not at the time aware of the suspended sentence or of some feature affecting the operation of that sentence, any court may, on receipt of information relating to that suspended sentence or that feature and the conviction of the subsequent offence, issue a summons requiring that person to appear at the place and time specified in the summons or may issue a warrant for that person's arrest.

(2) A summons or warrant issued under subsection (1) shall direct that the person appear or be brought before the court by or before which the person was convicted in respect of the subsequent offence and, upon that person so appearing or being so brought, the court shall proceed to exercise its powers under section 7 in respect of the suspended sentence.

Attendance centre orders

Provision, regulation and management of attendance centres

9. (1) The Minister may provide attendance centres.

(2) In this Act "attendance centre" means a place at which offenders under 21 years of age may be required to attend and be given under supervision appropriate training, occupation or instruction, in pursuance of orders made by the High Court or a magistrate's court under section 10 or any other enactment.

(3) The Minister may make rules for the regulation and management of attendance centres.

Attendance centre orders

10. (1) Subject to this section, where a court

- (a) would have power, but for section 13 of the *Juvenile Offenders Act*, to pass a sentence of imprisonment on a person who is under 21 year of age or commit such a person to prison in default of payment of a sum of money or for failing to do or abstain from doing anything required to be done or left undone; or

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- (b) has power to deal with such a person under section 9 of the *Probation of Offenders Act* for failure to comply with any of the requirements of a probation order, the court may, if it has been notified by the Minister that an attendance centre is available for the reception of persons of that person's description, order that person to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

(2) An order under this section is referred to in this Act as an "attendance centre order."

(3) An attendance centre order shall not be made in the case of an offender who has been previously sentenced

- (a) to imprisonment; or

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- (b) to detention in a School established under the *Reformatory and Industrial Schools Act*,

unless it appears to the court that there are special circumstances (whether relating to the offence or to the offender) which warrant the making of such an order in that offender's case.

(4) The First Schedule has effect with respect to attendance centre orders and the powers of courts in relation to such orders.

Discharge and variation of attendance

11. (1) An attendance centre order may be discharged on an application made by the offender or the officer in charge of the relevant attendance centre.

(2) An application under subsection (1) shall be made to a Judge or a magistrate and, subject to subsection (3), the discharge of such an order shall be by order of the court.

(3) Where the court that made the order is the High Court and that Court included in the order a direction reserving to itself the power to discharge the order, the power shall be exercised by the High Court.

(4) An attendance centre order may be varied by a magistrate's court on the application of the offender or the officer in charge of the relevant attendance centre.

(5) The power to vary an attendance centre order is a power by order

- (a) to vary the day or hour specified in the order for the first attendance at the relevant attendance centre; or
- (b) if the court is satisfied that the offender proposes to change or has changed the offender's residence, to substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to the offender's age, the means of access available to the offender and any other circumstances.

(6) Where an application is made under this section by the officer in charge of an attendance centre, the court may deal with the application without summoning the offender,

(7) In this section "the relevant attendance centre", in relation to an attendance centre order, means the attendance centre specified in the order or substituted for the attendance centre so specified by an order made by virtue of subsection (5)(b).

Breach of attendance centre order or rules

12. (1) Where an attendance centre order has been made and it appears on information to a magistrate that the offender

- (a) has failed to attend in accordance with the order; or
- (b) while attending has committed a breach of rules made under section 9(3) which cannot be adequately dealt with under those rules,

the magistrate may issue a summons requiring the offender to appear at the place and time specified in the summons before a magistrate's court or, if the information is in writing and on oath, may issue a warrant for the offender's arrest requiring the offender to be brought before such a court.

(2) If it is proved to the satisfaction of the magistrate's court before which an offender appears or is brought under this section that the offender has failed without reasonable excuse to attend as mentioned in paragraph (a) of subsection (1) or has committed such a breach of rules as is mentioned in paragraph (b) of that subsection, that court

- (a) if the attendance centre order was made by a magistrate's court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence by the court which made the order if the order had not been made;
- (b) if the order was made by the High Court, may commit the offender in custody or release the

offender on bail until the offender can be brought or appear before the High Court.

(3) A magistrate's court which deals with an offender's case under subsection (2)(b) shall send to the High Court a certificate signed by the magistrate giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules that the offender has committed, together with such particulars of the case as may be desirable; and a certificate purporting to be so signed shall be admissible as evidence of the failure or breach before the High Court.

(4) Where it is proved to the satisfaction of the High Court that an offender who has been brought or appeared before that Court by virtue of subsection (2)(b) has failed to attend as mentioned in paragraph (a) of subsection (1) or has committed such a breach of rules as is mentioned in paragraph (b) of that subsection, that Court may revoke the attendance centre order and deal with the offender, for the offence in respect of which the order was made, in any manner in which that Court could have dealt with the offender if it had not made the order.

(5) A person sentenced under subsection (2)(a) for an offence may appeal to the High Court against the sentence.

(6) In proceedings before the High Court under this section, any question whether there has been a failure to attend or a breach of the rules shall be determined by the Court and not by the verdict of a jury.

Community service orders

Community service orders

13. (1) Where a person of 16 years of age or over is convicted of an offence punishable with imprisonment, the court by or before which that person is convicted may, subject to subsection (3), make an order (referred to in this Act as a "community service order") requiring the offender to perform unpaid work in accordance with this section and section 14.

(2) The reference in subsection (1) to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.

(3) A court shall not make a community service order in respect of an offender unless

- (a) after considering a written report by a probation officer in respect of the offender and the offender's circumstances (and, if the court thinks it necessary, after hearing a probation officer), the court is satisfied that the offender is a suitable person to perform work under such an order; and
- (b) the court is also satisfied that arrangements can be made in the area which the offender lives, or will live, for the offender to perform work under such an order and for that work to be properly supervised; and
- (c) the court has first explained to the offender the matters specified in subsection (4) and the offender has consented to the making of the order.

(4) The matters referred to in subsection (3)(c) are

- (a) the purpose and effect of the order (and in particular the requirements specified in section 14); and
- (b) the consequences that may follow under the Second Schedule if the offender fails to comply with any of those requirements; and
- (c) that the order may be reviewed by the court under that Schedule.

(5) The number of hours that a person may be required to work under a community service order must be specified in the order and must not in the aggregate

- (a) be less than 80; or
- (b) be more
 - (i) in the case of an offender aged 16, than 140; and
 - (ii) in any other case, than 240.

(6) Where a court makes community service orders in respect of two or more offences of which the offender has been convicted by or before the court, the court may direct that the hours of work specified in any of those orders shall be concurrent with or additional to those specified in any other of those orders; but the total number of hours which are not concurrent must not exceed the maximum specified in paragraph (b)(i) or (ii) of subsection (5).

(7) The Minister may by order amend the maximum number of hours for the time being specified in paragraph (b)(i) or (ii) of subsection (5).

(8) A community service order shall specify the area in which the offender lives or will live, and the court shall cause copies of the order to be sent to the Chief Probation Officer for delivery to the probation officer assigned to that area (hereinafter referred to as "the probation officer").

Obligations of person under community service order

14. (1) An offender in respect of whom a community service order is in force shall

- (a) keep in touch with the probation officer in accordance with such instructions as the offender may from time to time be given by that officer, and notify that officer of any change of address; and
- (b) perform for the number of hours specified in the order such work at such times as the offender may be instructed by that officer.

(2) The work required to be performed under a community service order shall be performed during the period of twelve months beginning with the date of the order; but, unless revoked, the order shall remain in force until the offender has worked under the order for the number of hours specified in the order.

(3) The instructions given by the probation officer under this section shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject, and any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

Curfew orders

Curfew orders

15. (1) Where a person of 16 years of age or over is convicted of an offence (not being an offence for which the sentence is fixed by law), the court by or before which the offender is convicted may make a curfew order.

(2) A "curfew order" in this Act is an order requiring ⁴ the offender to remain, for periods specified in the order, at a place so specified.

(3) A curfew order may specify different places or different periods for different days, but shall not specify

- (a) periods which fall outside the period of six months beginning with the day on which it is made; or
- (b) periods which amount to less than 2 hours or more than 12 hours in any one day.

(4) The requirements in a curfew order shall, as far as practicable, be such as to avoid

- (a) any conflict with the offender's religious beliefs, or with the requirements of any other community order to which the offender may be subject; and
- (b) any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.

(5) A curfew order shall include provision for making a probation officer responsible for monitoring the offender's whereabouts during the curfew periods specified in the order (the "curfew periods").

(6) A court shall not make a curfew order in respect of an offender unless it has first explained to the offender in ordinary language the matters specified in subsection (7) and the offender has consented to the making of the order.

(7) the matters referred to in subsection (7) are

- (a) the purpose and effect of the order (including any additional requirements proposed to be included in the order in accordance with section 16);
- (b) the consequences which may follow under the Second Schedule if the Offender fails to comply with any of the requirements of the order; and
- (c) that the order may be reviewed by the court under that Schedule.

(8) Before making a curfew order, the court shall obtain and consider information about the place proposed to be specified in the order (the "curfew premises"), including information as to the attitude of persons likely to be affected by the enforced presence of the offender there.

(9) The Minister may by order

- (a) amend subsection (3) by substituting, for any period specified in that subsection such period as may be specified in the order;
- (b) direct that subsection (4) shall have effect with such additional restrictions as may be specified in the order.

Electronic monitoring of curfew orders

16. (1) Subject to subsection (2), a curfew order may in addition include requirements for securing the electronic monitoring of the offender's whereabouts during the curfew periods ("electronic monitoring requirements").

(2) A court shall not make a curfew order which • includes electronic monitoring requirements unless the court

- (a) has been notified by the Minister that arrangement for electronic monitoring are available at the curfew premises; and
- (b) is satisfied that the necessary provision can be made under those arrangements.

(3) Such arrangements *may* include arrangements whereby the monitoring of persons' whereabouts is done by persons acting under contract.

Combination orders

Orders combining probation with community service, or probation with curfew

17. (1) Where a court by or before which a person of 16 years of age or over is convicted of an offence punishable with imprisonment (not being an offence for which the sentence is fixed by law) is o f the opinion mentioned in subsection (3), the court may make a combination order.

(2) A "combination order" in this Act is an order which requires an offender either

- (a) both
 - (i) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and
 - (ii) to perform unpaid work for a number of hours so specified, being in the aggregate not less than 80 nor more than 140; or
- (b) both
 - (i) to be under the supervision of a probation officer for a period specified in the order, being not less than twelve months nor more than three years; and
 - (ii) to remain at a specified place or specified places for specified periods within the limits set forth at section 15(3).

(3) The opinion referred to in subsection (1) is that the making of a combination order is desirable in the interests of

- (a) securing the rehabilitation of the offender; or
- (b) protecting the public from harm from the offender or preventing the commission of further offences by the offender.

Application of relevant law to constituent parts of combination orders

18. (1) Subject to section 17, the Probation of Offenders Act applies in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in sub-paragraph (ii) of paragraph (a) or (b) of section 17(2), as if the order were a community service order.

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(2) Subject to section 17, this Act applies in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in sub-paragraph (ii) of paragraph (a) of section 17(2), as if the order were a community service order.

(3) Subject to section 17, this Act applies in relation to a combination order, in so far as the order imposes a requirement such as is mentioned in sub-paragraph (i) of paragraph (a) or (b) of section 17(2), as if the order were a curfew order.

Enforcement etc. of certain community orders

Enforcement etc. of certain community orders

19. The Second Schedule has effect to make provision for the following purposes

- (a) dealing with failures to comply with the requirements of certain community orders;
- (b) amending certain community orders;

Part III

MEDIATION

Interpretation of this Part

20. (1) In this Part

"complainant" means a person who, acting otherwise than in the course of official duty, lays an information, or causes an information to be laid, alleging the commission by the defendant of a scheduled offence;

"court" means, subject to section 30, a magistrate's court;

"mediation" has the meaning given by subsections (2) and (3);

"scheduled offence" means a summary offence listed in the Third Schedule.

(2) For the purposes of this Part, mediation means, subject to subsection (3), the settlement, by a third person called a "mediator", of a dispute or difference between one party and another by the employment of methods which consist of or include the discharge by one party of one or more of the following obligations

- (a) doing unpaid work for the benefit of the other;
- (b) paying compensation to the other;
- (c) participating in an education or rehabilitation programme.

(3) Where mediation is carried out under this

Part, an obligation of a person under subsection (2) must not conflict with that person's religious beliefs or interfere with the times, if *any*, at which that person normally works or attends a school or other educational establishment.

(4) Where the Minister is satisfied that a person has adequate knowledge of mediation, the Minister may by notice published in the *Gazette* approve that person as a mediator for the purpose of this Part, and a person so approved is referred to in this Part as an "approved mediator".

Eligibility for mediation

21. A person who is charged for the first time with a scheduled offence is eligible for mediation if that person is 21 years of age or under and has not before been charged with, or convicted of, any offence.

Eligible defendant to be offered mediation

22. A court which is about to try a scheduled offence alleged to have been committed by a defendant who is eligible for mediation shall, before the trial commences, invite the defendant to apply for mediation.

Adjournment pending application

23. (1) Where a defendant in response to an invitation under section 22 indicates to the court that the defendant wishes to apply for mediation, the court shall adjourn the trial of the offence to such a day as will allow the defendant sufficient time to make the application.

(2) Where

- (a) a defendant fails to make the application before the day appointed under subsection (1), or before such later day as the court may in its discretion appoint; or
- (b) the applicant is rejected by the court, the court shall proceed to trial of the offence.

(3) An inference of guilt shall not be drawn from the fact that a defendant applied, or indicated the defendant's wish to apply, for mediation.

Application for mediation

24. (1) An application for mediation shall be made in duplicate in a form acceptable to the court.

(2) On receiving the application, the clerk of the court

- (a) shall mark on the copy
 - (i) the court's acknowledgement of receipt of the application; and
 - (ii) the date on which the defendant is required to appear before the court for the resumption of the proceedings; and
- (b) shall return the copy so marked to the defendant.

Restrictions on making mediation order

25. (1) A court shall not approve an application for mediation unless

- (a) after considering a report in writing by a probation officer on the defendant and the defendant's circumstances and, if the court thinks it necessary, after hearing a probation officer, the court is satisfied that the charge is one that may appropriately be dealt with by mediation; and
- (b) the complainant has agreed that the charge should be so dealt with; and
- (c) the defendant and the complainant have agreed on an approved mediator who has agreed to act.

(2) The Director of Public Prosecutions is entitled to be heard by the court before the court determines to make any mediation order.

Mediation orders

26. (1) Where a court approves an application for mediation, it shall, subject to section 27, make an order under this section, in this Act referred to as a "mediation order".

(2) A mediation order shall contain provision

- (a) suspending the trial of the offence, subject to sections 28(b) and 29; and
- (b) appointing the person referred to in section 25(1)(c) to be the mediator; and
- (c) referring the subject matter of the charge to that person for mediation.

(3) A mediation order shall

- (a) subject to sections 28 and 29, have effect for such period not exceeding 12 months beginning with the date of the order as may be specified in the order; and
- (b) require the defendant to submit during that period to the supervision of a probation officer, in this Part referred to as "the probation officer"; and
- (c) contain such conditions as the court thinks necessary for securing the supervision of the defendant; and
- (d) contain such other conditions as to residence or other matters as the court, having regard to the circumstances of the case, considers necessary or expedient for the success of the proposed mediation.

(4) Where the complainant and the defendant both agree, a mediation order may require the defendant to assume an obligation described in section 20(2) and (3) or any other obligation the court thinks fit.

(5) A court which has made a mediation order shall furnish four copies to the probation officer, one for retention by the probation officer and the other three for distribution to the mediator, the complainant and the defendant.

Explanation to the defendant

27. Before making a mediation order, the court shall explain to the defendant

- (a) the effect and purpose of the order; and
- (b) the court's power to review the order under section 28; and
- (c) the consequences which may follow under section 29 if the defendant fails to comply with any requirements of the order; and
- (d) the benefit which may follow under section 31 if the mediation is successful.

Review of mediation order

28. Where a mediation order is in force in respect of a defendant and, on the application of the defendant or the complainant or the mediator or the probation officer, it appears to the court to be in the interests of justice to do so having regard to circumstances which have arisen since the order was made, the court may

- (a) with the consent of the defendant and the complainant, extend the duration of the order; or
- (b) revoke the order and proceed to the trial which was suspended by the order by virtue of section 26(2)(a).

Breach of mediation order

29. (1) If at any time while a mediation order is in force in respect of a defendant it appears to a magistrate on information that the defendant has failed to comply with any of the requirements of the order, the magistrate may issue a summons requiring the defendant to appear before a magistrate's court at the place and time specified in the summons; and if a defendant fails to comply with such a summons, the court may issue a warrant for the defendant's arrest directing that the defendant be brought before the court.

(2) Where it is proved to the satisfaction of a court before which a defendant appears or is brought under subsection (1) that the defendant has failed without reasonable excuse to comply with any of the requirements of the mediation order, the court may revoke the order and proceed to the trial which was suspended by the order by virtue of section 26(2)(a).

Protection against self-incrimination

30. (1) An incriminating statement made during, and as part of, mediation under this Part is not admissible in any court against the person making the incriminating statement.

(2) In this section, "court" includes a court other than a magistrate's court.

Action of court after end of mediation

31. (1) Subject to this section, if a court is satisfied that the purposes of a mediation order have been fulfilled, the court shall dismiss the charge of the scheduled offence in respect of which the order was made.

(2) Before the court exercises its powers under subsection (1), the court shall obtain and consider

- (a) a report in writing by the mediator appointed by the order, and
- (b) a report in writing by the probation officer; and
- (c) any evidence, whether oral or in writing, being evidence relevant to the question whether the court should exercise its powers under subsection (1), which the mediator or the probation officer or the complainant or the defendant may wish to proffer to the court.

(3) A court shall not exercise its powers under subsection (1) if in any report or evidence made or proffered to the court under subsection (2) the person making the report or proffering the evidence states that the purposes of the mediation order have in that person's opinion not been fulfilled.

(4) Where subsection (3) applies, the court, unless it is open to the court to extend the duration of the mediation order under paragraph (a) of section 28 and the court is satisfied that the powers conferred by that paragraph should be exercised, shall proceed to the trial which was suspended by the order by virtue of section 26(2)(a).

Regulations

32. (1) The Minister may make regulations under this section for carrying out the objects of this Part.

(2) Without prejudice to the generality of subsection (1), regulations may be made under this section prescribing

- (a) the practice and procedure to be followed in relation to the conduct of any proceedings under this Part;
- (b) the fees, charges and costs in relation to any such proceedings;
- (c) subject to the consent of the Minister responsible for Finance, the remuneration of mediators at the public expense.

(3) Regulations under this section are subject to affirmative resolution.

Part IV

PRINCIPLES OF JUDICIAL SENTENCING

Community sentences

Restrictions on imposition of community sentences

33. (1) A court shall not pass on an offender a community sentence, that is to say, a sentence which consists of or includes one or more community orders, unless it is of opinion that the offence, or the combination of the offence and one other offence associated with the offence, was serious enough to warrant such a sentence,

(2) Subject to subsection (3), where a court passes a community sentence

- (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
- (b) the restrictions on liberty imposed shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence.

(3) In consequence of the provision made by sections 17 and 18 with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order, or both a probation order and a curfew order.

Procedural requirements for community sentences

34. (1) In forming such an opinion as is mentioned in subsection (1) or (2)(b) of section 33, a court shall take into account all such information about the circumstances of the offence (including any aggravation or mitigating factors) as is available to the court.

(2) In forming such an opinion as is mentioned in subsection (2)(a) of section 33, a court may take into account any information about the offender which is before the court.

(3) A court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of a community service order or a combination order.

Custodial sentences

Restrictions on the imposition of custodial sentences

35. (1) This section applies where a person is convicted of an offence punishable with a custodial sentence other than one fixed by law.

(2) Subject to subsection (3), the court shall not pass a custodial sentence on the offender unless it is of opinion

- (a) that the offence, or the combination of the offence and one other offence associated with the offence, was so serious that only such a sentence can be justified for the offence; or
- (b) where the offence is a violent or sexual offence, that only such a sentence would be adequate to protect the public from serious harm from the offender.

(3) Nothing in subsection (2) prevents the court from passing a custodial sentence on an offender if the offender refuses to consent to a community sentence which is proposed by the court and requires that consent.

(4) Where a court passes a custodial sentence it is the court's duty

- (a) in a case not falling within subsection (3), to state in open court that it is of the opinion that either or both of paragraphs (a) and (b) of subsection (2) apply and why it is of that opinion; and
- (b) in any case, to explain to the offender in open court and in ordinary language why it is passing a custodial sentence on the offender.

(5) A court shall cause a reason stated by it under subsection (4) to be specified in the warrant of commitment and to be entered in the record of the court.

Length of custodial sentences

36. (1) This section applies where a court passes a custodial sentence other than one fixed by law.

(2) The custodial sentence shall be

- (a) for such term (not exceeding the permitted maximum) as in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with the offence; or
- (b) where the offence is a violent or sexual offence, for such longer term (not exceeding that maximum) as in the opinion of the court is necessary to protect the public from serious harm from the offender.

(3) Where the court passes a custodial sentence for a term longer than is commensurate with the seriousness of the offence, or the combination of the offence and other offences associated with it, the court shall

- (a) state in open court that it is of opinion that subsection (2)(b) applies and why it is of that opinion; and
- (b) explain to the offender in open court and in ordinary language why the sentence is for such a term.

(4) A custodial sentence for an indeterminate period shall be regarded for the purposes of subsections (2) and (3) as a custodial sentence for a term longer than any actual term.

Procedural requirements for custodial sentences

37. (1) Subject to subsection (2), a court shall obtain and consider a pre-sentence report before forming any such opinion as is mentioned in subsection (2) of section 35 or 36.

(2) Where the offence or any other offence associated with it is triable only on indictment, subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

(3) In forming any such opinion as is mentioned in subsection (2) of section 35 or 36 a court

- (a) shall take into account all such information about the circumstances of the offence (including any aggravating or mitigating factors) as is available to the court; and
- (b) in the case of any such opinion as is mentioned in paragraph (b) of that subsection, may take into account any information about the offender which is before the court.

(4) A custodial sentence which is passed in a case to which subsection (1) applies is not invalidated by the failure of a court to comply with that subsection but any court on an appeal against such a sentence

- (a) shall obtain a pre-sentence report if none was obtained by the court; and
- (b) shall consider any such report obtained by it or by that court.

(5) A "pre-sentence report" in this Act means a report in writing which is made by a probation officer with a view to assisting the court in determining the most suitable method of dealing with an offender.

Additional requirements in the case of mentally disordered offenders

38. (1) Subject to subsection (2), in any case where section 37 applies and the offender is or appears to be mentally disordered, the court shall obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court shall consider

- (a) any information before it which relates to the offender's mental condition (whether given in a medical report, a pre-sentence report or otherwise); and
- (b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) A custodial sentence which is passed in a case to which subsection (1) applies is not invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence

- (a) shall obtain a medical report if none was obtained by the court; and
- (b) shall consider any such report obtained by it or by that court,

(5) In this section

"medical report" means a report as to an offender's mental condition made or submitted orally or in writing by a qualified registered medical practitioner;

"qualified", in relation to a registered medical practitioner, means appearing to the court to have special knowledge and experience of cases of mental disorder.

(6) Nothing in this section prejudices the generality of section 37.

Other matters affecting sentencing

Saving for mitigation and mentally disordered offenders

39. (1) Nothing in this Act prevents a court from mitigating an offender's sentence by taking into account any such matters as, in the opinion of the court, are relevant in mitigation.

(2) Without prejudice to the generality of subsection (1), nothing in this Act prevents a court

- (a) from mitigating any penalty included in an offender's sentence by taking into account any other penalty included in that sentence; or
- (b) in a case of an offender who is convicted of one or more offences, from mitigating the offender's sentence by applying any rule of law as to the totality of sentences.

(3) Nothing in this Act

- (a) requires a court to pass a custodial sentence, or any particular custodial sentence, on a mentally disordered offender; or
- (b) restricts any power (whether under the *Mental Health Act* or otherwise) which enables a court to deal with such an offender in the manner the court considers to be most appropriate in all the circumstances.

Effect of previous convictions etc.

40. (1) An offence shall not be regarded as more serious for the purposes of any provision of this Act by reason of any previous convictions of the offender or any failure on the part of the offender to respond to previous sentences.

(2) Where any aggravating factors of an offence are disclosed by the circumstances of other offences committed by the offender, nothing in this Act prevents the court from taking those factors into account for the purpose of forming an opinion as to the seriousness of the offence.

General judicial guidelines

41. (1) Without prejudice to sections 33 to 40, a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.

(2) Those guidelines are as follows:

1. The rehabilitation of the offender is one of the aims of sentencing, except where the penalty is death.
2. The gravity of a punishment must be commensurate with the gravity of the offence.
3. An offender must not be sentenced except for an offence of which the offender has been convicted or for another offence or other offences which the offender has asked the court to take into consideration in passing sentence.
4. Where a fine is imposed, the court in fixing the amount of the fine must take into account, among other relevant considerations, the means of the offender so far as these are known to the court, regardless whether this will increase or reduce the amount of the fine.

Part V

MISCELLANEOUS

Amendment of Third Schedule

42. The Minister may by order subject to affirmative resolution amend the Third Schedule.

Amendment of section 7 of Cap. 138

43. Section 7 of the Juvenile Offenders Act is amended by deleting the word "seven", and substituting the word "eleven".

Commencement

44. This Act comes into operation on a date to be fixed by proclamation.

FIRST SCHEDULE

(Section 10(4))

ATTENDANCE CENTRE ORDERS

1. An attendance centre order shall not be made unless the court is satisfied that the attendance centre to be specified in the order is reasonably accessible to the person concerned, having regard to the age of the offender, the means of access available to the offender and any other circumstances.
2. The times at which an offender is required to attend at an attendance centre shall, so far as practicable, be such as to avoid any conflict with the offender's religious beliefs and any interference with the times, if any, at which the offender normally works or attends a school or other educational establishment.
3. The first such time shall be a time at which the centre is available for the attendance of the offender, in accordance with the notification of the Minister and shall be specified in the order.
4. The subsequent times shall be fixed by the officer in charge of the centre, having regard to the offender's circumstances.
5. The aggregate number of hours for which an attendance centre order may require an offender to attend at an attendance centre shall not be less than 24, except where the offender is less than 14 years of age and the court is of opinion that 24 hours would be excessive, having regard to the offender's age or any other circumstances.
6. The aggregate number of hours shall not exceed 24, except where the court is of opinion, having regard to all the circumstances, that 24 hours would be inadequate, and in that case shall not exceed 36 where the offender is under 17 years of age, or 48 hours *where* the offender is under 21 but not less than 17 years of age.
7. An offender shall not be required to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.
8. A court may make an attendance centre order in respect of an offender before a previous attendance centre order in respect of that offender has ceased to have effect, and may determine the number of hours to be specified in the order without regard
 - (a) to the number specified in the previous order; or
 - (b) to the fact that that order is still in effect.
9. Where a court makes an attendance centre order, the clerk of the court shall deliver or send a copy of the order to the officer in charge of the attendance centre specified in the order, and shall also deliver a copy to the offender or send a copy by registered post to the offender's last or usual place of abode.
10. Where an offender has been ordered to attend at an attendance centre in default of the payment of a sum

of money, then

FIRST SCHEDULE - *Cont'd*

- (a) on payment of the whole sum to any person authorised to receive that sum, the attendance centre order shall cease to have effect;
- (b) on payment of a part of the sum to any such person, the total number of hours for which the offender is required to attend at the centre shall be reduced proportionately, that is to say, by such number of complete hours as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion that the part bears to that sum.

Part I

ENFORCEMENT ETC. OF CERTAIN COMMUNITY ORDERS

Preliminary

1.(1) In this Schedule "relevant order" means any of the following orders, namely, a probation order, a community service order and a curfew order.

(2) This Schedule applies in relation to combination orders

- (a) in so far as they impose such a requirement as is mentioned in paragraph (a)(i) or (b)(i) of subsection (2) of section 17 of this Act, as if they were probation orders;
- (b) in so far as they impose such a requirement as is mentioned in paragraph (a)(ii) of that subsection, as if they were community service orders; and
- (c) in so far as they impose such a requirement as is mentioned in paragraph (b)(ii) of that subsection, as if they were curfew orders.

Part II

BREACH OF REQUIREMENT OF ORDER

Issue of summons or warrant

2.(1) If at any time while a relevant order is in force in respect of an offender it appears on information to a magistrate that the offender has failed to comply with any of the requirements of the order, the magistrate may

- (a) issue a summons requiring the offender to appear at the place and time specified in the summons;
or
- (b) if the information is in writing and on oath, issue a warrant for the offender's arrest.

(2) Any summons or warrant issued under this paragraph shall direct that the offender appear or be brought before a magistrate's court.

Powers of magistrate's court

3. (1) If it is proved to the satisfaction of the magistrate's court before which an offender appears or is brought under paragraph 2 that the offender has failed without reasonable excuse to comply with any of the requirements of the

relevant order, the court may deal with the offender in respect of the failure in any one of the following ways, namely

SECOND SCHEDULE *Cont 'd*

- (a) it may impose on the offender a fine not exceeding \$2, 500;
- (b) subject to paragraph 6(2) and (3) it may make a community service order in respect of the offender;
- (c) where the relevant order is a probation order and the case is one to which section 10 of this Act applies, it may make an order under that section requiring the offender to attend at an attendance centre; or
- (d) where the relevant order was made by a magistrate's court, it may revoke the order and deal with the offender, for the offence *in* respect of which the order was made, in any manner in which it could deal with the offender if the offender had just *been* convicted by the court of the offence.

(2) In dealing with an offender under subparagraph (1)(d) a magistrate's court

- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
- (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that the offender has refused to consent to a community sentence which has been proposed by the court and requires that consent.

(3) Where a relevant order was made by the High Court and a magistrate's court has power to deal with the offender under sub-paragraph (1)(a), (b) or (c) the latter court may instead commit the offender to custody or release the offender on bail until the offender can be brought or appear before the High Court.

(4) A magistrate's court which deals with an offender's case under sub-paragraph (3) shall send to the High Court

- (a) a certificate signed by the magistrate certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate; and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed shall be admissible as evidence of the failure before the High Court.

(5) A person sentenced under sub-paragraph (1)(d) for an offence may appeal to the High Court against the sentence.

SECOND SCHEDULE - *Cont'd*

Powers of High Court

4.(1) Where by virtue of paragraph 3(3) an offender is brought or appears before the High Court and it is proved to the satisfaction of the court that the offender has failed to comply with any of the requirements of the relevant order, that court may deal with the offender in respect of the failure in any one of the following ways, namely

- (a) it may impose on the offender a fine not exceeding \$3, 500;
- (b) subject to paragraph 6(2) and (3), it may make a community service order in respect of the offender;
- (c) Where the relevant order is a probation order and the case is one to which section 10 of this Act applies, it may make an order under that section requiring the offender to attend at an attendance centre;
- (d) it may revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before the court of the offence.

(2) In dealing with an offender under sub-paragraph (1)(d), the High Court

- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
- (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that the offender has refused to consent to a community sentence which has been proposed by the court and requires that consent.

(3) In proceedings before the High Court under this paragraph any question whether the offender has failed to comply with the requirements of the relevant order shall be determined by the court and not by the verdict of a jury.

SECOND SCHEDULE - *Cont 'd*

Exclusions

5. (1) Without prejudice to paragraphs 7 and 8, an offender who is convicted of a further offence while a relevant order is in force in respect of the offender shall not on that account be liable to be dealt with under paragraphs 3 and 4 in respect of a failure to comply with any requirement of the order.

(2) An offender who is required by a probation order to submit to treatment for the offender's mental condition, or the offender's dependency on drugs or alcohol, shall not be treated for the purposes of paragraph 3 or 4 as having failed to comply with that requirement on the ground only that the offender has refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, the offender's refusal was reasonable having regard to all the circumstances.

Supplemental

6. (1) Any exercise by a court of its powers under paragraph 3(1)(a), (b) or (c) or 4(1)(a) or (b) is without prejudice to the continuance of the relevant order.

(2) The number of hours which an offender may be required to work under a community service order made under paragraph 3(1)(b) or 4(1)(b)

- (a) shall be specified in the order and shall not exceed 80 in the aggregate; and
- (b) where the relevant order is a community service order, shall not be such that the total number of hours under both orders exceeds the maximum specified in section 13(5) of this Act.

(3) Sections 13 and 14 of this Act and, so far as applicable, the provisions of this Schedule so far as relating to community service orders, have effect in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) as they have effect in relation to a community service order in respect of an offender.

(4) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (3), the powers conferred by those provisions to deal with the offender for the offence in respect of which the community service order was made shall be construed as powers to deal with the offender for the failure to comply with the requirements of the relevant order in respect of which the community service order was made.

SECOND SCHEDULE - *Cont'd*

Part III

REVOCATION OF ORDER

Revocation of order with or without re-sentencing

7.(1) This paragraph applies where a relevant order is in force in respect of an offender and, on the application of the offender or the responsible officer, it appears to a magistrate's court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice

- (a) that the order should be revoked; or
- (b) that the offender should be dealt with in some other manner for the offence in respect of which the order was made.

(2) The court may

- (a) if the order was made by a magistrate's court
 - (i) revoke the order; or
 - (ii) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by the court of the offence; or
- (b) if the order was made by the High Court, commit the offender to custody or release the offender on bail until the offender can be brought or appear before the High Court.

(3) The circumstances in which a probation order may be revoked under sub-paragraph (2)(a)(i) include the offender's making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under sub-paragraph (2)(a)(ii), a magistrate's court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

(5) An offender sentenced under sub-paragraph (2)(a)(ii), may appeal to the High Court against the sentence.

(6) Where the court deals with an offender's case under sub-paragraph (2)(b), it shall send to the High Court such particulars of the case as may be desirable.

(7) Where a magistrate's court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it shall summon the offender to appear before the court and, if the offender does not appear in

answer to the summons, may issue a warrant for the offender's arrest.

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SECOND SCHEDULE - *Cont'd*

(8) An application may not be made by the offender under sub-paragraph (1) while an appeal against the relevant order is pending.

8.(1) This paragraph applies where an offender in respect of whom a relevant order is in force

- (a) is convicted of an offence before the High Court; or
- (b) is committed by a magistrate's court to the High Court for sentence and is brought or appears before the High Court; or
- (c) is brought or appears before the High Court by virtue of paragraph 7(2)(b).

(2) If it appears to the High Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the High Court may

- (a) revoke the order; or
- (b) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with the offender if the offender had just been convicted by or before the Court of the offence.

(3) The circumstances in which a probation order may be revoked under sub-paragraph (2)(a) include the offender's making good progress or responding satisfactorily to supervision.

(4) In dealing with an offender under sub-paragraph (2)(b), the High Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

Supplemental

9.(1) On the making under this Part of this Schedule of an order revoking a relevant order, the clerk to the court shall forthwith give copies of the revoking order to the responsible officer.

(2) A responsible officer to whom in accordance with sub-paragraph (1) copies of a revoking order are given shall give a copy to the offender and to the person in charge of any institution in which the offender was required by the order to reside.

SECOND SCHEDULE - *Cont'd*

Part IV

AMENDMENT OF ORDER

Amendment of requirements of probation or curfew order

10. (1) Subject to sub-paragraph (2), a magistrate's court may, on the application of the offender or the responsible officer, by order amend a probation or curfew order

- (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 then making the order.

(2) The power of a magistrate's court under sub-paragraph (1) is subject to the following restrictions, namely

- (a) the court shall not amend a probation order
 - (i) by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order; or
 - (ii) by inserting in the order a requirement that the offender shall submit to treatment for the offender's mental condition, or the offender's dependency on drugs or alcohol, unless the amending order is made within three months after the date of the original order;
- (b) the court shall not amend a curfew order by extending the curfew periods beyond the end of six months from the date of the original order.

(3) In this paragraph and paragraph 11, references to the offender's dependency on drugs or alcohol include references to his propensity towards the misuse of drugs or alcohol.

SECOND SCHEDULE -*Cont'd*

Amendment of certain requirements of probation order

11. (1) Where the medical practitioner or other person by whom or under whose direction an offender is being treated for the offender's mental condition, or the offender's dependency on drugs or alcohol, in pursuance of any requirement of a probation order

- (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 offender,

that medical practitioner or other person shall make a report in writing to that effect to the responsible officer and that officer shall apply under paragraph 10 to a magistrate's 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 offender should be contained beyond the period specified in that behalf in the order; or
- (b) that the offender needs different treatment, being treatment of a kind to which the offender could be required to submit in pursuance of a probation order; or
- (c) that the offender is not susceptible to treatment; or
- (d) that the offender does not require further treatment.

Extension of community service order.

12. Where

- (a) a community service order is in force in respect of an offender; and
- (b) on the application of the offender or the responsible officer, it appears to a magistrate's court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,

the court may, in relation to the order, extend the period of twelve months specified in section 14(2) of this Act.

SECOND SCHEDULE - *Concl'd*

Supplemental

13. An application may not be made under paragraph 10 or 12 while an appeal against the relevant order is pending.

14. (1) Subject to sub-paragraph (2), where a court proposes to exercise its powers under this Part of this Schedule otherwise than on the application of the offender, the court

- (a) shall summon the offender to appear before the court; and
- (b) if the offender does not appear, in answer to the summons, may issue a warrant for the offender's arrest,

and the court shall not amend a relevant order under this Part of this Schedule unless the offender expresses willingness to comply with the requirements of the order as amended.

(2) This paragraph does not apply to an order cancelling a requirement of a relevant order or reducing the period of any requirement or substituting a new place for the one specified in a relevant order.

15. (1) On a court making under this Part of this Schedule an order amending a relevant order, the clerk to the court shall forthwith

- (a) if the order amends the relevant order otherwise than by substituting a new place for the one specified in the relevant order, give copies of the amending order to the responsible officer;
- (b) if the order amends the relevant order in the manner excepted by paragraph (a), send to the clerk to the magistrate's court for the district in which the new place is situated
 - (i) copies of the amending order; and
 - (ii) such documents and information relating to the case as the clerk considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order;

and in a case falling within paragraph (b) the clerk to the magistrate's court for that district shall give copies of the amending order to the responsible officer.

(2) A responsible officer to whom copies of an order are given in accordance with sub-paragraph (1) shall give a copy to the offender and to the person in charge of any institution in which the offender is or was required by the order to reside.

THIRD SCHEDULE

(Section 20(1), 42)

SUMMARY OFFENCES WHICH MAY BE
DEALT WITH BY MEDIATION

1. Malicious Injury to Property Act, Cap. 140 section 23: destroying fence, stile or gate
2. Offences Against the Person Act, Cap. 141
 - section 25: common, assault
 - section 26: assault occasioning harm
 - section 27: other assaults
3. Praedial Larceny Prevention Act, Cap. 142A
 - section 4: conveying produce or livestock of more than one person
 - section 11: purchasing (selling) produce or livestock outside market without obtaining (issuing) receipt
4. Trespass to Property (Reform) Act, Cap. 155B
 - section 5(1)(a) to (d): petty trespass
5. Highways Act, Cap. 289
 - section 44(1): using obscene language on highway
6. **Minor Offences Act, 1998 —1**
 - section 2(1)(c), (d), (e), (f), (g): disorderly behavior**
 - section 3(g): being in a dwelling-house etc. for purpose of committing arrestable offence**
- 10.