

**2010 No.816 (C. 56)**

**CRIMINAL LAW, ENGLAND AND WALES**

**CRIMINAL LAW, NORTHERN IRELAND**

**CRIMINAL PROCEDURE, ENGLAND AND WALES**

**CRIMINAL PROCEDURE, NORTHERN IRELAND**

**SENIOR COURTS OF ENGLAND AND WALES**

**COURT OF JUDICATURE, NORTHERN IRELAND**

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**DATA PROTECTION**

**PROCEEDS OF CRIME**

**The Coroners and Justice Act 2009 (Commencement No. 4,  
Transitional and Saving Provisions) Order 2010**

*Made* - - - -

*16th March 2010*

The Lord Chancellor and Secretary of State in exercise of the powers conferred, respectively, by section 182(4) and section 182(5) of the Coroners and Justice Act 2009(a), and by section 176(3) of that Act, makes the following Order:

## **Citation and interpretation**

1.—(1) This Order may be cited as the Coroners and Justice Act 2009 (Commencement No. 4, Transitional and Saving Provisions) Order 2010.

(2) In this Order, “the 2009 Act” means the Coroners and Justice Act 2009.

## **Provisions coming into force on 6th April 2010**

2. The provisions of the 2009 Act specified in the Schedule shall come into force on 6th April 2010.

3. Sections 74 to 83 and 85 of the 2009 Act (anonymity in investigations) shall come into force on 6th April 2010 in England and Wales.

4.—(1) The following provisions of the 2009 Act shall come into force on 6th April 2010 in the relevant local justice areas<sup>(a)</sup>—

- (a) section 178 (repeals), so far as it relates to the provisions specified in sub-paragraph (b); and
- (b) in Part 3 of Schedule 23 (criminal evidence and procedure), the repeals relating to the Police and Criminal Evidence Act 1984<sup>(b)</sup> and section 57C of the Crime and Disorder Act 1998<sup>(c)</sup>.

(2) The relevant local justice areas are—

- (a) in London: Barking and Dagenham; Barnet; Bexley; Brent; Bromley; Camden and Islington; City of London; City of Westminster; Croydon; Ealing; Enfield; Greenwich and Lewisham; Hackney and Tower Hamlets; Hammersmith and Fulham and Kensington and Chelsea; Haringey; Harrow Gore; Haringey; Hillingdon; Hounslow; Kingston-upon-Thames; Lambeth and Southwark; Merton; Newham; Redbridge; Richmond-upon-Thames; Sutton; Waltham Forest; and Wandsworth; and
- (b) in Kent: Central Kent; East Kent; and North Kent.

## **Provisions coming into force on 4th October 2010**

5. The following provisions of the 2009 Act shall come into force on 4th October 2010—

- (a) section 52 (persons suffering from diminished responsibility (England and Wales));
- (b) section 56(2)(a) (repeal relating to abolition of common law defence of provocation);
- (c) section 57 (infanticide (England and Wales));
- (d) in section 177 (consequential etc amendments and transitional and saving provisions), subsection (1) so far as it relates to the provision specified in sub-paragraph (f);
- (e) section 178, so far as it relates to the provisions specified in sub-paragraph (g);
- (f) in Schedule 21 (minor and consequential amendments), paragraph 52;
- (g) in Part 2 of Schedule 23 (criminal offences), the repeals relating to—
  - (i) the Homicide Act 1957<sup>(d)</sup>; and
  - (ii) the Criminal Justice Act 2003<sup>(e)</sup>.

6. The following provisions of the 2009 Act shall come into force on 4th October 2010 in England and Wales—

- (a) sections 54 and 55 (partial defence to murder: loss of control); and

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(a) The local justice areas into which England and Wales is divided are specified in the Local Justice Areas Order 2005 (S.I. 2005/554).

(b) 1984 c. 60.

(c) 1998 c. 37.

(d) 1957 c. 11.

(e) 2003 c. 44.

(b) section 56(1) (abolition of common law defence of provocation).

### **Transitional and saving provisions**

7.—(1) Existing guidelines which have effect immediately before the coming into force, by virtue of article 2 and paragraph 8 of the Schedule, of section 125(1) of the 2009 Act (sentencing guidelines: duty of court) are to be treated as guidelines issued by the Sentencing Council for England and Wales under section 120 of the 2009 Act (sentencing guidelines).

(2) The repeal of section 172 of the Criminal Justice Act 2003 (duty of court to have regard to sentencing guidelines), which takes effect by virtue of article 2 and paragraph 22(b)(iv) of the Schedule, shall have no effect where a court is sentencing an offender for, or exercising any other function relating to the sentencing of offenders in respect of, an offence committed before 6th April 2010.

(3) The amendments to section 174 of the Criminal Justice Act 2003 (duty to give reasons for, and explain effect of, sentence), which take effect by virtue of article 2 and paragraph 20(b) of the Schedule, shall have no effect in relation to the sentencing of any offender for an offence committed before 6th April 2010.

(4) The amendments to Schedule 21 to the Criminal Justice Act 2003 (determination of minimum term in relation to mandatory life sentence), which take effect by virtue of article 5(f) and (g)(ii), shall have no effect in relation to the sentencing of any offender for an offence of murder committed before 4th October 2010.

(5) In this article, “existing guidelines” has the meaning given in paragraph 28(2) of Schedule 22 to the 2009 Act.

Signed by the authority of the Lord Chancellor and Secretary of State.

*Claire M Ward*  
Parliamentary Under Secretary of State  
Ministry of Justice

16th March 2010

## **SCHEDULE**

Article 2

### **Provisions which come into force on 6th April 2010**

1. Sections 62 to 68 (prohibited images of children).
2. Section 69 (indecent pseudo-photographs of children: marriage etc).
3. Section 70 (genocide, crimes against humanity and war crimes).
4. Section 71 (slavery, servitude and forced or compulsory labour).
5. Section 84 (anonymity in investigations: application to armed forces).
6. Section 113 (powers in respect of offenders who assist investigations and prosecutions).
7. Section 118 (Sentencing Council for England and Wales), so far as it is not already in force.
8. Sections 119 to 136 (remaining provisions regarding Sentencing Council for England and Wales).
9. Section 146 (retention of knives surrendered or seized (England and Wales)).
10. Section 147 (retention of knives surrendered or seized (Northern Ireland)).
11. Sections 155 to 172 (criminal memoirs etc).

12. Section 173 (assessment notices), so far as it is not already in force.
13. Section 175 (further amendments of the Data Protection Act 1998), so far as it relates to the provisions specified in paragraph 19.
14. In section 177 (consequential etc amendments and transitional and saving provisions)—
- (a) subsection (1) (minor and consequential amendments), so far as it relates to the provisions specified in paragraph 20; and
  - (b) subsection (2) (transitional, transitory and saving provisions), so far as it relates to the provisions specified in paragraph 21.
15. Section 178 (repeals), so far as it relates to the provisions specified in paragraph 22.
16. Schedule 13 (prohibited images: providers of information society services).
17. Schedule 15 (the Sentencing Council for England and Wales), so far as it is not already in force.
18. Schedule 19 (exploitation proceeds investigations).
19. In Schedule 20 (amendments of the Data Protection Act 1998), paragraphs 5 to 14 (amendments other than those relating to data controllers' registration).
20. In Schedule 21 (minor and consequential amendments)—
- (a) paragraph 62 (so far as it is not already in force) and paragraphs 63 and 64 (prohibited images of children); and
  - (b) paragraphs 79 to 89 (Sentencing Council for England and Wales).
21. In Schedule 22 (transitional, transitory and saving provisions)—
- (a) paragraph 12 (prohibited images of children);
  - (b) paragraph 13 (slavery, servitude and forced or compulsory labour);
  - (c) paragraphs 14 and 15 (anonymity in investigations);
  - (d) paragraph 27 (provision in respect of the Sentencing Council for England and Wales);
  - (e) paragraph 44 (knives in court buildings etc);
  - (f) paragraph 45 (criminal memoirs etc); and
  - (g) paragraph 46 (assessment notices).
22. In Schedule 23 (repeals) —
- (a) in Part 3 (criminal evidence and procedure), the repeals relating to:
    - (i) sections 57D and 57E of the Crime and Disorder Act 1998**(a)**; and
    - (ii) section 120(7)(d) of the Criminal Justice Act 2003**(b)**.
  - (b) in Part 4 (sentencing), the repeals relating to—
    - (i) the Parliamentary Commissioner Act 1967**(c)**;
    - (ii) the Race Relations Act 1976**(d)**;
    - (iii) the Freedom of Information Act 2000**(e)**;
    - (iv) the Criminal Justice Act 2003; and
    - (v) the Constitutional Reform Act 2005**(f)**.

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(a) 1998 c. 37.  
 (b) 2003 c. 44.  
 (c) 1967 c. 13.  
 (d) 1976 c. 74.  
 (e) 2000 c. 36.  
 (f) 2005 c. 4.

- (c) Part 7 (criminal memoirs); and
- (d) in Part 8 (Data Protection Act 1998), the repeals relating to section 16(1) of and Schedule 9 to the Data Protection Act 1998(a).

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order brings into force provisions of the Coroners and Justice Act 2009 (c. 25) (“the 2009 Act”).

The provisions of the 2009 Act set out in the Schedule come into force on 6th April 2010. These include criminal law provisions relating to a new offence of possession of prohibited images of children in England and Wales and Northern Ireland (sections 62 to 68 and Schedule 13); provisions extending the defence relating to marriage and other relationships in respect of the offences of making and possessing indecent photographs of a child in England and Wales and Northern Ireland so as to include indecent pseudo-photographs of a child (section 69); provisions relating to the offences of genocide, crimes against humanity and war crimes in the International Criminal Court Act 2001 (c. 17), providing for retrospective application of certain offences and making supplemental provision about the meaning of United Kingdom resident in that Act (section 70); and provisions relating to a new offence of slavery, servitude and forced or compulsory labour in England and Wales and Northern Ireland (section 71).

The provisions set out in the Schedule also include provisions amending the Serious Organised Crime and Police Act 2005 (c. 15) in respect of offenders who assist investigations and prosecutions (section 113); provisions concerning the new Sentencing Council for England and Wales (sections 118 to 136 and Schedule 15); provisions amending the Courts Act 2003 (c. 39) and the Justice (Northern Ireland) Act 2004 (c. 4) in respect of the retention of knives that have been surrendered to, or seized by, a court security officer (sections 146 and 147); provisions creating a new civil scheme under which certain courts in the United Kingdom may make an exploitation proceeds order in respect of qualifying offenders who have received exploitation proceeds from a relevant offence (sections 155 to 172 and Schedule 19); and provisions amending the Data Protection Act 1998 (c. 29) to enable the Information Commissioner to serve an assessment notice in order to carry out an assessment to determine whether a data controller has complied or is complying with the data protection principles (section 173) and to make consequential amendments in relation to assessment notices, enhance the Information Commissioner’s investigatory powers and make further provisions related to those investigatory powers (section 175 and Schedule 20).

Article 3 brings sections 74 to 83 and 85 into force only in respect of England and Wales on 6th April 2010. These provisions relate to investigation anonymity orders.

Article 4 brings into force certain repeals relating to the Police and Criminal Evidence Act 1984 (c. 60) and section 57C of the Crime and Disorder Act 1998 (c. 37) in respect of the local justice areas listed in article 4(2). The repeals relate to live links and come into force on 6th April 2010.

Articles 5 and 6 bring into force provisions relating to murder and infanticide in England and Wales only on 4th October 2010. These provisions amend the Homicide Act 1957 (c. 11) in respect of the partial defence to murder of diminished responsibility in England and Wales (section 52); replace the common law partial defence to murder of provocation in England and Wales with the new partial defence of loss of control (sections 54 to 56); and amend the Infanticide Act 1938 (c. 36) so that the offence and defence of infanticide in England and Wales can only apply in circumstances where the relevant conduct would otherwise amount to the offence of murder or manslaughter (section 57).

Article 7 makes transitional and saving provision. Paragraphs (1) and (5), relating to the commencement of section 125(1), have the effect that guidelines of the Sentencing Guidelines

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(a) 1998 c. 29.

Council existing immediately before 6th April 2010 are to be treated as guidelines issued by the Sentencing Council for England and Wales. By virtue of paragraph 27 of Schedule 22 to the 2009 Act, section 125 (duty to follow sentencing guidelines) has no effect in relation to the sentencing of persons for offences committed before 6th April 2010. Paragraphs (2) to (4) have the effect that certain repeals and minor and consequential amendments do not apply in relation to the sentencing of an offender for an offence committed before 6th April 2010 (in the case of paragraphs (2) and (3)) or before 4th October 2010 (in the case of paragraph (4)).

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the 2009 Act have been brought into force by commencement order made before the date of this Order:

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 35	01.02.2010	2010/145
Sections 59 to 61	01.02.2010	2010/145
Section 72	01.02.2010	2010/145
Section 106 (partially)	14.12.2009	2009/3253
Section 107 (partially)	14.12.2009	2009/3253
Section 108 (partially)	14.12.2009	2009/3253
Section 109 to 110	14.12.2009	2009/3253
Section 112	01.02.2010	2010/145
Section 114 to 115	01.02.2010	2010/145
Section 118 (partially)	01.02.2010	2010/145
Section 139	12.01.2010	2010/28
Sections 140 to 141	01.02.2010	2010/145
Section 142	31.01.2010	2010/145
Section 149 to 150	01.02.2010	2010/145
Section 153	01.02.2010	2010/145
Section 173 (partially)	01.02.2010	2010/145
Section 174	01.02.2010	2010/145
Section 175 (partially)	01.02.2010	2010/145
Section 177 (partially)	12.01.2010	2010/28
	01.02.2010	2010/145
Section 178 (partially)	31.01.2010	2010/145
	01.02.2010	2010/145
Section 180	01.02.2010	2010/145
Schedule 8	01.02.2010	2010/145
Schedule 12	01.02.2010	2010/145
Schedule 15 (partially)	01.02.2010	2010/145
Schedule 20 (partially)	01.02.2010	2010/145
Schedule 21 (partially)	01.02.2010	2010/145
Schedule 22 (partially)	12.01.2010	2010/28
	01.02.2010	2010/145
Schedule 23 (partially)	31.01.2010	2010/145
	01.02.2010	2010/145

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