



**Law
Commission**
Reforming the law

Sentencing law in England and Wales
Legislation currently in force
Part 3.3 – Non-custodial penalties

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Part 3. Sentencing powers and duties

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3.3 Non-custodial penalties

3.3.1. General powers

3.3.1.1. Fines

3.3.1.1.1 Power to order fines

Crown Court

Power

CJA 2003 s.163⁵⁸⁸: General power of Crown Court to fine offender convicted on indictment

s.163 - where a person is convicted on indictment, for an offence other than one which is fixed by law or a statutory sentence (e.g. PCC(S)A 2000 s.110), the court may impose a fine instead or in addition to dealing with him in any other way, unless prohibited by another enactment

Limit

CLA 1977 s.32⁵⁸⁹: Other provisions as to maximum fines

s.32(1) - on conviction on indictment, there is a power to impose an unlimited fine

Magistrates' Court

Power

MCA 1980 s.32⁵⁹⁰: Penalties on summary conviction for offences triable either way

s.32(1) - on summary conviction of any of the offences triable either way listed in Schedule 1 to this Act a person shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding the prescribed sum or both, except that—

- (a) a magistrates' court shall not have power to impose imprisonment for an offence so listed if the Crown Court would not have that power in the case of an adult convicted of it on indictment.

s.32(2) - for any offence triable either way which is not listed in Schedule 1 to this Act, being an offence under a relevant enactment, the maximum fine which may be imposed on summary conviction shall by virtue of this subsection be the prescribed sum unless the offence is one for which by virtue of an enactment other than this subsection a larger fine may be imposed on summary conviction.

s.32(3) - where, by virtue of any relevant enactment, a person summarily convicted of an offence triable either way would, apart from this section, be liable to a maximum fine of one amount in the case of a first conviction and of a different amount in the case of a

⁵⁸⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁵⁸⁹ Commencement: 17 July 1978 SI 1978/712 art.2(2) and Sch.1, but not in relation to Scotland, SI 1978/712 art.1(2). For the Scottish commencement, see SI 1978/900.

⁵⁹⁰ Commencement: 6 July 1981, SI 1981/457 art.2

second or subsequent conviction, subsection (2) above shall apply irrespective of whether the conviction is a first, second or subsequent one.

s.32(4) - subsection (2) above shall not affect so much of any enactment as (in whatever words) makes a person liable on summary conviction to a fine not exceeding a specified amount for each day on which a continuing offence is continued after conviction or the occurrence of any other specified event.

s.32(5) - subsection (2) above shall not apply on summary conviction of any of the following offences:—

- (a) offences under section 5(2) of the Misuse of Drugs Act 1971 (having possession of a controlled drug) where the controlled drug in relation to which the offence was committed was a Class B or Class C drug;
- (b) offences under the following provisions of that Act, where the controlled drug in relation to which the offence was committed was a Class C drug, namely—
 - (i) section 4(2) (production, or being concerned in the production, of a controlled drug);
 - (ii) section 4(3) (supplying or offering a controlled drug or being concerned in the doing of either activity by another);
 - (iii) section 5(3) (having possession of a controlled drug with intent to supply it to another);
 - (iv) section 8 (being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there);
 - (v) section 12(6) (contravention of direction prohibiting practitioner etc. from possessing, supplying etc. controlled drugs); or
 - (vi) section 13(3) (contravention of direction prohibiting practitioner etc. from prescribing, supplying etc. controlled drugs).

s.32(6) - where, as regards any offence triable either way, there is under any enactment (however framed or worded) a power by subordinate instrument to restrict the amount of the fine which on summary conviction can be imposed in respect of that offence—

- (a) subsection (2) above shall not affect that power or override any restriction imposed in the exercise of that power; and
- (b) the amount to which that fine may be restricted in the exercise of that power shall be any amount less than the maximum fine which could be imposed on summary conviction in respect of the offence apart from any restriction so imposed.

s.32(8) - in subsection (5) above “*controlled drug*”, “*Class B drug*” and “*Class C drug*” have the same meaning as in the Misuse of Drugs Act 1971.

s.32(9) - in this section—

“*fine*” includes a pecuniary penalty but does not include a pecuniary forfeiture or pecuniary compensation;

“*the prescribed sum*” means £5,000 or such sum as is for the time being substituted in this definition by an order in force under section 143(1) below;

“*relevant enactment*” means an enactment contained in the Criminal Law Act 1977 or in any Act passed before, or in the same Session as, that Act.

s.32(10) - section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (removal of limit on certain fines on conviction by magistrates’ court) makes provision that affects the application of this section.

LASPOA 2012 s.85⁵⁹¹: Removal of limit on certain fines on conviction by magistrates' court

- s.85(1) - where, on the commencement day, a relevant offence would, apart from this subsection, be punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the offence is punishable on summary conviction on or after that day by a fine of any amount
- s.85(2) where, on the commencement day, a relevant power could, apart from this subsection, be exercised to create an offence punishable on summary conviction by a fine or maximum fine of £5,000 or more (however expressed), the power may be exercised on or after that day to create an offence punishable on summary conviction by a fine of any amount.
- s.85(3) - for the purposes of this section:
- (a) an offence is relevant if, immediately before the commencement day, it is a common law offence or it is contained in an Act or an instrument made under an Act (whether or not the offence is in force at that time), and
 - (b) a power is relevant if, immediately before the commencement day, it is contained in an Act or an instrument made under an Act (whether or not the power is in force at that time).
- s.85(4) - nothing in subsection (1) affects:
- (a) fines for offences committed before the commencement day,
 - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
 - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
- and provision made in exercise of a relevant power in reliance on subsection (2) does not affect such fines or the operation of such restrictions.

Note: Section 85(1) does not apply to the offences listed in Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (SI 2015/664) Sch. 1. Schedule 2 amends certain provisions those offences to be punishable on summary conviction by a fine or maximum fine of an amount specified or described. Schedule 3 amends provisions in which the level of fine is expressed as a proportion. Schedules 4 and 5 contain consequential amendments.

PCC(S)A 2000 s.135⁵⁹²: Limit on fines imposed by magistrates' courts in respect of young offenders

- s.135(1) - where a person aged under 18 is found guilty by a magistrates' court of an offence for which, apart from this section, the court would have power to impose a fine of an amount exceeding £1,000, the amount of any fine imposed by the court shall not exceed £1,000.
- s.135(2) - in relation to a person aged under 14, subsection (1) above shall have effect as if for "£1,000", in both places where it occurs, there were substituted "£250".

⁵⁹¹ Commencement: Section 85(3), (5)-(13) and (15)-(17) in force 28 May 2014, SI 2014/1291 art.2(a)(i). Section 85(1), (2) and (4) in force 12 March 2015, SI 2015/504 art.2.

⁵⁹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1).

3.3.1.1.2 The standard scale***Criminal Justice Act 1982 s.37⁵⁹³: The standard scale of fines for summary offences***

s.37(1) - there is a standard scale of fine for summary offences

s.37(2) - the scale is:

Level on the scale	Amount of fine
1	£200
2	£500
3	£1,000
4	£2,500
5	£5,000

Note: See also CJA 1982 s.46 as to the “conversion of references to amounts to references to levels on scale”. Note also that s.47 provides a definition of a fine for the purposes of certain sections of the 1982 Act. See also CJA 1988 ss.51-57 for further provisions about fines, maximum fines and the standard scale.

3.3.1.1.3 Power to alter fines etc.***MCA 1980 s.143⁵⁹⁴: Power to alter sums specified in certain provisions***

s.143(1) - if it appears to the SoS that there has been a change in the value of money, he may by order amend etc. the sums in the provisions mentioned in subsec.(2)

s.143(2)(o) - CJA 1982 s.37(2) (standard scale)

LASPOA 2012 s.86⁵⁹⁵: Power to increase certain other fines on conviction by magistrates’ court

s.86(1) - subsection (2) applies in relation to a relevant offence which, immediately before the commencement day, is punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000.

s.86(2) - the Secretary of State may by regulations make provision for the offence to be punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.

s.86(3) - subsection (4) applies in relation to a relevant power which, immediately before the commencement day, can be exercised to create an offence punishable on summary conviction by a fine or maximum fine of a fixed amount of less than £5,000 but not to create an offence so punishable by a fine or maximum fine of a fixed amount of £5,000 or more.

s.86(4) - the Secretary of State may by regulations make provision for the power to be exercisable to create an offence punishable on summary conviction by a fine or maximum fine of an amount specified or described in the regulations.

⁵⁹³ Commencement: 11 April 1982, SI 1982/1847 Sch.2 para.1

⁵⁹⁴ Commencement: 6 July SI 1981/457 art.2

⁵⁹⁵ Commencement: 28 May 2014, SI 2014/1291 art.2(b)

- s.86(5) - regulations under this section may not specify or describe an amount exceeding whichever is the greater of—
- (a) £5,000, or
 - (b) the sum specified for the time being as level 4 on the standard scale.
- s.86(6) - regulations under this section may not include provision affecting—
- (a) fines for offences committed before the regulations come into force,
 - (b) the operation of restrictions on fines that may be imposed on a person aged under 18, or
 - (c) fines that may be imposed on a person convicted by a magistrates' court who is to be sentenced as if convicted on indictment,
- and provision made in exercise of a relevant power in reliance on regulations under subsection (4) may not include such provision.
- s.86(7) - regulations under this section—
- (a) may make different provision for different cases or circumstances,
 - (b) may make provision generally or only for specified cases or circumstances, and
 - (c) may make consequential, incidental, supplementary, transitional, transitory or saving provision.
- s.86(8) - regulations under this section may amend, repeal, revoke or otherwise modify any provision which, immediately before the commencement day, is contained in an Act or an instrument made under an Act (whether or not the provision is in force at that time).
- s.86(9) - regulations under this section are to be made by statutory instrument.
- s.86(10) - a statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- s.86(11) - if, immediately before the commencement day, the sum specified as level 5 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) is greater than £5,000, the references in this section to £5,000 have effect as if they were references to that sum.
- s.86(12) - powers under this section—
- (a) may be exercised from time to time, and
 - (b) are without prejudice to other powers to modify fines for relevant offences or fines that may be specified or described when exercising a relevant power.
- s.86(13) - in this section “Act”, “the commencement day”, “relevant offence” and “relevant power”, and references to a provision contained in an Act or instrument, have the same meaning as in section 85.

LASPOA 2012 s.87⁵⁹⁶: Power to amend standard scale of fines for summary offences

- s.87(1) - the Secretary of State may by order substitute for the sums for the time being specified as levels 1 to 4 on the standard scale in section 37(2) of the Criminal Justice Act 1982 (standard scale of fines for summary offences) such other sums as the Secretary of State considers appropriate.
- s.87(2) - the power under subsection (1) may not be exercised so as to alter the ratio of one of those levels to another.
- s.87(3) - in section 143 of the Magistrates' Courts Act 1980 (power to alter sums including standard scale of fines for summary offences), in subsection (3)(b), after "subsection (1) above" insert "or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012".
- s.87(4) - in section 37 of the Criminal Justice Act 1982 (standard scale of fines for summary offences), in subsection (3), at the end insert "or section 87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012".
- s.87(5) - an order under this section is to be made by statutory instrument.
- s.87(6) - a statutory instrument containing an order under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- s.87(7) - an order under this section does not affect fines for offences committed before the order comes into force.

3.3.1.1.4 Setting the level of the fine

Fixing the fine and enquiring into the offender's circumstances

CJA 2003 s.162⁵⁹⁷: Powers to order statement as to offender's financial circumstances

- s.162(1) - where an individual has been convicted of an offence, the court may, before sentencing him, make a financial circumstances order with respect to him.
- s.162(2) - where a magistrates' court has been notified in accordance with section 12(4) of the Magistrates' Courts Act 1980 (c. 43) that an individual desires to plead guilty without appearing before the court, the court may make a financial circumstances order with respect to him.
- s.162(3) - in this section "*a financial circumstances order*" means, in relation to any individual, an order requiring him to give to the court, within such period as may be specified in the order, such a statement of his assets and other financial circumstances as the court may require .
- s.162(4) - an individual who without reasonable excuse fails to comply with a financial circumstances order is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

⁵⁹⁶ Commencement: 28 May 2014, SI 2014/1291 art.2(c)

⁵⁹⁷ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

- s.162(5) - if an individual, in furnishing any statement in pursuance of a financial circumstances order—
- (a) makes a statement which he knows to be false in a material particular,
 - (b) recklessly furnishes a statement which is false in a material particular, or
 - (c) knowingly fails to disclose any material fact,
- he is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- s.162(6) - proceedings in respect of an offence under subsection (5) may, notwithstanding anything in section 127(1) of the Magistrates' Courts Act 1980 (c. 43) (limitation of time), be commenced at any time within two years from the date of the commission of the offence or within six months from its first discovery by the prosecutor, whichever period expires the earlier.

CJA 2003 s.164⁵⁹⁸: Fixing of fines

- s.164(1) - before fixing the amount of any fine to be imposed on an offender who is an individual, a court must inquire into his financial circumstances.
- s.164(2) - the amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.
- s.164(3) - in fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.
- s.164(4) - subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine.
- s.164(4A) - in applying subsection (3), a court must not reduce the amount of a fine on account of any surcharge it orders the offender to pay under section 161A, except to the extent that he has insufficient means to pay both.
- s.164(5) - where—
- (a) an offender has been convicted in his absence in pursuance of section 11 or 12 of the Magistrates' Courts Act 1980 (c. 43) (non-appearance of accused), or
 - (aa) an offender has been convicted in the offender's absence in proceedings conducted in accordance with section 16A of the Magistrates' Courts Act 1980 (trial by single justice on the papers),
 - (b) an offender—
 - (i) has failed to furnish a statement of his financial circumstances in response to a request which is an official request for the purposes of section 20A of the Criminal Justice Act 1991 (c.53) (offence of making false statement as to financial circumstances),
 - (ii) has failed to comply with an order under section 162(1), or
 - (iii) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

⁵⁹⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

and the court considers that it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.

CJA 2003 s.165: Remission of fines

- s.165(1) - this section applies where a court has, in fixing the amount of a fine, determined the offender's financial circumstances under section 164(5).
- s.165(2) - if, on subsequently inquiring into the offender's financial circumstances, the court is satisfied that had it had the results of that inquiry when sentencing the offender it would—
- (a) have fixed a smaller amount, or
 - (b) not have fined him,
- it may remit the whole or part of the fine.
- s.165(3) - where under this section the court remits the whole or part of a fine after a term of imprisonment has been fixed under section 139 of the Sentencing Act (powers of Crown Court in relation to fines) or section 82(5) of the Magistrates' Courts Act 1980 (magistrates' powers in relation to default) it must reduce the term by the corresponding proportion.
- s.165(4) - in calculating any reduction required by subsection (3), any fraction of a day is to be ignored.
- s.165(5) - where—
- (a) under this section the court remits the whole or part of a fine, and
 - (b) the offender was ordered under section 161A to pay a surcharge the amount of which was set by reference to the amount of the fine,
- the court must determine how much the surcharge would have been if the fine had not included the amount remitted, and remit the balance of the surcharge.

3.3.1.1.5 Payment by instalments and allowing time for payment

Crown Court: Fines

PCC(S)A 2000 s.139⁵⁹⁹: Powers and duties of Crown Court in relation to fines etc.

- s.139(1) - subject to the provisions of this section, if the Crown Court imposes a fine on any person or forfeits his recognizance, the court may make an order—
- (a) allowing time for the payment of the amount of the fine or the amount due under the recognizance;
 - (b) directing payment of that amount by instalments of such amounts and on such dates as may be specified in the order;
 - (c) in the case of a recognizance, discharging the recognizance or reducing the amount due under it.

⁵⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Crown Court: Costs and Compensation

PCC(S)A 2000 s.141⁶⁰⁰: Power of Crown Court to allow time for payment, or payment by instalments, of costs and compensation

- s.141 - where the Crown Court makes any such order as is mentioned in Administration of Justice Act 1970 Sch.9 Part 1 (orders against accused for the payment of costs or compensation), the court may: (a) allow time for the payment of the sum due under the order; (b) direct payment of that sum by instalments

Magistrates' Court

MCA 1980 s.75⁶⁰¹: Power to dispense with immediate payment

- s.75(1) - a magistrates' court by whose conviction or order a sum is adjudged to be paid may, instead of requiring immediate payment, allow time for payment, or order payment by instalments.
- s.75(2) - where a magistrates' court has allowed time for payment, the court may, on application by or on behalf of the person liable to make the payment, allow further time or order payment by instalments.
- s.75(3) - where a court has ordered payment by instalments and default is made in the payment of any one instalment, proceedings may be taken as if the default had been made in the payment of all the instalments then unpaid.

3.3.1.1.6 Prison in default term

Note: The court's duty to explain the effect of a sentence (see Part 4) under CJA 2003 s.174 includes a duty to explain the consequences of non-payment of fines.

Crown Court

PCC(S)A 2000 s.139⁶⁰²: Powers and duties of Crown Court in relation to fines etc.

- s.139(2) - subject to the provisions of this section, if the Crown Court imposes a fine on any person or forfeits his recognizance, the court shall make an order fixing a term of imprisonment or of detention under section 108 above (detention of persons aged 18 to 20 for default) which he is to undergo if any sum which he is liable to pay is not duly paid or recovered:
- s.139(3) - no person shall on the occasion when a fine is imposed on him or his recognizance is forfeited by the Crown Court be committed to prison or detained in pursuance of an order under subsection (2) above unless—
- (a) in the case of an offence punishable with imprisonment, he appears to the court to have sufficient means to pay the sum forthwith;
 - (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods; or

⁶⁰⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁰¹ Commencement: 6 July 1981, SI 1981/457 art.2

⁶⁰² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (c) on the occasion when the order is made the court sentences him to immediate imprisonment, custody for life or detention in a young offender institution for that or another offence, or so sentences him for an offence in addition to forfeiting his recognizance, or he is already serving a sentence of custody for life or a term—
 - (i) of imprisonment;
 - (ii) of detention in a young offender institution; or
 - (iii) of detention under section 108 above.

s.139(4) - the periods set out in the second column of the following Table shall be the maximum periods of imprisonment or detention under subsection (2) above applicable respectively to the amounts set out opposite them.

Table

Amount of fine	Period
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years

- s.139(5) - where any person liable for the payment of a fine or a sum due under a recognizance to which this section applies is sentenced by the court to, or is serving or otherwise liable to serve, a term of imprisonment or detention in a young offender institution or a term of detention under section 108 above, the court may order that any term of imprisonment or detention fixed under subsection (2) above shall not being to run until after the end of the first-mentioned term.
- s.139(6) - the power conferred by this section to discharge a recognizance or reduce the amount due under it shall be in addition to the powers conferred by any other Act relating to the discharge, cancellation, mitigation or reduction of recognizances or sums forfeited under recognizances.
- s.139(7) - subject to subsection (8) below, the powers conferred by this section shall not be taken as restricted by any enactment which authorises the Crown Court to deal with an offender in any way in which a magistrates' court might have dealt with him or could deal with him.
- s.139(8) - any term fixed under subsection (2) above as respects a fine imposed in pursuance of such an enactment, that is to say a fine which the magistrates' court could have imposed, shall not exceed the period applicable to that fine (if imposed by the magistrates' court) under section 149(1) of the Customs and Excise Management Act 1979 (maximum periods of imprisonment in default of payment of certain fines).
- s.139(9) - this section shall not apply to a fine imposed by the Crown Court on appeal against a decision of a magistrates' court, but subsections (2) to (4) above shall apply in relation to a fine imposed or recognizance forfeited by the criminal division of the Court of

Appeal, or by the Supreme Court on appeal from that division, as they apply in relation to a fine imposed or recognizance forfeited by the Crown Court, and the references to the Crown Court in subsections (2) and (3) above shall be construed accordingly.

- s.139(10) - for the purposes of any reference in this section, however expressed, to the term of imprisonment or other detention to which a person has been sentenced or which, or part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall, unless the context otherwise requires, be treated as a single term.
- s.139(11) - any reference in this section, however expressed, to a previous sentence shall be construed as a reference to a previous sentence passed by a court in Great Britain.

Magistrates' Court

MCA 1980 s.133⁶⁰³: Consecutive terms of imprisonment

- s.133(4) - where a person has been sentenced by a magistrates' court to imprisonment and a fine for the same offence, a period of imprisonment imposed for non-payment of the fine, or for want of sufficient goods to satisfy the fine, shall not be subject to the limitations imposed by the preceding subsections (the limit on imposing six-month and 12-month maximum terms)
- s.133(5) - for the purposes of s.133 a term of imprisonment shall be deemed to be imposed in respect of an offence if it is imposed as a sentence or in default of payment of a sum adjudged to be paid by the conviction or for want of sufficient goods to satisfy such a sum

MCA 1980 s.82⁶⁰⁴: Restriction on power to impose imprisonment for default

- s.82(1) - a magistrates' court shall not on the occasion of convicting an offender of an offence issue a warrant of commitment for a default in paying any sum adjudged to be paid by the conviction unless—
- (a) in the case of an offence punishable with imprisonment, he appears to the court to have sufficient means to pay the sum forthwith;
 - (b) it appears to the court that he is unlikely to remain long enough at a place of abode in the United Kingdom to enable payment of the sum to be enforced by other methods; or
 - (c) on the occasion of that conviction the court sentences him to immediate imprisonment, youth custody or detention in a detention centre for that or another offence or he is already serving a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982 or detention in a detention centre.
- s.82(1A) - a magistrates' court may not issue a warrant of commitment in reliance on subsection (1)(c) for a default in paying—
- (a) a charge ordered to be paid under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge), or
 - (b) a surcharge ordered to be paid under section 161A of the Criminal Justice Act 2003.

⁶⁰³ Commencement: 6 July 1981, SI 1981/457 art.2

⁶⁰⁴ Commencement: 6 July 1981, SI 1981/457 art.2

- s.82(2) - a magistrates' court shall not in advance of the issue of a warrant of commitment fix a term of imprisonment which is to be served by an offender in the event of a default in paying a sum adjudged to be paid by a conviction, except where it has power to issue a warrant of commitment forthwith, but postpones issuing the warrant under section 77(2) above.
- s.82(3) - where on the occasion of the offender's conviction a magistrates' court does not issue a warrant of commitment for a default in paying any such sum as aforesaid or fix a term of imprisonment under the said section 77(2) which is to be served by him in the event of any such default, it shall not thereafter issue a warrant of commitment for any such default or for want of sufficient goods to satisfy such a sum unless—
- (a) he is already serving a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982 or detention in a detention centre; or
 - (b) the court has since the conviction inquired into his means in his presence on at least one occasion.
- s.82(4) - where a magistrates' court is required by subsection (3) above to inquire into a person's means, the court may not on the occasion of the inquiry or at any time thereafter issue a warrant of commitment for a default in paying any such sum unless—
- (a) in the case of an offence punishable with imprisonment, the offender appears to the court to have sufficient means to pay the sum forthwith; or
 - (b) the court—
 - (i) is satisfied that the default is due to the offender's wilful refusal or culpable neglect; and
 - (ii) has considered or tried all other methods of enforcing payment of the sum and it appears to the court that they are inappropriate or unsuccessful.
- s.82(4A) - the methods of enforcing payment mentioned in subsection (4)(b)(ii) above are—
- (a) a warrant of control under section 76 above;
 - (b) an application to the High Court or county court for enforcement under section 87 below;
 - (c) an order under section 88 below;
 - (d) an attachment of earnings order; and
 - (e) if the offender is under the age of 25, an order under section 17 of the Criminal Justice Act 1982 (attendance centre orders).
- s.82(4B) - the cases in which the offender's default may be regarded for the purposes of subsection (4)(b)(i) as being attributable to his wilful refusal or culpable neglect include any case in which—
- (a) he has refused, otherwise than on reasonable grounds, to consent to a work order proposed to be made under Schedule 6 to the Courts Act 2003 (discharge of fines by unpaid work), or
 - (b) he has without reasonable excuse failed to comply with such an order.
- s.82(5) - after the occasion of an offender's conviction by a magistrates' court, the court shall not, unless—
- (a) the court has previously fixed a term of imprisonment under section 77(2) above which is to be served by the offender in the event of a default in paying a sum adjudged to be paid by the conviction; or

- (b) the offender is serving [a sentence of custody for life, or a term of imprisonment, youth custody, detention under section 9 of the Criminal Justice Act 1982] or detention in a detention centre,

issue a warrant of commitment for a default in paying the sum or fix such a term except at a hearing at which the offender is present.

- s.82(5A) - a magistrates' court may not issue a warrant of commitment under subsection (5) above at a hearing at which the offender is not present unless the designated officer for the court has first served on the offender a notice in writing stating that the court intends to hold a hearing to consider whether to issue such a warrant and giving the reason why the court so intends.
- s.82(5B) - where after the occasion of an offender's conviction by a magistrates' court the court holds a hearing for the purpose of considering whether to issue a warrant of commitment for default in paying a sum adjudged to be paid by the conviction, it shall consider such information about the offender's means as is available to it unless it has previously—
 - (a) inquired into the offender's means; and
 - (b) postponed the issue of the warrant of commitment under section 77(2) above.
- s.82(5C) - a notice under subsection (5A) above—
 - (a) shall state the time and place appointed for the hearing; and
 - (b) shall inform the offender that, if he considers that there are grounds why the warrant should not be issued, he may make representations to the court in person or in writing,but the court may exercise its powers in relation to the issue of a warrant whether or not he makes representations.
- s.82(5D) - except as mentioned in subsection (5E) below, the time stated in a notice under subsection (5A) above shall not be earlier than 21 days after the issue of the notice.
- s.82(5E) - where a magistrates' court exercises in relation to an offender the power conferred by section 77(2) above and at the same hearing issues a notice under subsection (5A) above in relation to him, the time stated in the notice may be a time on any day following the end of the period for which the issue of the warrant of commitment has been postponed.
- s.82(5F) - a notice under subsection (5A) above to be served on any person shall be deemed to be served on that person if it is sent by registered post or the recorded delivery service addressed to him at his last known address, notwithstanding that the notice is returned as undelivered or is for any other reason not received by that person.
- s.82(6) - where a magistrates' court issues a warrant of commitment on the ground that one of the conditions mentioned in subsection (1) or (4) above is satisfied, it shall state that fact, specifying the ground, in the warrant.

Appeals

R. (Purnell) v Essex Magistrates' Court [2015] EWHC 333 (Admin)

There is no right of appeal against the imposition of a prison in default term under MCA 1980 s.108 as such an order was not "a sentence" for the purposes of s.108(3) because it was not made upon conviction but in consequence of conviction and at a different time and for a different reason.

Release

MCA 1980 s.79⁶⁰⁵: Release from custody and reduction of detention on payment

- s.79(1) - where imprisonment or other detention has been imposed on any person by the order of a magistrates' court in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient goods to satisfy such a sum, then, on the payment of the sum, together with the costs and charges, if any, of the commitment, or (as the case may be) on the payment of the amount outstanding, the order shall cease to have effect; and if the person has been committed to custody he shall be released unless he is in custody for some other cause.
- s.79(2) - where, after a period of imprisonment or other detention has been imposed on any person in default of payment of any sum adjudged to be paid by the conviction or order of a magistrates' court or for want of sufficient goods to satisfy such a sum, payment is made in accordance with rules of court of part of the sum, the period of detention shall be reduced by such number of days as bears to the total number of days in that period less one day the same proportion as the amount so paid bears—
- (a) to the amount outstanding at the time the period of detention was imposed, if the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) had been used for recovering the sum;
 - (b) otherwise, to so much of the sum as was due at that time.
- s.79(3) - in calculating the reduction required under subsection (2) above any fraction of a day shall be left out of account.
- s.79(4) - in this Act, references to want of sufficient goods to satisfy a sum of money are references to circumstances where—
- (a) a warrant of control has been issued for the sum to be recovered from a person, but
 - (b) it appears on the return to the warrant that the person's money and goods are insufficient to pay the amount outstanding.
- s.79(5) - in this section, "*the amount outstanding*" has the meaning given by paragraph 50(3) of Schedule 12 to the Tribunals, Courts and Enforcement Act 2007.

CJA 2003 s.258: Early release of fine defaulters etc.

- s.258(1) - this section applies in relation to a person committed to prison—
- (a) in default of payment of a sum adjudged to be paid by a conviction, or
 - (b) for contempt of court or any kindred offence.
- s.258(2) - as soon as a person to whom this section applies has served one-half of the term for which he was committed, it is the duty of the Secretary of State to release him unconditionally.
- s.258(2A) - subsection (2) is subject to paragraph 35 of Schedule 20B (transitional cases).

⁶⁰⁵ Commencement: 6 July 1981, SI 1981/457 art.2

- s.258(2B) - subsection (2) does not apply to a person within subsection (1)(a) if the sum in question is a sum of more than £10 million ordered to be paid under a confiscation order made under Part 2 of the Proceeds of Crime Act 2002.
- s.258(2C) - the Secretary of State may by order amend the amount for the time being specified in subsection (2B).
- s.258(3) - where a person to whom this section applies is also serving one or more sentences of imprisonment or detention in a young offender institution, nothing in this section or in paragraph 35 of Schedule 20B requires the Secretary of State to release him until he is also required to release him in respect of that sentence or each of those sentences.
- s.258(3A) - the reference in subsection (3) to sentences of imprisonment includes sentences of detention under section 91 or 96 of the Sentencing Act or under section 226A, 226B, 227, 228 or 236A of this Act.
- s.258(4) - the Secretary of State may at any time release unconditionally a person to whom this section applies if he is satisfied that exceptional circumstances exist which justify the person's release on compassionate grounds.

Fine defaulters

3.3.1.1.7 Searching persons at the Crown Court

PCC(S)A 2000 s.142⁶⁰⁶: Power of Crown Court to order search of persons before it

s.142(1) - where—

- (za) the Crown Court orders a person to pay a surcharge under section 161A of the Criminal Justice Act 2003,
- (a) the Crown Court imposes a fine on a person or forfeits his recognizance,
- (b) the Crown Court makes against a person any such order as is mentioned in paragraph 3, 4 or 9 of Schedule 9 to the Administration of Justice Act 1970 (orders for the payment of costs),
- (ba) the Crown Court makes an order against a person under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge),
- (c) the Crown Court makes a compensation order against a person,
- (ca) the Crown Court makes an unlawful profit order under section 4 of the Prevention of Social Housing Fraud Act 2013 against a person,
- (d) the Crown Court makes against a person an order under section 137 above (order for parent or guardian to pay fine, costs, compensation or surcharge), or
- (e) on the determination of an appeal brought by a person under section 108 of the Magistrates' Courts Act 1980 a sum is payable by him, whether by virtue of an order of the Crown Court or by virtue of a conviction or order of the magistrates' court against whose decision the appeal was brought,

then, if that person is before it, the Crown Court may order him to be searched.

⁶⁰⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

s.142(2) - any money found on a person in a search under this section may be applied, unless the court otherwise directs, towards payment of the fine or other sum payable by him; and the balance, if any, shall be returned to him

3.3.1.1.8 Interaction with other sentencing orders

Compensation orders

PCC(S)A 2000 s.130⁶⁰⁷: Compensation orders against convicted persons

s.130(11) - in determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

Discharges

R. v McClelland (1951) 35 Cr. App. R. 22; R. v Sanck (1990-91) 12 Cr. App. R. (S.) 155

It is wrong to impose a fine and a conditional discharge for the same offence.

If an order of conditional discharge is made you cannot fine, because a fine is a punishment and conditional discharge can only be granted where a Court does not think fit to impose a punishment. (*McClelland*, Lord Chief Justice at p. 23)

Confiscation orders

POCA 2002 s.13⁶⁰⁸: Effect of order on court's other powers

s.13(2) - the court must take account of the confiscation order before: (a) it imposes a fine on a defendant

POA 1985 s.18⁶⁰⁹: Award of costs against accused

s.18(5) - where a person under 18 is convicted before a magistrates' court, the amount of costs ordered to be paid by the defendant may not exceed the amount of any fine imposed upon him

Custodial sentences: Determinate

TICs and Totality Definitive Guideline, Sentencing Council⁶¹⁰

A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:

- the sentence is suspended;
- a confiscation order is not contemplated; and
- there is no obvious victim to whom compensation can be awarded; and
- the offender has, or will have, resources from which a fine can be paid.

⁶⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁰⁸ Commencement: 24 March 2003, SI 2003/333 art.2 and Sch.1 para.1

⁶⁰⁹ Commencement: 1 October 1986, SI 1986/1334 art.3(1) and Sch.1 para.1

⁶¹⁰ In force from 11 June 2012

Custodial sentences: Fixed by law or required by statute

CJA 2003 s.163⁶¹¹: General power of Crown Court to fine offender convicted on indictment

s.163 - where a person is convicted on indictment of any offence, other than an offence for which the sentence is fixed by law or falls to be imposed under section 110(2) or 111(2) of the Sentencing Act or under section 224A, 225(2) or 226(2) of this Act, the court, if not precluded from sentencing an offender by its exercise of some other power, may impose a fine instead of or in addition to dealing with him in any other way in which the court has power to deal with him, subject however to any enactment requiring the offender to be dealt with in a particular way.

Note: Other required sentences for possession of firearms/knives/bladed articles etc. and the new “offender of particular concern order” have been omitted from this section.

Hospital order/Guardianship order

MHA 1983 s.37⁶¹²: Powers of courts to order hospital admission or guardianship

s.37(8) - the court may not impose a fine where it imposes a hospital order or guardianship order

Referral orders

PCC(S)A 2000 s.19: Referral order

s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.

s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.

s.19(3) - the court—

- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
- (b) may not deal with the offender for any such offence in any of the prohibited ways.

s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—

[...]

- (b) ordering him to pay a fine;

[...]

Unlawful profit orders

PSHFA 2013 s.4⁶¹³: Unlawful profit order

s.4(8) - subsection (9) applies where the court considers (a) that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, and (b) that

⁶¹¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7

⁶¹² Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶¹³ Commencement: 15 October 2013, SI 2013/2622 art.2 (England). 5 November 2013, SI 2013/2861 art.2 (Wales).

the offender has insufficient means to pay both: (i) an appropriate sum under an unlawful profit order, and (ii) an appropriate sum under a fine

- s.4(9) - the court must give preference to making an unlawful profit order (though it may impose a fine as well)

3.3.1.1.9 Magistrates' Court Fine Bands

Note: Magistrates' Court Sentencing Guidelines pp.147 et seq. set out guidance on the imposition of fines and the approach to setting the level of a fine.

3.3.1.1.10 Enforcement and collection of fines

PCC(S)A 2000 s.140⁶¹⁴: Enforcement of fines imposed and recognizances forfeited by Crown Court

- s.140(1) - subject to subsec.(5) a fine imposed by the Crown Court shall be treated for the purposes of collection, enforcement and remission of the fine as having been imposed (a) by a magistrates' court specified in an order made by the Crown Court, or (b) if no such order is made, by the magistrates' court by which the defendant was sent to the Crown Court for trial CDA 1998 ss.51 or 51A, and, in the case of a fine, as having been so imposed on conviction by the magistrates' court in question
- s.140(2) - subsec.(3) applies where a magistrates' court issues a warrant of commitment on a default in the payment of (a) a fine imposed by the Crown Court
- s.140(3) - in a case under subsec.(2), the term of imprisonment *or detention under section 108 above* specified in the warrant of commitment as the term which the offender is liable to serve shall be (a) the term fixed by the Crown Court under s.139 or (b) if that term has been reduced under MCA 1980 s.79 (part payment) or s.85 (remission), that term as so reduced, notwithstanding that that term exceeds the period applicable to the case under CEMA 1979 s.149 (maximum periods of imprisonment in default of payment of certain fines)
- s.140(4) - provision dealing with fines imposed by CACD and Supreme Court (treated as if they were imposed by Crown Court), subject to one modification
- s.140(5) - requirement for consent of Crown Court before magistrates' court remits all or part of a fine under MCA 1980 ss.85 or 120
- s.140(6) - any fine which is enforceable by a magistrates' court by virtue of this section shall be treated for the purposes of Justices of the Peace Act 1997 and, in particular, s.60 of that Act (application of fines and fees) as having been imposed by a magistrates' court

3.3.1.1.11 Corporations and public bodies

Note: The Fraud, bribery and money laundering: Corporate offenders Guideline (Sentencing Council) and the Corporate Manslaughter and Health and Safety Offences Causing Death Guideline (Sentencing Guidelines Council) provide some assistance as to the approach taken when imposing fines on corporate offenders. Specifically when dealing with fines, the approach of the courts with regards to means and setting the level of the fine has been similar to dealing with individuals. R v Sellafield; R v Network Rail [2014] EWCA Crim 49 sets out some of the principles.

⁶¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.2. Bind overs

3.3.1.2.1 Binding over to come up for judgment

3.3.1.2.1.1 Availability

Senior Courts Act 1981 s.79⁶¹⁵: Practice and procedure in connection with indictable offences and appeals

s.79(1) - all enactments and rules of law relating to procedure in connection with indictable offences shall continue to have effect in relation to proceedings in the Crown Court

s.79(2) - without prejudice to the generality of subsection (1), that subsection applies in particular to [...] (b) the release, after respite of judgment, of a convicted person on recognizance to come up for judgment if called on, but meanwhile to be of good behaviour;

Note: The power to bind a person over to come up for judgment cannot be exercised by a magistrates' court, since the power has not been granted to it by statute. See also R v Ayu (1959) Cr App R. 31

3.1.2.1.2 Consent

R. v Williams [1982] 1 W.L.R. 1398; (1982) 4 Cr. App. R. (S.) 239

It is a power which can be exercised only if the subject of the order consents to its being made or acknowledges himself to be bound by its terms.

...it may very well be that the only power in the court which it is proper for the court to exercise upon the defendant declining to give his consent is the power to imprison or to impose some custodial sentence. (Lord Lane CJ at p 1403/p 243)

3.3.1.2.1.3 Conditions attached to a bind over to come up for judgment

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J.17 If the Crown Court is considering binding over an individual to come up for judgment, the court should specify any conditions with which the individual is to comply in the meantime and not specify that the individual is to be of good behaviour.

R. v Hodges (1967) 51 Cr. App. R. 361

It was permissible to include a condition for the defendant to return to his native Ireland and not to return to the United Kingdom for a period of ten years.

R. v Williams [1982] 1 W.L.R. 1398; (1982) 4 Cr. App. R. (S.) 239

Save in exceptional circumstances [the power to keep someone out of the jurisdiction on pain of imprisonment] should be used only to ensure that the defendant goes to a country of which he is a citizen or in which he is habitually resident, or where there are very special circumstances in which the receiving country is prepared to take him for his own well-being.. (Lord Lane CJ, at p 1403/p243)

⁶¹⁵ Commencement: 1 January 1982, SCA 1981 s.153(2)

3.3.1.2.1.4 Duty to explain sentence etc.

Criminal Practice Directions 2015 VII Sentencing

J.18 The Crown Court should, if the individual is unrepresented, explain the consequences of a breach of the binding over order in these circumstances.

3.3.1.2.1.5 Appeals

R. v Williams [1982] 1 W.L.R. 1398; (1982) 4 Cr. App. R. (S.) 239

An order binding over an offender to come up for judgment on conditions is a “sentence” for the purpose of Criminal Appeal Act 1968, s.50.

3.3.1.2.1.6 Breach

R. v David (1940) 27 Cr. App. R. 50

It is not accurate to refer to a decision that there has been a breach of recognisance as a “conviction”.

3.3.1.2.1.7 Interaction with other sentencing orders

R. v Ayu (1959) 43 Cr. App. R. 31

A person who has been sentenced may not be bound over to come up for judgment in respect of the same offence.

3.3.1.2.2 Binding over to keep the peace

3.3.1.2.2.1 Availability

DPP v Speede [1998] 2 Cr. App. R. 108

In addition to the Magistrates’ Court, the Crown Court has the power to impose a bind over and there is no requirement that a complaint be made.

R. v Aubrey-Fletcher ex parte Thompson (1969) 53 Cr. App. R. 380 (LCJ)

The order may be made at any time during the proceedings.

Conlan v Oxford (1983) 5 Cr. App. R. (S.) 237

A court may bind over an offender under the age of 18 who consents to be bound over.

3.3.1.2.2.2 Power

JPA 1361 s.1⁶¹⁶

s.1 - Justices of the Peace [...] shall have Power [...] to take of all them that be not of good Fame, where they shall be found, sufficient Surety and Mainprise of their good Behaviour towards the King and his People

⁶¹⁶ Commencement: 24 January 1361

JPA 1968 s.1⁶¹⁷: Appointment of justices, oaths of office, etc.

s.1(7) - [...] any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring him to enter into his own recognisances or to find sureties or both [...]

Note: A person called to give evidence who is not called as a witness is not a person “before the court” for the purposes of the Act, see R. v Swindon Crown Court ex parte Pawittar Singh (1983) 5 Cr. App. R. (S.) 422.

MCA 1980 s.115⁶¹⁸: Binding over to keep the peace or be of good behaviour

s.115(1) - power of a magistrates’ court to adjudge any other person to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour towards the complainant shall be exercised by order on complaint

DPP v Speede [1998] 2 Cr. App. R. 108

There is authority for the existence of a common law power to use a bind over to “prevent conduct which is contrary to a good way of life”: *Percy v DPP* [1995] All E.R. 124, 129 (Hooper J, at p. 113)

3.3.1.2.2.3 Procedure on complaint

MCA 1980 ss.51-57⁶¹⁹: Jurisdiction to issue summons and deal with complaints and Hearing of complaint

Note: These sections deal with the procedure on the making of a complaint. They have not been detailed as they form the civil jurisdiction of the court as opposed to the criminal.

Criminal Practice Directions 2015 VII Sentencing

J.5 Sections 51 to 57 of the Magistrates’ Courts Act 1980 set out the jurisdiction of the magistrates’ court to hear an application made on complaint and the procedure which is to be followed. This includes a requirement under section 53 to hear evidence and the parties, before making any order. This practice should be applied to all cases in the magistrates’ court and the Crown Court where the court is considering imposing a binding over order. The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.

3.3.1.2.2.4 Power to remand where complaint made under s.115

MCA 1980 s.115⁶²⁰: Binding over to keep the peace or be of good behaviour

s.115(2) - where a complaint is made under this section, the power of the court to remand the defendant under subsection (5) of section 55 above shall not be subject to the restrictions imposed by subsection (6) of that section.

⁶¹⁷ Commencement: 1 February 1969, SI 1968/2035 art.1(1)

⁶¹⁸ Commencement: 6 July 1981, SI 1981/457 art.2

⁶¹⁹ Commencement: 6 July 1981, SI 1981/457 art.2

⁶²⁰ Commencement: 6 July 1981, SI 1981/457 art.2

3.3.1.2.2.5 Procedure etc. in criminal proceedings

DPP v Speede [1998] 2 Cr. App. R. 108

There is no requirement that a complaint be made.

R. v Aubrey Fletcher (1969) 53 Cr. App. R. 380

The order may be made at any time during the proceedings.

R. v Hendon Justices ex parte Gorchein [1973] 1 W.L.R. 1502

Complainants and witnesses should be warned before a bind over is imposed upon them. An acquitted defendant could be bound over without warning.

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- J.5 [...] The court should give the individual who would be subject to the order and the prosecutor the opportunity to make representations, both as to the making of the order and as to its terms. The court should also hear any admissible evidence the parties wish to call and which has not already been heard in the proceedings. Particularly careful consideration may be required where the individual who would be subject to the order is a witness in the proceedings.
- J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

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- J.10 The court must be satisfied on the merits of the case that an order for binding over is appropriate and should announce that decision before considering the amount of the recognisance. If unrepresented, the individual who is made subject to the binding over order should be told he has a right of appeal from the decision.

3.3.1.2.2.6 Making the order

Test to apply

Criminal Practice Directions 2015 VII Sentencing

- J.2 Before imposing a binding over order, the court must be satisfied so that it is sure that a breach of the peace involving violence, or an imminent threat of violence, has occurred or that there is a real risk of violence in the future. Such violence may be perpetrated by the individual who will be subject to the order or by a third party as a natural consequence of the individual's conduct.
- J.6 Where there is an admission which is sufficient to found the making of a binding over order and / or the individual consents to the making of the order, the court should nevertheless hear sufficient representations and, if appropriate, evidence, to satisfy itself that an order is appropriate in all the circumstances and to be clear about the terms of the order.

Burden and standard of proof

Criminal Practice Directions 2015 VII Sentencing

- J.8 The court should be satisfied so that it is sure of the matters complained of before a binding over order may be imposed. Where the procedure has been commenced on complaint, the burden of proof rests on the complainant. In all other circumstances, the burden of proof rests upon the prosecution.

Content of bind over

Criminal Practice Directions 2015 VII Sentencing

- J.3 In light of the judgment in *Hashman*, courts should no longer bind an individual over “to be of good behaviour”. Rather than binding an individual over to “keep the peace” in general terms, the court should identify the specific conduct or activity from which the individual must refrain.
- J.4 When making an order binding an individual over to refrain from specified types of conduct or activities, the details of that conduct or those activities should be specified by the court in a written order, served on all relevant parties. [...]

R. v Randall (1986) 8 Cr. App. R. (S.) 433

There is no power to add a condition to a statutory bind over.

Length

Criminal Practice Directions 2015 VII Sentencing

- J.4 The length of the order should be proportionate to the harm sought to be avoided and should not generally exceed 12 months.

R. v South Molden Justices ex parte Ankerson [1989] 1 W.L.R. 40; (1990) 90 Cr. App. R. 158

It is desirable that the bind over should be for a finite period. McCowan J, at p.44, cites Pickford J in *R v. Charles Edgar* (1913) 9 Cr. App. R. 13 as saying (at p.14):

“Objection is taken in this case to the fact that the defendant has been ordered to enter into a recognisance for an indefinite period. It is not necessary to decide whether there is power to order a recognisance to be entered into for life; we do not decide that there is no such power. It seems, however, that in all cases it has been the practice to limit the time for recognisance, and in no case has an indefinite time been inserted in the order. The court thinks it is better, whether there is power to leave the time indefinite or not, that the usual practice should be followed, and a time inserted.”

Setting the amount of recognisance

Criminal Practice Directions 2015 VII Sentencing

- J.11 When fixing the amount of recognisance, courts should have regard to the individual’s financial resources and should hear representations from the individual or his legal representatives regarding finances.
- J.12 A recognisance is made in the form of a bond giving rise to a civil debt on breach of the order.

R. v CCC ex parte Boulding (1983) 5 Cr. App. R. (S.) 433

Where a court propose to bind over a person who has been convicted in a substantial recognisance he should be given the opportunity to address the court on the question of the amount.

Giving reasons

Criminal Practice Directions 2015 VII Sentencing

J.4 The court should state its reasons for the making of the order, its length and the amount of the recognisance.

Refusal to enter into recognisance/Requirement for consent

Criminal Practice Directions 2015 VII Sentencing

J.13 If there is any possibility that an individual will refuse to enter a recognizance, the court should consider whether there are any appropriate alternatives to a binding over order (for example, continuing with a prosecution). Where there are no appropriate alternatives and the individual continues to refuse to enter into the recognisance, the court may commit the individual to custody. In the magistrates' court, the power to do so will derive from section 1(7) of the Justices of the Peace Act 1968 or, more rarely, from section 115(3) of the Magistrates' Courts Act 1980, and the court should state which power it is acting under; in the Crown Court, this is a common law power.

J.14 Before the court exercises a power to commit the individual to custody, the individual should be given the opportunity to see a duty solicitor or another legal representative and be represented in proceedings if the individual so wishes. Public funding should generally be granted to cover representation. In the Crown Court this rests with the Judge who may grant a Representation Order.

J.15 In the event that the individual does not take the opportunity to seek legal advice, the court shall give the individual a final opportunity to comply with the request and shall explain the consequences of a failure to do so.

JPA 1968 s.1⁶²¹: Appointment of justices, oaths of office, etc.

s.1(7) - any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to [...] [commit] him to prison if he does not comply

MCA 1980 s.115⁶²²: Binding over to keep the peace or be of good behaviour

s.115(3) - if any person ordered by a magistrates' court under subsection (1) above to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour fails to comply with the order, the court may commit him to custody for a period not exceeding 6 months or until he sooner complies with the order.

Note: For those aged under 21, see also PCC(S)A 2000 s.60(1)(b) which contains the power to impose an attendance centre order.

⁶²¹ Commencement: 1 February 1969, SI 1968/2035 art.1(1)

⁶²² Commencement: 6 July 1981, SI 1981/457 art.2

PCC(S)A 2000 s.108⁶²³: Detention of persons aged at least 18 but under 21 for default or contempt

s.108(1) - in any case where, but for s.89(1), a court would have power [...] (c) to commit such a person to prison for contempt of court or any kindred offence, the court shall have power, subject to subsection (3) (test to apply) below, to commit him to be detained under this section or, as the case may be, to make an order fixing a term of detention under this section in the event of default, for a term not exceeding the term of imprisonment.

Howley v Oxford (1985) 81 Cr. App. R. 246

A person over 18 but under 21 who refuses to be bound over by a magistrates' court may be detained under PCC(S)A 2000 s.108.

Veater v Glennon [1981] 1 W.L.R. 567; (1981) 3 Cr. App. R. (S.) 52

There is no power to order the detention of a person under the age of 18 years who refuses to be bound over.

PCC(S)A 2000 s.60⁶²⁴: Attendance centre orders

s.60(1) - where a court would have power, but for s.89 (restrictions on imprisonment of young offenders and defaulters), to commit a person aged under 21 to prison [...] for failing to do or abstain from doing anything required to be done or left undone, the court may, if it has been notified by the Secretary of State that an attendance centre is available for the reception of persons of his description, order him to attend at such a centre, to be specified in the order, for such number of hours as may be so specified

Note: See 3.3.1.6, the Attendance Centre Order section for further details of this order.

3.3.1.2.2.7 Interaction with other sentencing orders

PCC(S)A 2000 s.19⁶²⁵: Making of referral orders: effect on court's other sentencing powers

s.19(1) - subsecs.(2) to (5) apply where a court makes a referral order in respect of an offence

s.19(5) - the court may not make, in connection with the conviction of the defendant for the offence or any connected offence an order binding him over to keep the peace or to be of good behaviour

⁶²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶²⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.2.2.8 Appeals

Magistrates' Court to Crown Court

Magistrates' Courts (Appeals from Binding over Orders) Act 1956 s.1⁶²⁶: Right of appeal to quarter sessions

- s.1(1) - where, under Justices of the Peace Act 1361, or otherwise, a person is ordered by a magistrates' court to enter into a recognisance with or without sureties to keep the peace or to be of good behaviour, he may appeal to the Crown Court
- s.1(2) - provisions dealing with procedural requirements/modifications
- s.1(3) - nothing in s.1 applies in relation to any order an appeal from which lies to the Crown Court apart from the provisions of s.1
- s.1(4) - disapplication of s.1 in relation to bind overs made before the expiration of a period of one month before the Act was passed

Shaw v Hamilton [1982] 1 W.L.R. 1308; (1982) 4 Cr. App. R. (S.) 80

[The judge] fell into the error of trying to equate an appeal against a bind over with either an appeal against conviction or an appeal against sentence. It was, in truth, *sui generis*...if the defendant wanted to appeal it was to be by way of rehearing...if the matter was contested, the facts which justified the justices and, as the prosecution would say, which justified the Crown Court had to be strictly proved, just as strictly proved as they had to be in front of the justices. (Donaldson LJ, at p. 1311/p. 82)

Magistrates' Court to Divisional Court

Emohare v Thames Magistrates' Court [2009] EWHC 689 (Admin)

Whilst the Magistrates' Court (Appeals from Bindings Over Orders) Act 1956 s.1 provides an ability to appeal to the Crown Court, it does not preclude an appeal by way of Case Stated instead.

Crown Court to Divisional Court

R. v Randall (1986) 8 Cr. App. R. (S.) 433

The Court of Appeal has no jurisdiction to hear an appeal arising from the imposition of a bind over; an appellant would not have been dealt with for "an offence" as required by the Criminal Appeal Act 1968, s.10(2). The matter did however fall within the power of the High Court by way of judicial review.

3.3.1.2.2.9 Breach

Procedure

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- J.7 Where there is an allegation of breach of a binding over order and this is contested, the court should hear representations and evidence, including oral evidence, from the parties before making a finding. If unrepresented and no opportunity has been given

⁶²⁶ Commencement: 5 July 1956

previously the court should give a reasonable period for the person said to have breached the binding over order to find representation.

MCA 1980 s.116⁶²⁷: Discharge of recognizance to keep the peace or be of good behaviour on complaint of surety

s.116(1) - on complaint being made to a justice of the peace by a surety to a recognizance to keep the peace or to be of good behaviour entered into before a magistrates' court that the person bound by the recognizance as principal has been, or is about to be, guilty of conduct constituting a breach of the conditions of the recognizance, the justice may issue a warrant to arrest the principal and bring him before a magistrates' court or a summons requiring the principal to appear before such a court; but the justice shall not issue a warrant unless the complaint is in writing and substantiated on oath

MCA 1980 s.120⁶²⁸: Forfeiture of recognizance

s.120(1) - this section applies where: (a) a recognizance to keep the peace or to be of good behaviour has been entered into before a magistrates' court or (b) any recognizance is conditioned for the appearance of a person before a magistrates' court, or for his doing any other thing connected with a proceeding before a magistrates' court.

s.120(2) - if, in any other case falling within subsection (1) (see s.120(1A) for the context), the recognizance appears to the magistrates' court to be forfeited, the court may: (a) declare the recognizance to be forfeited; and (b) adjudge each person bound by it, whether as principal or surety, to pay the sum in which he is bound; but in a case falling within subsection (1)(a) above, the court shall not declare the recognizance to be forfeited except by order made on complaint.

s.120(5) - a recognizance such as is mentioned in s.120 shall not be enforced otherwise than in accordance with s.120, and accordingly shall not be transmitted to the Crown Court nor shall its forfeiture be certified to that Court.

Burden and standard of proof

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J.9 Where there is an allegation of breach of a binding over order, the court should be satisfied on the balance of probabilities that the defendant is in breach before making any order for forfeiture of a recognisance. The burden of proof shall rest on the prosecution.

R. v McGarry (1945) 30 Cr. App. R. 187

The breach should be proved just as if the allegation were that the defendant had committed an offence.

⁶²⁷ Commencement: 6 July 1981, SI 1981/457 art. 2

⁶²⁸ Commencement: 6 July 1981, SI 1981/457 art. 2

Powers

MCA 1980 s.116⁶²⁹: Discharge of recognizance to keep the peace or be of good behaviour on complaint of surety

- s.116(2) - the magistrates' court before which the principal appears or is brought in pursuance of such a summons or warrant as aforesaid may, unless it adjudges the recognizance to be forfeited, order the recognizance to be discharged and order the principal to enter into a new recognizance, with or without sureties, to keep the peace or to be of good behaviour.
- s.116(3) - the court which declares the recognizance to be forfeited may, instead of adjudging any person to pay the whole sum in which he is bound, adjudge him to pay part only of the sum or remit the sum.

Note: There is no power to commit a person to prison for breaking a condition of a recognizance unless he is in default of payment following an order forfeiting the recognisance, R. v Gilbert, unreported, 4 April 1974.

Costs

Note: The Costs Practice Direction [2013] EWCA Crim 1632 para.2.1.1 grants a power to the court to make an order for costs out of central funds to be made in breach of a bind over proceedings. See also SI 1986/1335 reg. 14.

⁶²⁹ Commencement: 6 July 1981, SI 1981/457 art. 2

3.3.1.3. Bind over (parents/guardian)

3.3.1.3.1 Availability and types of order

Availability

PCC(S)A 2000 s.150⁶³⁰: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by s.150 shall be exercisable by the court by which he is sentenced for that offence [...]

Discretionary order

PCC(S)A 2000 s.150⁶³¹: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by s.150 shall be exercisable by the court by which he is sentenced for that offence [...] (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences [...]

Mandatory order

PCC(S)A 2000 s.150⁶³²: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by s.150 shall be exercisable by the court by which he is sentenced for that offence, and where the offender is aged under 16 when sentenced it shall be the duty of that court: (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences [...]

Duty to explain why order under s.150 not desirable

PCC(S)A 2000 s.150⁶³³: Bind over of parent or guardian

s.150(1) - (b) if it does not exercise the powers in s.150(1) (see above), it shall state in open court that it is not satisfied as mentioned in paragraph (a) above and why it is not so satisfied

3.3.1.3.2 Power

PCC(S)A 2000 s.150⁶³⁴: Bind over of parent or guardian

s.150(2) - the powers conferred by this section are as follows:

⁶³⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³³ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³⁴ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- (a) with the consent of the defendant's parent or guardian, to order the parent or guardian to enter into a recognizance to take proper care of him and exercise proper control over him [...]

s.150(3) - an order under this section shall not require the parent or guardian to enter into a recognizance for an amount exceeding £1,000

s.150(11) - for the purposes of s.150, taking “care” of a person includes giving him protection and guidance and “control” includes discipline.

3.3.1.3.3 Making the order

Contents of the order

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J.19 Where a court is considering binding over a parent or guardian under section 150 of the Powers of Criminal Courts (Sentencing) Act 2000 to enter into a recognizance to take proper care of and exercise proper control over a child or young person, the court should specify the actions which the parent or guardian is to take.

Fixing the amount

PCC(S)A 2000 s.150⁶³⁵: Bind over of parent or guardian

s.150(7) - in fixing the amount of a recognizance, the court shall take into account among other things the means of the parent or guardian so far as they appear or are known to the court; s.150(7) applies whether taking into account the means of the parent or guardian has the effect of increasing or reducing the amount of the recognizance.

Length of the order

PCC(S)A 2000 s.150⁶³⁶: Bind over of parent or guardian

s.150(4) - an order under this section shall not require the parent or guardian to enter into a recognizance:

- (a) for a period exceeding three years; or
- (b) where the defendant will attain the age of 18 in a period shorter than three years, for a period exceeding that shorter period.

3.3.1.3.4 Refusal to enter recognizance

PCC(S)A 2000 s.150⁶³⁷: Bind over of parent or guardian

s.150(2) - the powers conferred by this section are as follows: [...] (b) if the parent or guardian refuses consent and the court considers the refusal unreasonable, to order the parent or guardian to pay a fine not exceeding £1,000 [...]

s.150(6) - a fine imposed under subsection (2)(b) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

⁶³⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³⁶ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶³⁷ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.3.5 Interaction with other sentencing orders

Hospital/Guardianship order

MHA 1983 s.37⁶³⁸: Powers of courts to order hospital admission or guardianship

s.37(8) - where an order is made under s.37 (hospital order and guardianship order), the court shall not: [...] (c) make in respect of the defendant an order under PCC(S)A 2000 s.150 (binding over of parent or guardian)

Referral order

PCC(S)A 2000 ss.16 and 19⁶³⁹: Making of referral orders: effect on court's other sentencing powers

s.16(1) - this section applies where a youth court or other magistrates' court is dealing with a person aged under 18 for an offence and—

- (a) neither the offence nor any connected offence is one for which the sentence is fixed by law;
- (b) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order (within the meaning of the Mental Health Act 1983) in his case; and
- (c) the court is not proposing to discharge him, whether absolutely or conditionally, in respect of the offence.

s.19(1) - subsections (2) to (5) apply when the court makes a referral order

s.19(5) - the court may not make, in connection with the conviction of the offender for the offence or any connected offence: [...] (b) an order under section 150 (binding over of parent or guardian)

PCC(S)A 2000 s.150⁶⁴⁰: Bind over of parent or guardian

s.150(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence, the powers conferred by this section shall be exercisable by the court by which he is sentenced for that offence, and where the offender is aged under 16 when sentenced it shall be the duty of that court—

- (a) to exercise those powers if it is satisfied, having regard to the circumstances of the case, that their exercise would be desirable in the interests of preventing the commission by him of further offences; and
- (b) if it does not exercise them, to state in open court that it is not satisfied as mentioned in paragraph (a) above and why it is not so satisfied;

but this subsection has effect subject to section 19(5) above and paragraph 13(5) of Schedule 1 to this Act (cases where referral orders made or extended).

⁶³⁸ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁶³⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁶⁴⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.3.6 Variation/Revocation

PCC(S)A 2000 s.150⁶⁴¹: Bind over of parent or guardian

s.150(10) - a court may vary or revoke an order made by it under s.150 if, on the application of the parent or guardian, it appears to the court, having regard to any change in the circumstances since the order was made, to be in the interests of justice to do so.

3.3.1.3.7 Appeals

PCC(S)A 2000 s.150⁶⁴²: Bind over of parent or guardian

s.150(8) - a parent or guardian may appeal to the Crown Court against an order under this section made by a magistrates' court.

s.150(9) - a parent or guardian may appeal to the Court of Appeal against an order under this section made by the Crown Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction.

3.3.1.3.8 Breach: Forfeiture of recognisance

PCC(S)A 2000 s.150⁶⁴³: Bind over of parent or guardian

s.150(5) - Magistrates' Courts Act 1980 s.120 (forfeiture of recognizances) shall apply in relation to a recognizance entered into in pursuance of an order under this section as it applies in relation to a recognizance to keep the peace.

⁶⁴¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶⁴² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁶⁴³ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.1.4. Discharges

3.3.1.4.1 General

PCC(S)A 2000 s.12⁶⁴⁴: Absolute and conditional discharge

s.12(3) - an order discharging a person subject to such a condition as is mentioned in subsection (1)(b) above is in this Act referred to as an “*order for conditional discharge*”, and the period specified in any such order is in this Act referred to as “*the period of conditional discharge*”.

3.3.1.4.2 Making the order

Availability

PCC(S)A 2000 s.12⁶⁴⁵: Absolute and conditional discharge

s.12(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 or falls to be imposed under a provision mentioned in subsection (1A) is of the 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, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.

s.12(1A) - the provisions referred to in subsection (1) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
- (d) section 110(2) or 111(2) of this Act;
- (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

s.12(2) - subsection (1)(b) above has effect subject to CDA 1998 s.66ZB(6) (effect of youth cautions)

CDA 1998 s.66ZB⁶⁴⁶: Youth cautions

s.66ZB(5) - subsection (6) applies if (a) a person who has received two or more youth cautions is convicted of an offence committed within two years beginning with the date of the last of those cautions; or (b) a person who has received a youth conditional caution followed by a youth caution is convicted of an offence committed within two years beginning with the date of the youth caution.

⁶⁴⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁴⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁴⁶ Commencement: 8 April 2013, as inserted by LASPOA 2012 s.135(2), SI 2013/453 art.4(d)

s.66ZB(6) - the court by or before which the person is convicted (a) must not make an order under section 12(1)(b) of the Powers of Criminal Courts (Sentencing) Act 2000 (conditional discharge) in respect of the offence unless it is of the opinion that there are exceptional circumstances relating to the offence or the person that justify it doing so, and (b) where it does so, must state in open court that it is of that opinion and its reasons for that opinion.

Power and test to apply

PCC(S)A 2000 s.12⁶⁴⁷: Absolute and conditional discharge

s.12(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 or falls to be imposed under a provision mentioned in subsection (1A) is of the 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, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.

s.12(1A) - the provisions referred to in subsection (1) are—

- (a) section 1(2B) or 1A(5) of the Prevention of Crime Act 1953;
- (b) section 51A(2) of the Firearms Act 1968;
- (c) section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988;
- (d) section 110(2) or 111(2) of this Act;
- (e) section 224A, 225(2) or 226(2) of the Criminal Justice Act 2003;
- (f) section 29(4) or (6) of the Violent Crime Reduction Act 2006.

s.12(2) - subsection (1)(b) above has effect subject to CDA 1998 s.66ZB(6) (effect of youth cautions)

Length of conditional discharge

PCC(S)A 2000 s.12⁶⁴⁸: Absolute and conditional discharge

s.12(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 or falls to be imposed under a provision mentioned in subsection (1A) is of the 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, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.

⁶⁴⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁴⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Supplemental

PCC(S)A 2000 s.12⁶⁴⁹: Absolute and conditional discharge

s.12(6) - on making an order for conditional discharge, the court may, if it thinks it expedient for the purpose of the offender's reformation, allow any person who consents to do so to give security for the good behaviour of the offender.

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J.20 Where a court is imposing a conditional discharge under section 12 of the Powers of Criminal Courts (Sentencing) Act 2000, it has the power, under section 12(6) to make an order that a person who consents to do so give security for the good behaviour of the offender. When making such an order, the court should specify the type of conduct from which the offender is to refrain.

3.3.1.4.3 Obligation of offender subject to conditional discharge

PCC(S)A 2000 s.12⁶⁵⁰: Absolute and conditional discharge

s.12(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 or falls to be imposed under a provision mentioned in subsection (1A) is of the 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, the court may make an order either—

- (a) discharging him absolutely; or
- (b) if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding three years from the date of the order, as may be specified in the order.

3.3.1.4.4 Interaction with other sentencing orders

General

PCC(S)A 2000 s.14⁶⁵¹: Effect of discharge

s.14(3) - without prejudice to subsection (1) and (2) (effect of conviction for which a person is discharged), the conviction of a defendant discharged absolutely or conditionally shall in any event be disregarded for the purposes of an enactment etc. which (a) imposes any disqualification or disability upon convicted persons; or (b) authorises or requires the imposition of any such disqualification or disability.

Costs

PCC(S)A 2000 s.12⁶⁵²: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: an order for costs

⁶⁴⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁶⁵² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Compensation order

PCC(S)A 2000 s.12⁶⁵³: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: a compensation order

Confiscation

R. v Varma [2012] UKSC 42; [2013] 1 Cr. App. R. (S.) 125 (p.650)

The court must proceed under POCA 2002 s.6 if s.6(1) and (2) were satisfied: a court may make a confiscation order with an order for absolute or conditional discharge.

Recommendation for deportation

R. v Akan (1972) 56 Cr. App. R. 716

An order for conditional discharge and a recommendation for deportation could be imposed together as a recommendation for deportation was not to be regarded as a “disqualification or disability”.

Deprivation order

PCC(S)A 2000 s.12⁶⁵⁴: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: a deprivation order

“Any disqualification”

PCC(S)A 2000 s.12⁶⁵⁵: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: any disqualification

Driving: Disqualification and endorsement

RTOA 1988 s.46⁶⁵⁶: Combination of disqualification and endorsement with probation orders and orders for discharge

s.46(1) - notwithstanding anything in PCC(S)A 2000 s.14(3) (conviction of defendant discharged to be disregarded for the purposes of enactments relating to disqualification), a court in England and Wales which on convicting a person of an offence involving obligatory or discretionary disqualification makes: (b) an order discharging him absolutely or conditionally, may on that occasion also exercise any power conferred, and must also discharge any duty imposed, on the court by RTOA 1988 ss.34 (disqualification), 35 (disqualification for repeated offences), 36 (disqualification until test is passed), 44 (endorsement) or 44A (endorsement in accordance with order)

⁶⁵³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁵⁶ Commencement: 15 May 1989, RTOA 1988 s.99(2)

Exclusion order

LP(ECP)A 1980 s.1⁶⁵⁷: Exclusion orders

- s.1(1) - where a court by or before which a person is convicted of an offence committed on licensed premises is satisfied that in committing that offence he resorted to violence or offered or threatened to resort to violence, the court may, subject to subsection (2) below, make an order (in this Act referred to as an “*exclusion order*”) prohibiting him from entering those premises or any other specified premises, without the express consent of the licensee of the premises or his servant or agent.
- s.1(2) - an exclusion order may be made either—
- (a) in addition to any sentence which is imposed in respect of the offence of which the person is convicted; or
 - (b) where the offence was committed in England and Wales, notwithstanding the provisions of section 12 and 14 of the Powers of Criminal Courts (Sentencing) Act 2000 (cases in which absolute and conditional discharges may be made, and their effect), in addition to an order discharging him absolutely or conditionally;
 - (c) where the offence was committed in Scotland, notwithstanding the provisions of sections 228, 246(2) and (3) and 247 of the Criminal Procedure (Scotland) Act 1995 (cases in which probation orders and absolute discharges may be made, and their effect), in addition to a probation order or an order discharging him absolutely;
- but not otherwise.

Fine

R. v McClelland (1951) 35 Cr. App. R. 22; R. v Sanck (1990-91) 12 Cr. App. R. (S.) 155

It is wrong to impose a fine and a conditional discharge for the same offence.

If an order of conditional discharge is made you cannot fine, because a fine is a punishment and conditional discharge can only be granted where a Court does not think fit to impose a punishment. (*McClelland*, Lord Chief Justice at p. 23)

Football Banning Order

Football Spectators Act 1989 s.14A⁶⁵⁸: Banning orders made on conviction of an offence

- s.14A(4) - a banning order may be made: (b) in addition to an order discharging a person conditionally
- s.14A(5) - a banning order may be made as mentioned in s.14A(4)(b) in spite of anything in PCC(S)A 2000 s.12 and 14

Notification requirement

R. v Longworth [2006] UKHL 1; [2006] 2 Cr. App. R. (S.) 62 (p.401)

A person who has been conditionally discharged is not subject to notification.

⁶⁵⁷ Commencement: 30 June 1980. Note: The provision will be repealed by the VCRA 2006 Sch.5 para.1, commencement is awaited.

⁶⁵⁸ Commencement: 28 August 2000, F(D)A 2000 Sch.1 para.2, SI 2000/2125 art.2.

Referral order

PCC(S)A 2000 s.19⁶⁵⁹: Making of referral orders: effect on court's other sentencing powers

- s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.
- s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.
- s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—
[...]
(d) making an order discharging him conditionally.

Referral order: Connected offence(s)

PCC(S)A 2000 ss.16 and 19⁶⁶⁰: Making of referral orders: effect on court's other sentencing powers

- s.16(1) - this section applies where a youth or other magistrates' court deals with a defendant aged under 18 for an offence and [...] it does not propose to discharge him absolutely or conditionally
- s.19(1) - subsections (2) to (5) apply when the court makes a referral order
- s.19(5) - the court may not make, in connection with the conviction of the offender for the offence or any connected offence: [...] (b) an order under section 150 (binding over of parent or guardian)

Restitution order

PCC(S)A 2000 s.12⁶⁶¹: Absolute and conditional discharge

- s.12(7) - nothing prevents a court from imposing in addition to a discharge: a restitution order

Serious Crime Prevention Order

SCA 2007 ss.19 and 36: Proceedings in the Crown Court

- s.19(7) - a serious crime prevention order must not be made under s.19 except in addition to a sentence imposed in respect of the offence or in addition to an order discharging the person conditionally
- s.36(5) - a serious crime prevention order may be made as mentioned in section 19(7)(b) in spite of anything in PCC(S)A 2000 ss.12 and 14 (orders for discharge and effect of discharge)

⁶⁵⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁶⁶⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁶⁶¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Unlawful profit order

PCC(S)A 2000 s.12⁶⁶²: Absolute and conditional discharge

s.12(7) - nothing prevents a court from imposing in addition to a discharge: an unlawful profit order

3.3.1.4.5 Appeals

PCC(S)A 2000 s.15⁶⁶³: Discharge: Supplementary

s.15(2) - provision deeming an order under s.12 made on appeal as having been made by the magistrates' court where the appeal was brought from that court, or from the Crown Court where the appeal was brought from the Crown Court or Court of Appeal

MCA 1980 s.108⁶⁶⁴: Right of appeal to Crown Court

s.108(1) - a person convicted by a magistrates' court may appeal to the Crown Court against conviction or sentence or against sentence (if he pleaded) guilty

s.108(1A) - PCC(S)A 2000 s.14 (conviction for which a discharge is imposed is deemed not a conviction for certain purposes) does not prevent an appeal under MCA 1980 s.108

3.3.1.4.6 Breach by commission of further offence

General

PCC(S)A 2000 s.12⁶⁶⁵: Absolute and conditional discharge

s.12(5) - the order ceases to have effect where the defendant is sentenced for the original offence following a breach of the conditional discharge

Issuing of summons/warrant

PCC(S)A 2000 s.13⁶⁶⁶: Commission of further offence by person conditionally discharged

s.13(1) - if it appears to the Crown Court, where that court has jurisdiction in accordance with subsection (2) below, or to a justice of the peace having jurisdiction in accordance with that subsection, that a person in whose case an order for conditional discharge has been made—

(a) has been convicted by a court in Great Britain of an offence committed during the period of conditional discharge, and

(b) has been dealt with in respect of that offence,

that court or justice may, subject to subsection (3) below, issue a summons requiring that person to appear at the place and time specified in it or a warrant for his arrest.

⁶⁶² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶⁴ Commencement: 6 July 1981, SI 1981/457 art.2

⁶⁶⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- s.13(2) - jurisdiction for the purposes of subsection (1) above may be exercised—
- (a) if the order for conditional discharge was made by the Crown Court, by that court;
 - (b) if the order was made by a magistrates' court, by a justice of the peace.
- s.13(3) - a justice of the peace shall not issue a summons under this section except on information and shall not issue a warrant under this section except on information in writing and on oath.
- s.13(4) - a summons or warrant issued under this section shall direct the person to whom it relates to appear or to be brought before the court by which the order for conditional discharge was made.

Order made by Magistrates' Court

PCC(S)A 2000 s.13⁶⁶⁷: Commission of further offence by person conditionally discharged

- s.13(6) - where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person 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 him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.
- s.13(7) - if a person in whose case an order for conditional discharge has been made by a magistrates' court—
- (a) is convicted before the Crown Court of an offence committed during the period of conditional discharge, or
 - (b) is dealt with by the Crown Court for any such offence in respect of which he was committed for sentence to the Crown Court,
- the Crown Court may deal with him, for the offence for which the order was made, in any way in which the magistrates' court could deal with him if it had just convicted him of that offence.
- s.13(8) - if a person in whose case an order for conditional discharge has been made by a magistrates' court is convicted by another magistrates' court of any offence committed during the period of conditional discharge, that other court may, with the consent of the court which made the order, deal with him, for the offence for which the order was made, in any way in which the court could deal with him if it had just convicted him of that offence.
- s.13(10) - the reference in subsection (6) above to a person's having been convicted of an offence committed during the period of conditional discharge is a reference to his having been so convicted by a court in Great Britain.

⁶⁶⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Order made by Crown Court

PCC(S)A 2000 s.13⁶⁶⁸: Commission of further offence by person conditionally discharged

- s.13(5) - if a person in whose case an order for conditional discharge has been made by the Crown Court is convicted by a magistrates' court of an offence committed during the period of conditional discharge, the magistrates' court—
- (a) may commit him to custody or release him on bail until he can be brought or appear before the Crown Court; and
 - (b) if it does so, shall send to the Crown Court a copy of the minute or memorandum of the conviction entered in the register, signed by the designated officer by whom the register is kept.
- s.13(6) - where it is proved to the satisfaction of the court by which an order for conditional discharge was made that the person 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 him, for the offence for which the order was made, in any way in which it could deal with him if he had just been convicted by or before that court of that offence.
- s.13(10) - the reference in subsection (6) above to a person's having been convicted of an offence committed during the period of conditional discharge is a reference to his having been so convicted by a court in Great Britain.

Order made by Magistrates' court: Offender under 18

PCC(S)A 2000 s.13⁶⁶⁹: Commission of further offence by person conditionally discharged

- s.13(9) - where an order for conditional discharge has been made by a magistrates' court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under subsection (6), (7) or (8) above by that or any other court in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
 - (b) to deal with the offender for that offence in any way in which a magistrates' court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

Determination of breach

PCC(S)A 2000 s.15⁶⁷⁰: Discharge: Supplementary

- s.15(3) - in proceedings before the Crown Court under section 13 above, any question whether any person in whose case an order for conditional discharge has been made has been convicted of an offence committed during the period of conditional discharge shall be determined by the court and not by the verdict of a jury.

⁶⁶⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁷⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

Young offender attains age of 18: Youth Court

CYPA 1933 s.48⁶⁷¹: Miscellaneous provisions as to powers of juvenile courts

- s.48(2) - the attainment of the age of eighteen years by a person in whose case an order for conditional discharge has been made, shall not deprive a youth court of jurisdiction to enforce his attendance and deal with him in respect of the commission of a further offence.

3.3.1.4.7 Effect of discharge

PCC(S)A 2000 s.14⁶⁷²: Effect of discharge

- s.14(1) - subject to subsection (2) below, a conviction of an offence for which an order is made under section 12 above discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under section 13 above.
- s.14(2) - where the offender was aged 18 or over at the time of his conviction of the offence in question and is subsequently sentenced (under section 13 above) for that offence, subsection (1) above shall cease to apply to the conviction.
- s.14(3) - without prejudice to subsections (1) and (2) above, the conviction of an offender who is discharged absolutely or conditionally under section 12 above shall in any event be disregarded for the purposes of any enactment or instrument which—
- (a) imposes any disqualification or disability upon convicted persons; or
 - (b) authorises or requires the imposition of any such disqualification or disability.
- s.14(4) - subsections (1) to (3) above shall not affect—
- (a) any right of an offender discharged absolutely or conditionally under section 12 above to rely on his conviction in bar of any subsequent proceedings for the same offence;
 - (b) the restoration of any property in consequence of the conviction of any such offender; or
 - (c) the operation, in relation to any such offender, of any enactment or instrument in force on 1st July 1974 which is expressed to extend to persons dealt with under section 1(1) of the Probation of Offenders Act 1907 as well as to convicted persons.
- s.14(5) - in subsections (3) and (4) above—
“*enactment*” includes an enactment contained in a local Act; and
“*instrument*” means an instrument having effect by virtue of an Act.
- s.14(6) - subsection (1) above has effect subject to section 50(1A) of the Criminal Appeal Act 1968 and section 108(1A) of the Magistrates’ Courts Act 1980 (rights of appeal); and this subsection shall not be taken to prejudice any other enactment that excludes the effect of subsection (1) or (3) above for particular purposes.

⁶⁷¹ Commencement: 1 November 1933, CYPA 1933 s.109(2) (now repealed) and SI 1933/663 art.1

⁶⁷² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- s.14(7) - without prejudice to paragraph 1(3) of Schedule 11 to this Act (references to provisions of this Act to be construed as including references to corresponding old enactments), in this section—
- (a) any reference to an order made under section 12 above discharging an offender absolutely or conditionally includes a reference to an order which was made under any provision of Part I of the Powers of Criminal Courts Act 1973 (whether or not reproduced in this Act) discharging the offender absolutely or conditionally;
 - (b) any reference to an offender who is discharged absolutely or conditionally under section 12 includes a reference to an offender who was discharged absolutely or conditionally under any such provision.

3.3.1.4.8 Powers of Secretary of State to amend maximum period of conditional discharge

PCC(S)A 2000 s.15⁶⁷³: Discharge: Supplementary

- s.15(1) - the Secretary of State may by order direct that subsection (1) of section 12 above shall be amended 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.

⁶⁷³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

3.3.1.5. Parenting orders/Parental orders

Note: A parenting order under the CDA 1998 is an order requiring a parent to comply with conditions specified in the order. A parental order under the PCC(S)A 2000 is an order requiring a parent to pay a fine or other financial order (see below for the list) on behalf of the child or young person. Orders binding over parents or guardians are listed above in section 3.3.1.3.

3.3.1.5.1 Parenting orders

3.3.1.5.1.1 General

What is a parenting order?

CDA 1998 s.8⁶⁷⁴: Parenting orders

s.8(4) - a parenting order is an order which requires the parent: (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and (b) subject to subsection (5) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

Definitions etc.

CDA 1998 s.8⁶⁷⁵: Parenting orders

s.8(8) - in this section and section 9 below “*responsible officer*”, in relation to a parenting order, means one of the following who is specified in the order, namely—

- (a) an officer of a local probation board or an officer of a provider of probation services;
- (b) a social worker of a local authority; and
- (bb) a person nominated by [a person appointed as director of children’s services under section 18 of the Children Act 2004 or by a person appointed as chief education officer under section 532 of the Education Act 1996.
- (c) a member of a youth offending team.

CDA 1998 s.9⁶⁷⁶: Parenting orders: supplemental

s.9(7A) - in this section “*referral order*” means an order under Powers of Criminal Courts (Sentencing) Act 2000 s.16(2) or (3) (referral of offender to youth offender panel).

3.3.1.5.1.2 Determining whether an order can/should be made

Discretionary order

CDA 1998 s.8⁶⁷⁷: Parenting orders

s.8(1) - this section applies where, in any court proceedings: (a) a child safety order is made etc.; (aa) a parental compensation order is made in relation to a child’s behaviour; (b)

⁶⁷⁴ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁵ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁶ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁷ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

an injunction is granted under Anti-social Behaviour, Crime and Policing Act 2014 s.1, or a criminal behaviour order is made under s.22 under that Act, or a Sexual Harm Prevention Order is made in respect of a child or young person; (c) a child or young person is convicted of an offence; or (d) a person is convicted of an offence under Education Act 1996 s.443 (failure to comply with school attendance order) or s.444 (failure to secure regular attendance at school of registered pupil)

- s.8(2) - subject to s.8(3) and s.9(1), if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under ss.443 or 444 (*“the parent”*).
- s.8(3) - a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn

Mandatory order

CDA 1998 s.9⁶⁷⁸: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence
- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

Test to apply: the “relevant condition”

CDA 1998 s.8⁶⁷⁹: Parenting orders

- s.8(2) - subject to s.8(3) and s.9(1) below, if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under ss.443 or 444 (*“the parent”*).
- s.8(6) - The relevant condition is that the parenting order would be desirable in the interests of preventing:
 - (a) in a case falling within paragraph (a), (aa) or (b) of s.8(1), any repetition of the kind of behaviour which led to the order being made or the injunction granted;
 - (b) in a case falling within paragraph (c), the commission of any further offence by the child or young person;

⁶⁷⁸ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁷⁹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- (c) in a case falling within paragraph (d), the commission of any further offence under Education Act 1996 ss.443 or 444.

Duty to make an order

CDA 1998 s.9⁶⁸⁰: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence
- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

Requirement that arrangements are in place etc.

CDA 1998 s.8⁶⁸¹: Parenting orders

- s.8(3) - a court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn

3.3.1.5.1.3 Making the order

Duty to obtain information about family circumstances

CDA 1998 s.9⁶⁸²: Parenting orders: supplemental

- s.9(2) - before making a parenting order:
- (a) in a case falling within s.8(1)(a);
 - (b) in a case falling within s.8(1)(b) or (c), where the person concerned is under the age of 16; or
 - (c) in a case falling within s.8(1)(d), where the person to whom the offence related is under that age,
- a court shall obtain and consider information about the person's family circumstances and the likely effect of the order on those circumstances.

⁶⁸⁰ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸² Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

Referral order: Duty to consider report prepared by YOT etc.

CDA 1998 s.9⁶⁸³: Parenting orders: supplemental

- s.9(2A) - in a case where a court proposes to make both a referral order in respect of a child or young person convicted of an offence and a parenting order, before making the parenting order the court shall obtain and consider a report by an appropriate officer: (a) indicating the requirements proposed by that officer to be included in the parenting order; (b) indicating the reasons why he considers those requirements would be desirable in the interests of preventing the commission of any further offence by the child or young person; and (c) if the child or young person is aged under 16, containing the information required by subsection (2) above.
- s.9(2B) - in subsection (2A) above “*an appropriate officer*” means: (a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; or (c) a member of a youth offending team.

Duty to explain the order

CDA 1998 s.9⁶⁸⁴: Parenting orders: supplemental

- s.9(3) - before making a parenting order, a court shall explain to the parent in ordinary language:
- (a) the effect of the order and of the requirements proposed to be included in it;
 - (b) the consequences which may follow (under s.9(7) below) if he fails to comply with any of those requirements; and
 - (c) that the court has power (under s.9(5)) to review the order on the application either of the parent or of the responsible officer.

Contents of the order

CDA 1998 s.8⁶⁸⁵: Parenting orders

- s.8(4) - a parenting order is an order which requires the parent: (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and (b) subject to subsection (5) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.
- s.8(5) - a parenting order may, but need not, include such a requirement as is mentioned in s.8(4)(b) in any case where a parenting order under this section or any other enactment has been made in respect of the parent on a previous occasion.
- s.8(7) - requirements specified under s.8(4)(a) are those which the court considers desirable in the interests of preventing any such repetition or the commission of any such further offence.
- s.8(7A) - a counselling or guidance programme which a parent is required to attend under s.8(4)(b) may include a residential course but only if the court is satisfied: (a) that the

⁶⁸³ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁴ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁵ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

attendance of the parent at a residential course is likely to be more effective than his attendance at a non-residential course in preventing any such repetition/commission of any such further offence, and (b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

CDA 1998 s.9⁶⁸⁶: Parenting orders: supplemental

- s.9(4) - requirements/directions contained in a parenting order shall, as far as practicable, avoid (a) any conflict with the parent's religious beliefs; and (b) any interference with the times, if any, at which he normally works or attends an educational establishment.

3.3.1.5.1.4 Interaction with other sentencing orders

Referral order

CDA 1998 s.9⁶⁸⁷: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence
- s.9(2A) - in a case where a court proposes to make both a referral order in respect of a child or young person convicted of an offence and a parenting order, before making the parenting order the court shall obtain and consider a report by an appropriate officer: (a) indicating the requirements proposed by that officer to be included in the parenting order; (b) indicating the reasons why he considers those requirements would be desirable in the interests of preventing the commission of any further offence by the child or young person; and (c) if the child or young person is aged under 16, containing the information required by subsection (2) above.
- s.9(2B) - in subsection (2A) above "*an appropriate officer*" means: (a) an officer of a local probation board or an officer of a provider of probation services; (b) a social worker of a local authority; or (c) a member of a youth offending team.
- s.9(7A) - in this section "*referral order*" means an order under Powers of Criminal Courts (Sentencing) Act 2000 s.16(2) or (3) (referral of offender to youth offender panel).

Criminal behaviour order/ASB Injunction

CDA 1998 s.9⁶⁸⁸: Parenting orders: supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court: (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and (b) if it is not so satisfied, shall state in open court that it is not and why it is not.

⁶⁸⁶ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁷ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁸⁸ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- s.9(1B) - if an injunction under the Anti-social Behaviour, Crime and Policing Act 2014 s.1 is granted or a criminal behaviour order is made under s.22 of that Act in respect of a person under the age of 16 the court: (a) must make a parenting order if it is satisfied that the relevant condition is fulfilled; (b) if it is not so satisfied, must state in open court that it is not and why it is not.

3.3.1.5.1.5 Discharging/Varying the order

CDA 1998 s.9⁶⁸⁹: Parenting orders: supplemental

- s.9(5) - if while a parenting order is in force it appears to the court which made it, on the application of the responsible officer or the parent, that it is appropriate to make an order under s.9(5), the court may make an order discharging the parenting order or varying it: (a) by cancelling any provision included in it; or (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.
- s.9(6) - where an application under s.9(5) above for the discharge of a parenting order is dismissed, no further application for its discharge shall be made except with the consent of the court which made the order.

3.3.1.5.1.6 Appeals

Powers etc.

CDA 1998 s.10⁶⁹⁰: Appeals against parenting orders

- s.10(1) - an appeal shall lie: (a) to the county court where the order was made under s.8(1)(a) and (b) to the Crown Court where the order was made under s.8(1)(b)
- s.10(2) - on an appeal under subsection (1), the court (a) may make such orders as may be necessary to give effect to its determination of the appeals; and (b) may also make such incidental or consequential orders as appear to it to be just
- s.10(4) - a person in respect of whom a parenting order is made by virtue of section 8(1)(c) shall have the same right of appeal against the making of the order as if: (a) the offence that led to the making of the order were an offence committed by him; and (b) the order were a sentence passed on him for the offence
- s.10(5) - a person in respect of whom a parenting order is made by virtue of section 8(1)(d) shall have the same right of appeal against the making of the order as if the order were a sentence passed on him for the offence that led to the making of the order.

CDA 1998 s.8⁶⁹¹: Parenting orders

- s.8(1) - application of section:
(a) a child safety order is made etc.;

⁶⁸⁹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁹⁰ Commencement: Section 10(1)-(5) in force 30 September 1998, SI 1998/2327 art.2(1)(a). Section 10(6) and (7) in force SI 2000/924 art.5.

⁶⁹¹ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

- (aa) a parental compensation order is made in relation to a child's behaviour;
- (b) an injunction is granted under Anti-social Behaviour, Crime and Policing Act 2014 s.1, or a criminal behaviour order is made under s.22 under that Act;
- (c) a child or young person is convicted of an offence; or
- (d) a person is convicted of an offence under Education Act 1996 s.443 (failure to comply with school attendance order) or s.444 (failure to secure regular attendance at school of registered pupil)

Supplementary

CDA 1998 s.10⁶⁹²: Appeals against parenting orders

- s.10(3) - any order the county court or the Crown Court made on an appeal under subsection (1) above shall be treated as though it was made by the court from whence the appeal was brought
- s.10(6) - provision dealing with appeals against decisions concerning the transfer of proceedings concerning a repealed section of the Children Act 1989
- s.10(7) - except to the extent provided for in any order made under s.10(6), no appeal may be made against a decision of the kind mentioned in s.10(6)
- s.10(8) - the Lord Chief Justice may nominate a judicial office holder to exercise his functions under s.10 (see. s.10(6))

3.3.1.5.1.7 Breach: Failure to comply

CDA 1998 s.9⁶⁹³: Parenting orders: supplemental

- s.9(7) - if while a parenting order is in force the parent without reasonable excuse fails to comply with any requirement/directions, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3.3.1.5.2 Parental orders

3.3.1.5.2.1 Power and types of order

Financial circumstances order

PCC(S)A 2000 s.136⁶⁹⁴: Power to order statement as to financial circumstances of parent or guardian

- s.136(1) - before exercising its powers under section 137 below (power to order parent or guardian to pay fine, costs, compensation or surcharge) against the parent or guardian of an individual who has been convicted of an offence, the court may make a financial circumstances order with respect to the parent or (as the case may be) guardian.

⁶⁹² Commencement: Section 10(1)-(5) in force 30 September 1998, SI 1998/2327 art.2(1)(a). Section 10(6) and (7) in force SI 2000/924 art.5.

⁶⁹³ Commencement: 30 September 1998, SI 1998/2327 art.2(1)(a)

⁶⁹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- (2) In this section “*financial circumstances order*” has the meaning given by subsection (3) of section 162 of the Criminal Justice Act 2003, and subsections (4) to (6) of that section shall apply in relation to a financial circumstances order made under this section as they apply in relation to such an order made under that section.

Mandatory order for those under 16

PCC(S)A 2000 s.137⁶⁹⁵: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(1) - where—

- (a) a child or young person (that is to say, any person aged under 18) is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made, and
- (b) the court is of the opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment,

the court shall order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(1A) - where but for this subsection a court would order a child or young person to pay a surcharge under section 161A of the Criminal Justice Act 2003, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

- (a) that the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(2) - where but for this subsection a court would impose a fine on a child or young person under—

- (za) paragraph 6(2)(a) or 8(2)(a) of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach of youth rehabilitation order),
- (b) paragraph 2(1)(a) of Schedule 5 to this Act (breach of attendance centre order or attendance centre rules),
- (d) paragraph 2(2)(a) of Schedule 8 to this Act (breach of reparation order),
- (e) section 104(3)(b) above (breach of requirements of supervision under a detention and training order), or
- (f) section 4(3)(b) of the Criminal Justice and Public Order Act 1994 (breach of requirements of supervision under a secure training order),

the court shall order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied—

⁶⁹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, subsections (1) to (2) above shall have effect as if, instead of imposing a duty, they conferred a power to make such an order as is mentioned in those subsections.

Discretionary order for those aged 16 or 17

PCC(S)A 2000 s.137⁶⁹⁶: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(3) - in the case of a young person aged 16 or over, subsections (1) to (2) above shall have effect as if, instead of imposing a duty, they conferred a power to make such an order as is mentioned in those subsections.

3.3.1.5.2.2 Making the order

Fine, costs or compensation

PCC(S)A 2000 s.137⁶⁹⁷: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(1) - where: (a) a child or young person (that is to say, any person aged under 18) is convicted of any offence for the commission of which a fine or costs may be imposed or a compensation order may be made, and (b) the court is of the opinion that the case would best be met by the imposition of a fine or costs or the making of such an order, whether with or without any other punishment,

the court shall order that the fine, compensation or costs awarded be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied: (i) that the parent or guardian cannot be found; or (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, s.137(1) to (2) have effect as if, instead of imposing a duty, they conferred a power to make such an order.

Fine for breach of order etc.

PCC(S)A 2000 s.137⁶⁹⁸: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(2) - where but for this subsection a court would impose a fine on a child or young person under:

- (za) CJIA 2008 Sch.2 paras.6(2)(a) or 8(2)(a) (breach of youth rehabilitation order),
- (b) PCC(S)A 2000 Sch.5 para.2(1)(a) (breach of attendance centre order or attendance centre rules),

⁶⁹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁶⁹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (d) PCC(S)A 2000 Sch.8 para.2(2)(a) (breach of reparation order),
- (e) PCC(S)A 2000 s.104(3)(b)(breach of requirements of supervision under a detention and training order), or
- (f) CJPOA 1994 s.4(3)(b) (breach of requirements of supervision under a secure training order),

the court shall order that the fine be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied:

- (i) that the parent or guardian cannot be found; or
- (ii) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, s.137(1) to (2) have effect as if, instead of imposing a duty, they conferred a power to make such an order.

Surcharge

PCC(S)A 2000 s.137⁶⁹⁹: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(1A) - where but for this subsection a court would order a child or young person to pay a surcharge under Criminal Justice Act 2003 s.161A, the court shall order that the surcharge be paid by the parent or guardian of the child or young person instead of by the child or young person himself, unless the court is satisfied:

- (a) that the parent or guardian cannot be found; or
- (b) that it would be unreasonable to make an order for payment, having regard to the circumstances of the case.

s.137(3) - in the case of a young person aged 16 or over, s.137(1) to (2) have effect as if, instead of imposing a duty, they conferred a power to make such an order.

Requirement that parent/guardian must be given opportunity to make representations

PCC(S)A 2000 s.137⁷⁰⁰: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(4) - subject to s.137(5), no order shall be made without giving the parent or guardian an opportunity of being heard

s.137(5) - an order may be made against a parent or guardian who, having been required to attend, failed to do so

⁶⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.5.2.3 Fixing the level of fine etc.

Failure to comply with inquiry into financial circumstances

PCC(S)A 2000 s.138⁷⁰¹: Fixing of fine, compensation or surcharge to be paid by parent or guardian

s.138(3) - for the purposes of any order under section 137, where the parent or guardian of a defendant who is a child or young person:

- (a) has failed to comply with an order under section 136 above, or
- (b) has otherwise failed to co-operate with the court in its inquiry into his financial circumstances,

and the court considers that it has insufficient information to make a proper determination of the parent's or guardian's financial circumstances, it may make such determination as it thinks fit.

Modifications of provisions concerning the fixing of fines etc.

PCC(S)A 2000 s.138⁷⁰²: Fixing of fine, compensation or surcharge to be paid by parent or guardian

s.138(1) - for the purposes of any order under section 137 made against the parent or guardian of a child or young person:

- (za) CJA 2003 s.161A(3) (surcharges) and s.164(4A) (fixing of fines) have effect as if a reference to the defendant's means were a reference to those of the parent or guardian;
- (a) CJA 2003 s.164 (fixing of fines) has effect as if a reference in s.164(1)-(4) to the financial circumstances of the defendant were a reference to the financial circumstances of the parent or guardian, and as if s.164(5) was omitted;
- (b) PCC(S)A 2000 s.130(11) (determination of compensation order) has effect as if a reference to the means of the person against whom the compensation order is made was a reference to the financial circumstances of the parent or guardian; and
- (c) PCC(S)A 2000 s.130(12) (preference to be given to compensation if insufficient means to pay both compensation and a fine) has effect as if the reference to the defendant was a reference to the parent or guardian;

but in relation to an order under section 137 made against a local authority, this subsection has effect subject to subsection (2) below.

s.138(4) - where a court has, in fixing the amount of a fine, determined the financial circumstances of a parent or guardian under s.138(3) CJA 2003, s.165(2)-(4) (remission of fines) have effect as they have effect in the case mentioned in s.165(1), but as if the reference in s.165(2) to the defendant's financial circumstances were a reference to the financial circumstances of the parent or guardian.

⁷⁰¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.1.5.2.4 Orders made against local authorities in respect of a child/young person for whom they have parental responsibility

PCC(S)A 2000 s.137⁷⁰³: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(8) - in relation to a child or young person for whom a local authority have parental responsibility and who—

- (a) is in their care, or
- (b) is provided with accommodation by them in the exercise of any functions (in particular those under the Children Act 1989) which [are social services functions within the meaning of] ⁷ the Local Authority Social Services Act 1970,

references in this section to his parent or guardian shall be construed as references to that authority.

s.137(9) - in subsection (8) above “*local authority*” and “*parental responsibility*” have the same meanings as in the Children Act 1989.

PCC(S)A 2000 s.138⁷⁰⁴: Fixing of fine, compensation or surcharge to be paid by parent or guardian

s.138(1) - for the purposes of any order under section 137 made against the parent or guardian of a child or young person:

- (za) CJA 2003 s.161A(3) (surcharges) and s.164(4A) (fixing of fines) have effect as if a reference to the defendant’s means were a reference to those of the parent or guardian;
- (a) CJA 2003 s.164 (fixing of fines) has effect as if a reference in s.164(1)-(4) to the financial circumstances of the defendant were a reference to the financial circumstances of the parent or guardian, and as if s.164(5) was omitted;
- (b) PCC(S)A 2000 s.130(11) (determination of compensation order) has effect as if a reference to the means of the person against whom the compensation order is made was a reference to the financial circumstances of the parent or guardian; and
- (c) PCC(S)A 2000 s.130(12) (preference to be given to compensation if insufficient means to pay both compensation and a fine) has effect as if the reference to the defendant was a reference to the parent or guardian;

but in relation to an order under section 137 made against a local authority, this subsection has effect subject to subsection (2) below.

s.138(2) - for the purposes of any order under section 137 made against a local authority, CJA 2003 s.164(1) and PCC(S)A 2000 s.130(11) shall not apply.

s.138(5) - in this section “*local authority*” has the same meaning as in the Children Act 1989

⁷⁰³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.5.2.5 Appeals

PCC(S)A 2000 s.137⁷⁰⁵: Power to order parent or guardian to pay fine, costs, compensation or surcharge

s.137(6) - a parent or guardian may appeal to the Crown Court against an order made by a magistrates' court.

s.137(7) - a parent or guardian may appeal to the Court of Appeal against an order made by the Crown Court, as if he had been convicted on indictment and the order were a sentence passed on his conviction

⁷⁰⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

3.3.1.6. Attendance centre orders

3.3.1.6.1 General

Note: As to the commencement, transitional and saving provisions concerning the partial repeal of attendance centre orders, see David Thomas' article for Sentencing News (S. News 2009 (4 (Nov), 7), which sets out the various changes and their effect upon the availability of this sentencing order.

For the purposes of the PCC(S)A 2000, "youth community order" means an attendance centre order, see PCC(S)A 2000 s.33.

PCC(S)A 2000 s.60⁷⁰⁶: Attendance Centre Order

s.60(2) - an order under subsection (1) is to be referred to as an "attendance centre order".

3.3.1.6.2 Power to order and test to apply

PCC(S)A 2000 s.60⁷⁰⁷: Attendance Centre Order

s.60(1) - where:

- (b) a court would have power, but for PCC(S)A 2000 s.89 (restrictions on imprisonment of young offenders and defaulters), to commit a person aged under 21 to prison in default of payment of any sum of money or for failing to do or abstain from doing anything required to be done or left undone, or
- (c) a court has power to commit a person aged at least 21 but under 25 to prison in default of payment of any sum of money,

the court may, if it has been notified by the Secretary of State that an attendance centre is available for the reception of persons of his description, order him to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

3.3.1.6.3 Making the order

Number of hours

PCC(S)A 2000 s.60⁷⁰⁸: Attendance Centre Order

s.60(3) - total number of hours may not be less than 12 except where:

- (a) he is aged under 14; and
- (b) the court is of the opinion that 12 hours would be excessive, having regard to his age or any other circumstances.

s.60(4) total number of hours may not be more than 12 except where the court is of the opinion, having regard to all the circumstances, that 12 hours would be inadequate, and in that case—

- (a) shall not exceed 24 where the person is aged under 16; and

⁷⁰⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁷⁰⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) shall not exceed 36 where the person is aged 16 or over but under 21 or (where subsection (1)(c) applies) under 25.

Condition: The centre must be reasonably accessible

PCC(S)A 2000 s.60⁷⁰⁹: Attendance Centre Order

- s.60(6) - an order shall not be made unless the court is satisfied that the attendance centre to be specified in it is reasonably accessible to the person concerned, having regard to his age, the means of access available to him and any other circumstances.

Condition: Attendance at centre to avoid conflict with religious beliefs etc.

PCC(S)A 2000 s.60⁷¹⁰: Attendance Centre Order

- s.60(7) - the times at which a person is required to attend at an attendance centre shall, as far as practicable, be such as to avoid—
- (a) any conflict with his religious beliefs or with the requirements of any other youth community order; and
 - (b) any interference with the times at which he normally works or attends school or any other educational establishment.

Fixing attendance at an attendance centre order

PCC(S)A 2000 s.60⁷¹¹: Attendance Centre Order

- s.60(8) - the first time at which the person is required to attend at an attendance centre shall be a time at which the centre is available for his attendance in accordance with the notification of the SoS, and shall be specified in the order.
- s.60(9) - the subsequent times shall be fixed by the officer in charge of the centre, having regard to the person's circumstances
- s.60(10) - a person 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.

Duty to provide copies of the order

PCC(S)A 2000 s.60⁷¹²: Attendance Centre Order

- s.60(11) - Where a court makes an attendance centre order, the designated officer for the court shall:
- (a) deliver or send a copy of the order to the officer in charge of the attendance centre specified in it; and
 - (b) deliver a copy of the order to the person in respect of whom it is made or send a copy by registered post or the recorded delivery service addressed to his last or usual place of abode.

⁷⁰⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

3.3.1.6.4 Interaction with other sentencing orders

Attendance Centre Order (existing)

PCC(S)A 2000 s.60⁷¹³: Attendance Centre Order

- s.60(5) - a court may make an order in respect of a person who remains subject to an order, 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 order is still in effect

3.3.1.6.5 Reduction in number of hours for part payment of sum of money

PCC(S)A 2000 s.60⁷¹⁴: Attendance Centre Order

- s.60(12) - where a person (“the defaulter”) has been ordered to attend at an attendance centre in default of the payment of any sum of money—
- (a) on payment of the whole sum to any person authorised to receive it, 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 defaulter 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 which the part bears to the whole sum.

3.3.1.6.6 Breach, revocation and amendment

PCC(S)A 2000 s.61⁷¹⁵: Breach, revocation and amendment of attendance centre orders

- s.61 - PCC(S)A 2000 Sch.5 (which makes provision for dealing with failures to comply with attendance centre orders, for revoking such orders with or without the substitution of other sentences and for amending such orders) shall have effect.

Modifications in relation to Attendance Centre Orders for defaulters etc.

PCC(S)A 2000 Sch.5 para.7⁷¹⁶

- para.7(1) - references in this Schedule to an “*offender*” include a person who has been ordered to attend at an attendance centre for such a default or failure as is mentioned in PCC(S)A 2000 s.60(1)(b) or (c)⁷¹⁷.
- para.7(2) - where a person has been ordered to attend at an attendance centre for such a default or failure:

⁷¹³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁷ Note: Due to the repeal of s.60(1)(a), it appears that the modifications listed by this paragraph apply to all instances where an attendance centre order can be imposed under s.60.

- (a) paras.2(1)(b), 3(1) and 4(3) shall each have effect in relation to the order as if the words “, for the offence in respect of which the order was made,” and “for that offence” were omitted; and
- (b) paras.2(5)(b) and 3(3)(b) (which relate to custodial sentences for offences) do not apply.

Breach: Issuing summons/warrant

PCC(S)A 2000 Sch.5 para.1⁷¹⁸

para.1(1) - where an attendance centre order is in force and it appears on information to a justice 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 222(1)(d) or (e) of the Criminal Justice Act 2003 which cannot be adequately dealt with under those rules,

the justice may issue a summons requiring the offender to appear at the place and time specified in the summons or, if the information is in writing and on oath, may issue a warrant for the offender’s arrest

para.(2) - any summons or warrant issued under this paragraph shall direct the offender to appear or be brought—

- (a) before a magistrates’ court acting for the local justice area in which the offender resides; or
- (b) if it is not known where the offender resides, before a magistrates’ court acting for the local justice area in which is situated the attendance centre which the offender is required to attend by the order or by virtue of an order under paragraph 5(1)(b) below.

Breach: Powers/duties of magistrates’ court

PCC(S)A 2000 Sch.5 para.2⁷¹⁹

para.2(1) - if it is proved to the satisfaction of the magistrates’ court before which an offender appears or is brought under paragraph 1 above that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) of that paragraph or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b) of that paragraph, that court may deal with him in any one of the following ways—

- (a) it may impose on him a fine not exceeding £1,000;
- (b) where the attendance centre order was made by a magistrates’ court, it may deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or
- (c) where the order was made by the Crown Court, it may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

⁷¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- para.2(2) - any exercise by the court of its power under sub-paragraph (1)(a) above shall be without prejudice to the continuation of the order.
- para.2(3) - a fine imposed under sub-paragraph (1)(a) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- para.2(4) - where a magistrates' court deals with an offender under sub-paragraph (1)(b) above, it shall revoke the attendance centre order if it is still in force.
- para.2(5) - in dealing with an offender under sub-paragraph (1)(b) above, a magistrates' court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the attendance centre order; and
 - (b) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003.
- para.2(5A) - where a magistrates' court dealing with an offender under sub-paragraph (1)(a) above would not otherwise have the power to amend the order under paragraph 5(1)(b) below (substitution of different attendance centre), that paragraph has effect as if references to an appropriate magistrates' court were references to the court dealing with the offender.
- para.2(6) - a person sentenced under sub-paragraph (1)(b) above for an offence may appeal to the Crown Court against the sentence.
- para.2(7) - a magistrates' court which deals with an offender's case under sub-paragraph (1)(c) above shall send to the Crown Court—
- (a) a certificate signed by a justice of the peace giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules which he has committed; 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 or the breach before the Crown Court.

Breach: Powers/duties of Crown Court etc.

PCC(S)A 2000 Sch.5 para.3⁷²⁰

- para.3(1) - where by virtue of para.2(1)(c) the defendant appears before the Crown Court and it is proved to the satisfaction of the court:
- (a) that he has failed without reasonable excuse to attend as mentioned in para.1(1)(a), or
 - (b) that he has committed such a breach of rules as is mentioned in para.1(1)(b),
- that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.
- para.3(2) - where the Crown Court deals with a defendant under para.3(1) above, it shall revoke the attendance centre order if it is still in force.

⁷²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

para.3(3) - in dealing with a defendant under para.3(1), the Crown Court:

- (a) shall take into account the extent to which the defendant has complied with the order; and
- (b) in the case of an defendant who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in CJA 2003 s.152(2)

para.3(4) - 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 (when in the Crown Court)

Revocation

PCC(S)A 2000 Sch.5 para.4⁷²¹

para.4(1) - where an attendance centre order is in force in respect of an offender, an appropriate court may, on an application made by the offender or by the officer in charge of the relevant attendance centre, revoke the order.

para.4(2) - in sub-paragraph (1) above “*an appropriate court*” means—

- (a) where the court which made the order was the Crown Court and there is included in the order a direction that the power to revoke the order is reserved to that court, the Crown Court;
- (b) in any other case, either of the following—
 - (i) a magistrates’ court [acting in the local justice area] ¹ in which the relevant attendance centre is situated;
 - (ii) the court which made the order.

para.4(3) - any power conferred by this paragraph—

- (a) on a magistrates’ court to revoke an attendance centre order made by such a court, or
- (b) on the Crown Court to revoke an attendance centre order made by the Crown Court,

includes power to deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.4(4) - a person sentenced by a magistrates’ court under sub-paragraph (3) above for an offence may appeal to the Crown Court against the sentence.

para.4(5) - the proper officer of a court which makes an order under this paragraph revoking an attendance centre order shall—

- (a) deliver a copy of the revoking order to the offender or send a copy by registered post or the recorded delivery service addressed to the offender’s last or usual place of abode; and
- (b) deliver or send a copy to the officer in charge of the relevant attendance centre.

⁷²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

para.4(6) - in this paragraph “*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 paragraph 5(1)(b) below.

para.4(7) - in this paragraph “*proper officer*” means—

- (a) in relation to a magistrates’ court, the designated officer for the court; and
- (b) in relation to the Crown Court, the appropriate officer.

Amendment

PCC(S)A 2000 Sch.5 para.5⁷²²

para.5(1) - where an attendance centre order is in force, an appropriate magistrates’ court may, on an application made by the offender or by the officer in charge of the relevant attendance centre: (a) vary the day or hour specified in the order for the defendant’s first attendance at the relevant attendance centre; or

- (b) substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.

para.5(2) - in sub-paragraph (1) above “an appropriate magistrates’ court” means:

- (a) a magistrates’ court acting in the local justice area in which the relevant attendance centre is situated; or
- (b) (except where the attendance centre order was made by the Crown Court) the magistrates’ court which made the order

para.5(3) - the designated officer for the court shall:

- (a) deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender’s last or usual place of abode; and
- (b) deliver or send a copy:
 - (i) if the order is made under para.5(1)(a), to the officer in charge of the relevant attendance centre; and
 - (ii) if the order is made under para.5(1)(b), to the officer in charge of the attendance centre which the order as amended will require the defendant to attend

para.5(4) - in this paragraph “*the relevant attendance centre*” has the meaning given by paragraph 4(6) above.

Orders made on appeal

PCC(S)A 2000 Sch.5 para.6⁷²³

para.6(1) - where an attendance centre order has been made on appeal, for the purposes of this Schedule it shall be deemed—

- (a) if it was made on an appeal brought from a magistrates’ court, to have been made by that magistrates’ court;

⁷²² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

⁷²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1),

- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court.

para.6(2) - in relation to an attendance centre order made on appeal, paragraphs 2(1)(b) and 4(3) above shall each have effect as if the words “if the order had not been made” were omitted and paragraph 3(1) above shall have effect as if the words “if it had not made the order” were omitted.

3.3.2. Adults

3.3.2.1. Community order

CJA 2003 s.147⁷²⁴: Meaning of “community sentence”

s.147(1) - in this part, “community sentence” means a sentence which consists of or includes (a) a community order (as defined by s.177) or (c) a YRO

CJA 2003 s.196⁷²⁵: Meaning of “relevant order”

s.196(1) - in this Chapter “relevant order” means—

- (a) a community order, or
- (c) a suspended sentence order.

s.196(1A) - in this Chapter “suspended sentence order” means a suspended sentence order that imposes one or more community requirements.

CJA 2003 s.197⁷²⁶: Meaning of “responsible officer”

s.197(1) - for the purposes of this Part, “the responsible officer”, in relation to an offender to whom a relevant order relates, means the person who is for the time being responsible for discharging the functions conferred by this Part on the responsible officer in accordance with arrangements made by the Secretary of State.

s.197(2) - the responsible officer must be—

- (a) an officer of a provider of probation services, or
- (b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the relevant order.

3.3.2.1.1 Availability and power to impose the order

Availability

CJA 2003 s.150⁷²⁷: When a community order is not available

s.150(1) - the power to make a community order or youth rehabilitation order is not exercisable in respect of an offence for which the sentence—

- (a) is fixed by law,
- (b) falls to be imposed under section 51A(2) of the Firearms Act 1968 (c. 27) (required custodial sentence for certain firearms offences),

⁷²⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

⁷²⁵ Commencement: Section 196(1)(a) and (c) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.11. Section 196(1A) was inserted by LASPOA 2012 Sch.9 para.7(3), in force 3 December 2012, SI 2012/2906 art.2(g).

⁷²⁶ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.12 otherwise.

⁷²⁷ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

- (c) falls to be imposed under section 110(2) or 111(2) of the Sentencing Act (requirement to impose custodial sentences for certain repeated offences committed by offenders aged 18 or over),
 - (ca) falls to be imposed under section 29(4) or (6) of the Violent Crime Reduction Act 2006 (required custodial sentence in certain cases of using someone to mind a weapon),
 - (cb) falls to be imposed under section 224A of this Act (life sentence for second listed offence for certain dangerous offenders), or
 - (d) falls to be imposed under section 225(2) or 226(2) of this Act (requirement to impose sentence of imprisonment for life or detention for life).
- s.150(2) - the power to make a community order is not exercisable in respect of an offence for which the sentence—
- (a) falls to be imposed under section 1(2B) or 1A(5) of the Prevention of Crime Act 1953 (minimum sentence for certain offences involving offensive weapons), or
 - (b) falls to be imposed under section 139(6B), 139A(5B) or 139AA(7) of the Criminal Justice Act 1988 (minimum sentence for certain offences involving article with blade or point or offensive weapon).

CJA 2003 s.150A⁷²⁸: Offence must carry imprisonment

- s.150A(1) - the power to make a community order is only exercisable in respect of an offence if—
- (a) the offence is punishable with imprisonment; or
 - (b) in any other case, section 151(2) confers power to make such an order.
- s.150A(2) - for the purposes of this section and section 151 an offence triable either way that was tried summarily is to be regarded as punishable with imprisonment only if it is so punishable by the sentencing court (and for this purpose section 148(1) is to be disregarded).

CJA 2003 s.177⁷²⁹: Power to impose community order

- s.177(1) - where a person aged 18 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a “community order”) imposing on him any one or more of the following requirements—
- (a) an unpaid work requirement (as defined by section 199),
 - (aa) a rehabilitation activity requirement (as defined by section 200A),
 - (d) a prohibited activity requirement (as defined by section 203),
 - (e) a curfew requirement (as defined by section 204),
 - (f) an exclusion requirement (as defined by section 205),

⁷²⁸ Commencement: 14 July 2008, as inserted by CJIA 2008 s.11(1). Section 11(1) was commenced by SI 2008/1586 art.2(1) and Sch.1 para.2. The insertion of s.150A is of no effect in relation to any person who is sentenced to a community order within the meaning of section 177 of the 2003 Act before 14 July 2008, SI 2008/1586 art.2(3) and Sch.2 para.1.

⁷²⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.8. Amendments were made to the SI but they have since been repealed. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

- (g) a residence requirement (as defined by section 206),
 - (ga) a foreign travel prohibition requirement (as defined by section 206A),
 - (h) a mental health treatment requirement (as defined by section 207),
 - (i) a drug rehabilitation requirement (as defined by section 209),
 - (j) an alcohol treatment requirement (as defined by section 212),
 - (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- s.177(2) - subsection (1) has effect subject to sections 150 and 218 and to the following provisions of Chapter 4 relating to particular requirements—
- (a) section 199(3) (unpaid work requirement),
 - (c) section 202(4) and (5) (programme requirement),
 - (d) section 203(2) (prohibited activity requirement),
 - (e) section 207(3) (mental health treatment requirement),
 - (f) section 209(2) (drug rehabilitation requirement), and
 - (g) section 212(2) and (3) (alcohol treatment requirement).
- s.177(2A) - where the court makes a community order, the court must—
- (a) include in the order at least one requirement imposed for the purpose of punishment, or
 - (b) impose a fine for the offence in respect of which the community order is made, or
 - (c) comply with both of paragraphs (a) and (b).
- s.177(2B) - subsection (2A) does not apply where there are exceptional circumstances which—
- (a) relate to the offence or to the offender,
 - (b) would make it unjust in all the circumstances for the court to comply with subsection (2A)(a) in the particular case, and
 - (c) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.
- s.177(3) - where the court makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement (as defined by section 215) unless—
- (a) it is prevented from doing so by section 215(2) or 218(4), or
 - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- s.177(4) - where the court makes a community order imposing an unpaid work requirement, a rehabilitation activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a foreign travel prohibition requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented from doing so by section 215(2) or 218(4).
- s.177(5) - a community order must specify a date (“the end date”), not more than three years after the date of the order, by which all the requirements in it must have been complied with.

- s.177(5A) - if a community order imposes two or more different requirements falling within subsection (1), the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.
- s.177(5B) - subject to section 200(3) (duration of community order imposing unpaid work requirement), a community order ceases to be in force on the end date.
- s.177(6) - before making a community order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

Note: In relation to the south London justice area, there is an additional requirement available. See CJA 2003 s.177(1)(ja) and 212A, LASPOA 2012 s.76(1), and SI 2014/1777 for details of the pilot. This pilot was extended to a total period of 18 months to run from 31 July 2014, by SI 2015/1480 with a consequential amendment made by SI 2015/1482.

MHA 1983 s.37⁷³⁰: Power to impose hospital order or guardianship order

- s.37(8) - when imposing a hospital order or a guardianship order, the court may not also impose a community order

CJA 2003 s.189⁷³¹: Power to impose a suspended sentence order

- s.189(5) - a court which passes a suspended sentence on any person for an offence may not impose a community sentence

Test to apply before imposing an order

CJA 2003 s.148⁷³²: Restrictions on imposing community sentences

- s.148(1) - a court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- s.148(2) - where a court passes a community sentence —
- (a) the particular requirement or requirements forming part of the community order, or, as the case may be, youth rehabilitation order, comprised in the sentence must 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 by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

⁷³⁰ Commencement: 30 September 1983, MHA 1983 s.149(2). Section 37(8) had been extensively amended; CJA 2003 Sch.32 para.38(b) inserted the reference to community orders, effective 4 April 2005, SI 2005/950 art.2 and Sch.1 para 42(18)

⁷³¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.9. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

⁷³² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

s.148(2A) - subsection (2) is subject to section 177(2A) (community orders: punitive elements) and to paragraph 3(4) of Schedule 1 to the Criminal Justice and Immigration Act 2008 (youth rehabilitation order with intensive supervision and surveillance).

s.148(4) - subsections (1) and (2)(b) have effect subject to section 151(2).

s.148(5) - the fact that by virtue of any provision of this section—

(a) a community sentence may be passed in relation to an offence; or

(b) particular restrictions on liberty may be imposed by a community order or youth rehabilitation order,

does not require a court to pass such a sentence or to impose those restrictions.

CJA 2003 s.156⁷³³: Pre-sentence reports and other requirements

s.156(1) - in forming any such opinion as is mentioned in section 148(1) or (2)(b), section 152(2) or section 153(2), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering), a court must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.

s.156(2) - in forming any such opinion as is mentioned in section 148(2)(a), the court may take into account any information about the offender which is before it.

Discount for remand in custody

CJA 2003 s.149⁷³⁴: Imposing a community order on defendant remanded in custody

s.149(1) - in determining the restrictions on liberty to be imposed by a community order or youth rehabilitation order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

s.149(2) - in subsection (1) “*remanded in custody*” has the meaning given by section 242(2).

3.3.2.1.2 Requirements which may be included as part of a community order

CJA 2003 s.177⁷³⁵: Power to impose community order with requirements

s.177(1) - Where a person aged 18 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a “community order”) imposing on him any one or more of the following requirements—

(a) an unpaid work requirement (as defined by section 199),

(aa) a rehabilitation activity requirement (as defined by section 200A),

(d) a prohibited activity requirement (as defined by section 203),

⁷³³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

⁷³⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

⁷³⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.8. Amendments were made to the SI but they have since been repealed. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

- (e) a curfew requirement (as defined by section 204),
- (f) an exclusion requirement (as defined by section 205),
- (g) a residence requirement (as defined by section 206),
- (ga) a foreign travel prohibition requirement (as defined by section 206A),
- (h) a mental health treatment requirement (as defined by section 207),
- (i) a drug rehabilitation requirement (as defined by section 209),
- (j) an alcohol treatment requirement (as defined by section 212),
- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

CJA 2003 s.199⁷³⁶: Unpaid work requirement

- s.199(1) - in this Part “*unpaid work requirement*”, in relation to a relevant order, means a requirement that the offender must perform unpaid work in accordance with section 200.
- s.199(2) - the number of hours which a person may be required to work under an unpaid work requirement must be specified in the relevant order and must be in the aggregate—
- (a) not less than 40, and
 - (b) not more than 300.
- s.199(3) - a court may not impose an unpaid work requirement in respect of an offender unless after hearing (if the courts thinks necessary) an officer of a local probation board or an officer of a provider of probation services, the court is satisfied that the offender is a suitable person to perform work under such a requirement.
- s.199(5) - where the court makes relevant orders in respect of two or more offences of which the offender has been convicted on the same occasion and includes unpaid work requirements in each of them, the court may direct that the hours of work specified in any of those requirements is to be concurrent with or additional to those specified in any other of those orders, but so that the total number of hours which are not concurrent does not exceed the maximum specified in subsection (2)(b).

CJA 2003 s.200A⁷³⁷: Rehabilitation activity requirement

- s.200A(1) - in this Part “*rehabilitation activity requirement*”, in relation to a relevant order, means a requirement that, during the relevant period, the offender must comply with any instructions given by the responsible officer to attend appointments or participate in activities or both.
- s.200A(2) - a relevant order imposing a rehabilitation activity requirement must specify the maximum number of days for which the offender may be instructed to participate in activities.

⁷³⁶ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

⁷³⁷ Commencement: 1 February 2015, as inserted by ORA 2014 s.15(3). The insertion has no effect in relation to orders made in respect of an offence committed before 1 February 2015, ORA 2014 s.21 and Sch.7 para.7.

- s.200A(3) - any instructions given by the responsible officer must be given with a view to promoting the offender's rehabilitation; but this does not prevent the responsible officer giving instructions with a view to other purposes in addition to rehabilitation.
- s.200A(4) - the responsible officer may instruct the offender to attend appointments with the responsible officer or with someone else.
- s.200A(5) - the responsible officer, when instructing the offender to participate in activities, may require the offender to—
- (a) participate in specified activities and, while doing so, comply with instructions given by the person in charge of the activities, or
 - (b) go to a specified place and, while there, comply with any instructions given by the person in charge of the place.
- s.200A(6) - the references in subsection (5)(a) and (b) to instructions given by a person include instructions given by anyone acting under the person's authority.
- s.200A(7) - the activities that responsible officers may instruct offenders to participate in include—
- (a) activities forming an accredited programme (see section 202(2));
 - (b) activities whose purpose is reparative, such as restorative justice activities.
- s.200A(8) - for the purposes of subsection (7)(b) an activity is a restorative justice activity if—
- (a) the participants consist of, or include, the offender and one or more of the victims,
 - (b) the aim of the activity is to maximise the offender's awareness of the impact of the offending concerned on the victims, and
 - (c) the activity gives a victim or victims an opportunity to talk about, or by other means express experience of, the offending and its impact.
- s.200A(9) - in subsection (8) "*victim*" means a victim of, or other person affected by, the offending concerned.
- s.200A(10) - where compliance with an instruction would require the co-operation of a person other than the offender, the responsible officer may give the instruction only if that person agrees.
- s.200A(11) - in this section "*the relevant period*" means—
- (a) in relation to a community order, the period for which the community order remains in force, and
 - (b) in relation to a suspended sentence order, the supervision period as defined by section 189(1A).

CJA 2003 s.201 [repealed on 1 February 2015]: Activity requirement

Note: This requirement was repealed on 1 February 2015 subject to saving provisions specified in ORA 2014 s.21 and Sch.7 para.7 which preserve the requirement for offences committed prior to the commencement date.

CJA 2003 s.202⁷³⁸: Programme requirement

s.202(1) - in this Part “*programme requirement*”, in relation to a relevant order, means a requirement that the offender must participate in accordance with this section in an accredited programme on the number of days specified in the order

s.202(2) - in this Part “*accredited programme*” means a programme that is for the time being accredited by the Secretary of State for the purposes of this section.

s.202(3) - in this section—

(a) “*programme*” means a systematic set of activities, and

s.202(6) A programme requirement operates to require the offender—

(a) in accordance with instructions given by the responsible officer, to participate in the accredited programme that is from time to time specified by the responsible officer at the place that is so specified on the number of days specified in the order, and

(b) while at that place, to comply with instructions given by, or under the authority of, the person in charge of the programme.

CJA 2003 s.203⁷³⁹: Prohibited activity requirement

s.203(1) - in this Part “*prohibited activity requirement*”, in relation to a relevant order, means a requirement that the offender must refrain from participating in activities specified in the order—

(a) on a day or days so specified, or

(b) during a period so specified.

s.203(2) - a court may not include a prohibited activity requirement in a relevant order unless it has consulted an officer of a local probation board or an officer of a provider of probation services.

s.203(3) - the requirements that may by virtue of this section be included in a relevant order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27).

⁷³⁸ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

⁷³⁹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

CJA 2003 s.204⁷⁴⁰: Curfew requirement

- s.204(1) - in this Part “*curfew requirement*”, in relation to a relevant order, means a requirement that the offender must remain, for periods specified in the relevant order, at a place so specified.
- s.204(2) - a relevant order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than two hours or more than sixteen hours in any day.
- s.204(3) - a community order or suspended sentence order which imposes a curfew requirement may not specify periods which fall outside the period of twelve months beginning with the day on which it is made.
- s.204(6) - before making a relevant order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

CJA 2003 s.205⁷⁴¹: Exclusion requirement

- s.205(1) - in this Part “*exclusion requirement*”, in relation to a relevant order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified.
- s.205(2) - where the relevant order is a community order, the period specified must not be more than two years.
- s.205(3) - an exclusion requirement—
 - (a) may provide for the prohibition to operate only during the periods specified in the order, and
 - (b) may specify different places for different periods or days.
- s.205(4) - in this section “*place*” includes an area.

⁷⁴⁰ Commencement: Section 204(1), (2), (5) and (6) on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 to the extent that it was not in force. Section 204(3) on 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. Section 204(5) on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, not in force otherwise. Section 204(4) and (5) were repealed by LASPOA 2012 Sch.10 para.17 on 3 December 2012, SI 2012/2906 art.2(h). LASPOA 2012 amended s.204(2) and (3) in respect of the maximum number of hours and the maximum length of the requirement. This amendment is of no effect in relation to offences committed prior to the commencement date, SI 2012/2906 art.3.

⁷⁴¹ Commencement: Section 205(1) and (3)-(4) on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise. Section 205(2) on 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

CJA 2003 s.206⁷⁴²: Residence requirement

- s.206(1) - in this Part, “*residence requirement*”, in relation to a community order or a suspended sentence order, means a requirement that, during a period specified in the relevant order, the offender must reside at a place specified in the order.
- s.206(2) - if the order so provides, a residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.
- s.206(3) - before making a community order or suspended sentence order containing a residence requirement, the court must consider the home surroundings of the offender.
- s.206(4) - a court may not specify a hostel or other institution as the place where an offender must reside, except on the recommendation of an officer of a local probation board or an officer of a provider of probation services.

CJA 2003 s.206A⁷⁴³: Foreign travel prohibition requirement

- s.206A(1) - in this Part “*foreign travel prohibition requirement*”, in relation to a relevant order, means a requirement prohibiting the offender from travelling, on a day or days specified in the order, or for a period so specified—
 - (a) to any country or territory outside the British Islands specified or described in the order,
 - (b) to any country or territory outside the British Islands other than a country or territory specified or described in the order, or
 - (c) to any country or territory outside the British Islands.
- s.206A(2) - a day specified under subsection (1) may not fall outside the period of 12 months beginning with the day on which the relevant order is made.
- s.206A(3) - a period specified under that subsection may not exceed 12 months beginning with the day on which the relevant order is made.

CJA 2003 s.207⁷⁴⁴: Mental health treatment requirement

- s.207(1) - in this Part, “*mental health treatment requirement*”, in relation to a community order or suspended sentence order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition .
- s.207(2) - the treatment required must be such one of the following kinds of treatment as may be specified in the relevant order—
 - (a) treatment as a resident patient in a care home within the meaning of the Care Standards Act 2000 (c. 14), an independent hospital or a hospital within the

⁷⁴² Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

⁷⁴³ Commencement: 3 December 2012, as inserted by LASPOA 2012 s.72(5), SI 2012/2906 art.2. The insertion is of no effect in respect of offences committed prior to the commencement date, SI 2012/2906 art.3

⁷⁴⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. LASPOA 2012 s.73(3) repealed s.207(5) on 3 December 2012.

meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;

- (b) treatment as a non-resident patient at such institution or place as may be specified in the order;
- (c) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified;

but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a), (b) or (c).

s.207(3) - a court may not by virtue of this section include a mental health treatment requirement in a relevant order unless—

- (a) the court is satisfied that the mental condition of the offender—
 - (i) is such as requires and may be susceptible to treatment, but
 - (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of the Mental Health Act 1983;
- (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient); and
- (c) the offender has expressed his willingness to comply with such a requirement.

s.207(4) - while the offender is under treatment as a resident patient in pursuance of a mental health requirement of a relevant order, his responsible officer shall carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

s.207(4A) - in subsection (2) “*independent hospital*”—

- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; and
- (b) in relation to Wales, has the same meaning as in the Care Standards Act 2000.

s.207(6) - in this section and section 208, “*registered psychologist*” means a person registered in the part of the register maintained under the Health and Social Work Professions Order 2001 which relates to practitioner psychologists.

CJA 2003 s.208⁷⁴⁵: Mental health treatment at place other than that specified in order

s.208(1) - where the medical practitioner or registered psychologist by whom or under whose direction an offender is being treated for his mental condition in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

- (a) is not specified in the relevant order, and
- (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or registered psychologist,

⁷⁴⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

he may, with the consent of the offender, make arrangements for him to be treated accordingly.

s.208(2) - such arrangements as are mentioned in subsection (1) may provide for the offender to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the relevant order.

s.208(3) - where any such arrangements as are mentioned in subsection (1) are made for the treatment of an offender—

- (a) the medical practitioner or registered psychologist by whom the arrangements are made shall give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the relevant order.

CJA 2003 s.209⁷⁴⁶: Drug rehabilitation requirement

s.209(1) - in this Part "*drug rehabilitation requirement*", in relation to a community order or suspended sentence order, means a requirement that during a period specified in the order ("the treatment and testing period") the offender—

- (a) must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on or propensity to misuse drugs, and
- (b) for the purpose of ascertaining whether he has any drug in his body during that period, must provide samples of such description as may be so determined, at such times or in such circumstances as may (subject to the provisions of the order) be determined by the responsible officer or by the person specified as the person by or under whose direction the treatment is to be provided.

s.209(2) - a court may not impose a drug rehabilitation requirement unless—

- (a) it is satisfied—
 - (i) that the offender is dependent on, or has a propensity to misuse, drugs, and
 - (ii) that his dependency or propensity is such as requires and may be susceptible to treatment,
- (b) it is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident),
- (c) the requirement has been recommended to the court as being suitable or the offender by an officer of a local probation board or an officer of a provider of probation services, and
- (d) the offender expresses his willingness to comply with the requirement.

⁷⁴⁶ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

- s.209(4) - the required treatment for any particular period must be—
- (a) treatment as a resident in such institution or place as may be specified in the order, or
 - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified;
- but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a) or (b) above.
- s.209(5) - the function of making a determination as to the provision of samples under provision included in the community order or suspended sentence order by virtue of subsection (1)(b) is to be exercised in accordance with guidance given from time to time by the Secretary of State.
- s.209(6) - a community order or suspended sentence order imposing a drug rehabilitation requirement must provide that the results of tests carried out on any samples provided by the offender in pursuance of the requirement to a person other than the responsible officer are to be communicated to the responsible officer.
- s.209(7) - in this section “*drug*” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

CJA 2003 s.210⁷⁴⁷: Drug rehabilitation requirement: provision for review by court

- s.210(1) - a community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months)—
- (a) provide for the requirement to be reviewed periodically at intervals of not less than one month,
 - (b) provide for each review of the requirement to be made, subject to section 211(6), at a hearing held for the purpose by the court responsible for the order (a “review hearing”),
 - (c) require the offender to attend each review hearing,
 - (d) provide for [an officer of a provider of probation services]¹ to make to the court responsible for the order, before each review, a report in writing on the offender’s progress under the requirement, and
 - (e) provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender.
- s.210(2) - in this section references to the court responsible for a community order or suspended sentence order imposing a drug rehabilitation requirement are references—
- (a) where a court is specified in the order in accordance with subsection (3), to that court;
 - (b) in any other case, to the court by which the order is made.
- s.210(3) - where the area specified in a community order or suspended sentence order which is made by a magistrates’ court and imposes a drug rehabilitation requirement is not the area for which the court acts, the court may, if it thinks fit, include in the order provision

⁷⁴⁷ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13.

specifying for the purposes of subsection (2) a magistrates' court which acts for the area specified in the order.

s.210(4) - where a community order or suspended sentence order imposing a drug rehabilitation requirement has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, for the purposes of subsection (2)(b) it shall be taken to have been made by the Crown Court.

CJA 2003 s.211⁷⁴⁸: Periodic review of drug rehabilitation requirement

s.211(1) - at a review hearing (within the meaning given by subsection (1) of section 210) the court may, after considering the officer's report referred to in that subsection ("the review officer's report"), amend the community order or suspended sentence order, so far as it relates to the drug rehabilitation requirement.

s.211(2) - the court—

- (a) may not amend the drug rehabilitation requirement unless the offender expresses his willingness to comply with the requirement as amended, and
- (c) except with the consent of the offender, may not amend any requirement or provision of the order while an appeal against the order is pending.

s.211(3) - if the offender fails to express his willingness to comply with the drug rehabilitation requirement as proposed to be amended by the court, the court may—

- (a) revoke the community order, or the suspended sentence order and the suspended sentence to which it relates, and
- (b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

s.211(4) - in dealing with the offender under subsection (3)(b), the court—

- (a) shall take into account the extent to which the offender has complied with the requirements of the order, and
- (b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

s.211(6) - if at a review hearing (as defined by section 210(1)(b)) the court, after considering the review officer's report, is of the opinion that the offender's progress under the requirement is satisfactory, the court may so amend the order as to provide for each subsequent review to be made by the court without a hearing.

s.211(7) - if at a review without a hearing the court, after considering the review officer's report, is of the opinion that the offender's progress under the requirement is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.

⁷⁴⁸ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. As amended by ORA 2014 Sch.4 para.5(3).

- s.211(8) - at that hearing the court, after considering that report, may—
- (a) exercise the powers conferred by this section as if the hearing were a review hearing, and
 - (b) so amend the order as to provide for each subsequent review to be made at a review hearing.
- s.211(9) - in this section any reference to the court, in relation to a review without a hearing, is to be read—
- (a) in the case of the Crown Court, as a reference to a judge of the court;
 - (b) in the case of a magistrates' court, as a reference to a justice of the peace

CJA 2003 s.212⁷⁴⁹: Alcohol treatment requirement

- s.212(1) - in this Part "*alcohol treatment requirement*", in relation to a community order or suspended sentence order, means a requirement that the offender must submit during a period specified in the order to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol.
- s.212(2) - a court may not impose an alcohol treatment requirement in respect of an offender unless it is satisfied—
- (a) that he is dependent on alcohol,
 - (b) that his dependency is such as requires and may be susceptible to treatment, and
 - (c) that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident).
- s.212(3) - a court may not impose an alcohol treatment requirement unless the offender expresses his willingness to comply with its requirements.
- s.212(5) - the treatment required by an alcohol treatment requirement for any particular period must be—
- (a) treatment as a resident in such institution or place as may be specified in the order,
 - (b) treatment as a non-resident in or at such institution or place, and at such intervals, as may be so specified, or
 - (c) treatment by or under the direction of such person having the necessary qualification or experience as may be so specified;
- but the nature of the treatment shall not be specified in the order except as mentioned in paragraph (a), (b) or (c) above.

⁷⁴⁹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13. LASPOA 2012 s.75(1) repealed s.212(4), in force 3 December 2012, SI 2012/2906 art.2a.

CJA 2003 s.212A⁷⁵⁰: Alcohol abstinence and monitoring requirement

Note: This is a pilot and is not in force for England and Wales. It is in force for the south London justice area only. See CJA 2003 s.177(1)(ja) and 212A, LASPOA 2012 s.76(1), and SI 2014/1777 for details of the pilot. This pilot was extended to a total period of 18 months to run from 31 July 2014, by SI 2015/1480 with a consequential amendment made by SI 2015/1482.

- s.212A(1) - in this Part “*alcohol abstinence and monitoring requirement*”, in relation to a relevant order, means a requirement—
- (a) that, subject to such exceptions (if any) as are specified—
 - (i) the offender must abstain from consuming alcohol throughout a specified period, or
 - (ii) the offender must not consume alcohol so that at any time during a specified period there is more than a specified level of alcohol in the offender’s body, and
 - (b) that the offender must, for the purpose of ascertaining whether the offender is complying with provision under paragraph (a), submit during the specified period to monitoring in accordance with specified arrangements.
- s.212A(2) - a period specified under subsection (1)(a) must not exceed 120 days.
- s.212A(3) - if the Secretary of State by order prescribes a minimum period for the purposes of subsection (1)(a), a period specified under that provision must be at least as long as the period prescribed.
- s.212A(4) - the level of alcohol specified under subsection (1)(a)(ii) must be that prescribed by the Secretary of State by order for the purposes of that provision (and a requirement under that provision may not be imposed unless such an order is in force).
- s.212A(5) - an order under subsection (4) may prescribe a level—
- (a) by reference to the proportion of alcohol in any one or more of an offender’s breath, blood, urine or sweat, or
 - (b) by some other means.
- s.212A(6) - the arrangements for monitoring specified under subsection (1)(b) must be consistent with those prescribed by the Secretary of State by order (and an alcohol abstinence and monitoring requirement may not be imposed unless such an order is in force).
- s.212A(7) - an order under subsection (6) may in particular prescribe—
- (a) arrangements for monitoring by electronic means;
 - (b) arrangements for monitoring by other means of testing.
- s.212A(8) - a court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met.
- s.212A(9) - the first condition is that—
- (a) the consumption of alcohol by the offender is an element of the offence for which the order is to be imposed or an associated offence, or

⁷⁵⁰ Commencement: 31 July 2014, in relation to the south London local justice area only, for a period of 12 months from the commencement date, SI 2014/1777 art.2, 3 and 4, and LASPOA 2012 s.76.

- (b) the court is satisfied that the consumption of alcohol by the offender was a factor that contributed to the commission of that offence or an associated offence.

s.212A(10) - the second condition is that the court is satisfied that the offender is not dependent on alcohol.

s.212A(11) - the third condition is that the court does not include an alcohol treatment requirement in the order.

s.212A(12) - the fourth condition is that the court has been notified by the Secretary of State that arrangements for monitoring of the kind to be specified are available in the local justice area to be specified.

s.212A(13) - in this section—

“alcohol” includes anything containing alcohol;

“specified”, in relation to a relevant order, means specified in the order.

Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement) (Prescription of Arrangement for Monitoring) Order 2014 (SI 2014/1787)

art.2(b) - the method for the purposes of s.212A(6) is transdermal electronic tag

CJA 2003 s.213 [repealed on 1 February 2015]: Supervision requirement

Note: This requirement was repealed on 1 February 2015 subject to saving provisions specified in ORA 2014 s.21 and Sch.7 para.7 which preserve the requirement for offences committed prior to the commencement date.

CJA 2003 s.214⁷⁵¹: Attendance centre requirement

Note: This section was amended by the ORA 2014. The amendments are of no effect in relation to offences committed prior to the commencement date. See ORA 2014 s.21 and Sch.7 para.7 for details.

s.214(1) - in this Part “attendance centre requirement”, in relation to a relevant order, means a requirement that the offender must attend at an attendance centre for such number of hours as may be specified in the relevant order.

s.214(2) - the aggregate number of hours for which the offender may be required to attend at an attendance centre must not be less than 12 or more than 36.

s.214(3) - the court may not impose an attendance centre requirement unless the court is satisfied that an attendance centre which is available for persons of the offender’s description is reasonably accessible to the offender concerned, having regard to the means of access available to him and any other circumstances.

s.214(3A) - the attendance centre at which the offender is required to attend is to be notified to the offender by the responsible officer from time to time.

s.214(3B) - when choosing an attendance centre, the responsible officer must consider—

⁷⁵¹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.14 otherwise.

- (a) the accessibility of the attendance centre to the offender, having regard to the means of access available to the offender and any other circumstances, and
- (b) the description of persons for whom it is available.

- s.214(4) - the first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.
- s.214(5) - the subsequent hours are to be fixed by the officer in charge of the centre, having regard to the offender's circumstances.
- s.214(6) - an offender may not be required under this section to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.
- s.214(7) - a requirement to attend at an attendance centre for any period on any occasion operates as a requirement, during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere.

CJA 2003 s.215⁷⁵²: Electronic monitoring requirement

Note: There is a pilot being conducted in the south London justice area concerning alcohol abstinence (see s.212A above). LASPOA 2012 s.76 inserted s.212A for that purpose and with it made a number of consequential amendments. See CJA 2003 s.177(1)(ja) and 212A, LASPOA 2012 s.76(1), and SI 2014/1777 for details of the pilot. This pilot was extended to a total period of 18 months to run from 31 July 2014, by SI 2015/1480 with a consequential amendment made by SI 2015/1482.

- s.215(1) - in this Part “*electronic monitoring requirement*”, in relation to a relevant order, means a requirement for securing the electronic monitoring of the offender's compliance with other requirements imposed by the order during a period specified in the order, or determined by the responsible officer in accordance with the relevant order.
- s.215(2) - where—
 - (a) it is proposed to include in a relevant order a requirement for securing electronic monitoring in accordance with this section, but
 - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,the requirement may not be included in the order without that person's consent.
- s.215(3) - a relevant order which includes an electronic monitoring requirement must include provision for making a person responsible for the monitoring; and a person who is made so responsible must be of a description specified in an order made by the Secretary of State.

⁷⁵² Commencement: Section 215(1)-(2)(b) and (4)-(4)(c) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.15 otherwise. Section 215(3) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 7 March 2005, SI2005/373 art.2(2)(g) otherwise.

- s.215(4) - where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the relevant order, the responsible officer must, before the beginning of that period, notify—
- (a) the offender,
 - (b) the person responsible for the monitoring, and
 - (c) any person falling within subsection (2)(b),
- of the time when the period is to begin.

3.3.2.1.3 Obligations of responsible officer/offender/court under a community order

Responsible officer

CJA 2003 s.198⁷⁵³: Duties of the responsible officer

- s.198(1) - where a relevant order has effect, it is the duty of the responsible officer—
- (a) to make any arrangements that are necessary in connection with the requirements imposed by the order, and
 - (b) to promote the offender's compliance with those requirements

Defendant

CJA 2003 s.200⁷⁵⁴: Obligations of person subject to unpaid work requirement

- s.200(1) - an offender in respect of whom an unpaid work requirement of a relevant order is in force must perform for the number of hours specified in the order such work at such times as he may be instructed by the responsible officer.
- s.200(2) - subject to paragraph 20 of Schedule 8 and paragraph 18 of Schedule 12 (power to extend order), the work required to be performed under an unpaid work requirement of a community order or a suspended sentence order must be performed during a period of twelve months.
- s.200(3) - unless revoked, a community order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.
- s.200(4) - where an unpaid work requirement is imposed by a suspended sentence order, the supervision period as defined by section 189(1A) continues until the offender has worked under the order for the number of hours specified in the order, but does not continue beyond the end of the operational period as defined by section 189(1)(a).

⁷⁵³ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.12 otherwise.

⁷⁵⁴ Commencement: Section 200(1) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. Section 200(2)-(4) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.13 otherwise.

Court

CJA 2003 s.216⁷⁵⁵: Requirement to specify local justice area in order

s.216(1) - a community order or suspended sentence order must specify the local justice area in which the offender resides or will reside.

CJA 2003 s.217⁷⁵⁶: Requirement to avoid conflict with religious beliefs etc.

s.217(1) - the court must ensure, as far as practicable, that any requirement imposed by a relevant order is such as to avoid—

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

s.217(2) - the responsible officer in relation to an offender to whom a relevant order relates must ensure, as far as practicable, that any instruction given or requirement imposed by him in pursuance of the order is such as to avoid the conflict or interference mentioned in subsection (1).

s.217(3) - the Secretary of State may by order provide that subsection (1) or (2) is to have effect with such additional restrictions as may be specified in the order.

CJA 2003 s.218⁷⁵⁷: Availability of arrangements in local area

s.218(1) - a court may not include an unpaid work requirement in a relevant order unless the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which he resides or will reside.

s.218(3) - a court may not include an attendance centre requirement in a relevant order in respect of an offender unless the court has been notified by the Secretary of State that an attendance centre is available for persons of his description.

s.218(4) - a court may not include an electronic monitoring requirement in a relevant order in respect of an offender unless the court—

- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant area (see subsections (5) to (7)), and
- (b) is satisfied that the necessary provision can be made under those arrangements.

⁷⁵⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16. The section was amended and subsection (2) repealed.

⁷⁵⁶ Commencement: Section 217(1) and (2) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16 otherwise. Section 217(3) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence and 7 March 2005, SI 2005/373 art.2(2)(h) otherwise.

⁷⁵⁷ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16 otherwise.

- s.218(5) - in the case of a relevant order containing a curfew requirement or an exclusion requirement, the relevant area for the purposes of subsection (4) is the area in which the place proposed to be specified in the order is situated.
- s.218(6) - in the case of a relevant order containing an attendance centre requirement, the relevant area for the purposes of subsection (4) is an area in which there is an attendance centre which is available for persons of the offender's description and which the court is satisfied is reasonably accessible to the offender.
- s.218(7) - in the case of any other relevant order, the relevant area for the purposes of subsection (4) is the local justice area proposed to be specified in the order.
- s.218(8) - in subsection (5) "*place*", in relation to an exclusion requirement, has the same meaning as in section 205.

CJA 2003 s.219⁷⁵⁸: Provision of copies of relevant orders

- s.219(1) - the court by which any relevant order is made must forthwith provide copies of the order—
 - (a) to the offender,
 - (b) to the responsible officer,
 - (c) to an officer who is acting at the court and is an officer of a provider of probation services that is a public sector provider, and
 - (d) where the court specifies a local justice area in which the court making the order does not act, to a provider of probation services that is a public sector provider and is acting in that area.
- s.219(2) - where a relevant order imposes any requirement specified in the first column of Schedule 14, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Schedule with a copy of so much of the order as relates to that requirement.
- s.219(3) - where a relevant order specifies a local justice area in which the court making the order does not act, the court making the order must provide to the magistrates's court acting in that area—
 - (a) a copy of the order, and
 - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.
- s.219(4) - in subsection (1)(c) and (d), "*public sector provider*" means—
 - (a) a probation trust or other public body, or
 - (b) the Secretary of State.

⁷⁵⁸ Commencement: Section 219(1)(a), (b) and (d), (2) and (3) in force on 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence, 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16 otherwise. Section 219(1)(c) in force 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16. Section 219(4) was inserted on 1 June 2014 by ORA 2014 Sch.4 para.12(3), SI 2014/1287 art.2(d).

CJA 2003 Sch.14⁷⁵⁹: Persons to whom copies of requirements to be provided in particular cases

The requirement	The person to whom a copy must be provided
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected.
A residence requirement relating to residence in an institution.	The person in charge of the institution.
A mental health treatment requirement.	The person specified under section 207(2)(c) or the person in charge of the institution or place specified under section 207(2)(a) or (b).
A drug rehabilitation requirement.	The person in charge of the institution or place specified under section 209(4)(a) or (b).
An alcohol treatment requirement.	The person specified under section 212(5)(c) or the person in charge of the institution or place specified under section 212(5)(a) or (b).
An electronic monitoring requirement.	Any person who by virtue of section 215(3) will be responsible for the electronic monitoring.
	Any person by virtue of whose consent the requirement is included in the order.

CJA 2003 s.220⁷⁶⁰: Duty of offender to keep in touch with responsible officer

Note: This section was amended by ORA 2014 s.18(3). The amendment repealed the requirement that the defendant had to notify the officer of any change of address which was consequent on the insertion of s.220A (below). The repeal does not apply to offences committed prior to 1 February 2015, see ORA 2014 s.21 and Sch.7 para.7.

- s.220(1) - an offender in respect of whom a community order or a suspended sentence order is in force—
- (a) must keep in touch with the responsible officer in accordance with such instructions as he may from time to time be given by that officer.
- s.220(2) - the obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the order.

⁷⁵⁹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.36 otherwise. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 Sch.2 para.5.

⁷⁶⁰ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.16

CJA 2003 s.220A⁷⁶¹: Duty to obtain permission prior to change of address

- s.220A(1) - an offender in respect of whom a relevant order is in force must not change residence without permission given in accordance with this section by—
- (a) the responsible officer, or
 - (b) a court.
- s.220A(2) - the appropriate court may, on an application by the offender, give permission in a case in which the responsible officer has refused.
- s.220A(3) - a court may also give permission in any proceedings before it under Schedule 8 or 12 (breach or amendment of orders etc).
- s.220A(4) - the grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
- (a) is likely to prevent the offender complying with a requirement imposed by the relevant order, or
 - (b) would hinder the offender's rehabilitation.
- s.220A(5) - the obligation imposed by subsection (1) is enforceable as if it were a requirement imposed by the relevant order.
- s.220A(6) - this section does not apply if the relevant order includes a residence requirement imposed under section 206.
- s.220A(7) - for cases in which a relevant order has to be amended because of permission given under this section, see paragraph 16 of Schedule 8 and paragraph 14 of Schedule 12 (amendment to reflect change in local justice area).
- s.220A(8) - in this section "*the appropriate court*" has the same meaning as in paragraph 16 of Schedule 8 or paragraph 14 of Schedule 12.

3.3.2.1.4 Reviews of community orders

Note: See also the section above dealing with reviews of drug rehabilitation requirements in the "Requirements" section.

CJA 2003 s.178⁷⁶²: Power to provide for review of community orders

- s.178(1) - the Secretary of State may by order—
- (a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,
 - (b) enable a court to amend a community order so as to include or remove a provision for review by a court, and
 - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.

⁷⁶¹ Commencement: 1 February 2015, ORA 2014 s.18(2), SI 2015/40. The insertion is of no effect in relation to offences committed prior to the commencement date, ORA 2014 s.21 and Sch.7 para.7.

⁷⁶² Commencement: 7 March 2005, SI 2005/373 art.2(2)(d)

s.178(2) - an order under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 191 and 192 in relation to suspended sentence orders.

s.178(3) - an order under this section may repeal or amend any provision of this Part.

Note: Community Order (Review by Specified Courts in Liverpool and Salford) Order 2006 (SI 2006/1006): Made provision for the review of community orders in the above justice area. This SI has since been revoked, see SI 2007/2162 art.5.

Community Order (Review by Specified Courts) Order 2007 (SI 2007/2162)⁷⁶³

art.2(1) - subject to paragraph (3) a court specified in paragraph (2) may—

- (a) when making a community order provide for that order to be reviewed periodically by that or another court specified in paragraph (2);
- (b) amend a community order so as to include or remove a provision for review by that or another court specified in paragraph (2).

art.2(2) - the courts referred to in paragraph (1) are—

- (a) a magistrates' court sitting at Birmingham Magistrates' Court, Victoria Law Courts, Corporation Street, Birmingham, B4 6QA,
- (b) a magistrates' court sitting at Bradford Magistrates' Court, The Tyrls, Bradford, BD1 1JL,
- (c) a magistrates' court sitting at the City of Salford Magistrates' Court, Bexley Square, Salford, M3 6DJ,
- (d) a magistrates' court sitting at Enfield Magistrates' Court, The Court House, Lordship Lane, Tottenham, London, N17 6RT,
- (e) a magistrates' court sitting at Haringey Magistrates' Court, Highgate Court House, Bishops Road, Archway Road, Highgate, London N6 4HS,
- (f) a magistrates' court sitting at Kingston-upon-Hull Magistrates' Court, The Law Courts, Market Place, Kingston-upon-Hull, HU1 2AD,
- (g) a magistrates' court sitting at Leicester Magistrates' Court, 15 Pocklington Walk, Leicester, LE1 6BT,
- (h) a magistrates' court sitting at Merthyr Tydfil Magistrates' Court, Law Courts, Merthyr Tydfil, CF47 8BU,
- (i) a magistrates' court sitting at North Liverpool Community Justice Centre, Boundary Street, Liverpool, L5 2QD, or the Crown Court sitting at that address,
- (j) a magistrates' court sitting at Nottingham Magistrates' Court, Carrington Street, Nottingham, NG2 1EE,
- (k) a magistrates' court sitting at Plymouth Magistrates' Court, St. Andrews Street, Plymouth, PL1 2DP,
- (l) a magistrates' court sitting at South Western Magistrates' Court, 176a Lavender Hill, Battersea, London, SW11 1JU,
- (m) a magistrates' court sitting at Stratford Magistrates' Court, The Court House, 389-397 High Street, Stratford, London, E15 4SB, and

⁷⁶³ Commencement: 22 July 2007, SI 2007/2162 art.art.1(1)

- (n) a magistrates' court sitting at Teesside Magistrates' Court, Teesside Law Courts, Victoria Square, Middlesbrough, TS1 2AS.
- art.2(3) - nothing in this article shall enable a magistrates' court to include provision for review by the Crown Court when making a community order.
- art.3(1) - subject to paragraph (2) a community order providing for review by a court may—
- (a) provide for the order to be reviewed periodically at specified intervals;
 - (b) provide for each review to be made, subject to article 4(4), at a hearing held for the purpose by the court responsible for the order (“a review hearing”);
 - (c) require the offender to attend each review hearing; and
 - (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report on the offender's progress in complying with the requirements of the order.
- art.3(2) - where a community order imposes a drug rehabilitation requirement under section 177(1) (i) of the 2003 Act, provision for review of that requirement shall be made in accordance with section 210 of the 2003 Act.
- art.3(3) - in this article references to the court responsible for the order are references to the court specified in the community order as responsible for reviewing the order.
- art.4(1) - At a review hearing (within the meaning of article 3(1)) the court may, after considering any responsible officer's report prepared pursuant to that paragraph, amend the requirements of the community order, or any provision of the order which relates to those requirements.
- art.4(2) - the court—
- (a) may not amend the order so as to impose a requirement of a different kind unless the offender expresses his willingness to comply with that requirement;
 - (b) may not amend the order so as to make a requirement more onerous unless the offender expresses his willingness to comply with the requirement as amended;
 - (c) may not amend a mental health treatment requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended;
 - (d) may, subject to sub-paragraph (b), extend the duration of a particular requirement (subject to any limit imposed by Chapter 4 of Part 12 of the 2003 Act) but may not extend the date specified under section 177(5) of the 2003 Act by which all the requirements in the order must have been complied with; and
 - (e) except with the consent of the offender, may not amend the order while an appeal against that order is pending.
- art.4(3) - for the purposes of paragraph (2)(a)—
- (a) a requirement falling within any paragraph of section 177(1) of the 2003 Act is of the same kind as any other requirement falling within that paragraph; and
 - (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 177(1) to which it relates.
- art.4(4) - if before a review hearing is held at any review the court, after considering any responsible officer's report prepared pursuant to article 3(1), is of the opinion that the offender's progress in complying with the requirements of the order is satisfactory, it may order that no review hearing is to be held at that review; and if before a review

hearing is held at any review, or at a review hearing, the court, after considering any such report, is of that opinion, it may amend the community order so as to provide for each subsequent review to be held without a hearing.

- art.4(5) - if at a review held without a hearing the court, after considering any responsible officer's report prepared pursuant to article 3(1), is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.
- art.4(6) - if at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 9 or 10 of Schedule 8 to the 2003 Act.
- art.4(7) - at a review hearing the court may amend the community order so as to vary the intervals specified under article 3(1)(a).
- art.4(8) - in this article, any reference to the court, in relation to a review without a hearing, is to be read—
- (a) in the case of the Crown Court, as a reference to a judge of the court; and
 - (b) in the case of a magistrates' court, as a reference to a justice of the peace.
- art.5 - the Community Order (Review by Specified Courts in Liverpool and Salford) Order 2006 SI 2006/1006 is hereby revoked

3.3.2.1.5 Breach, revocation and amendment

General

CJA 2003 s.179⁷⁶⁴: Breach, revocation and amendment of community orders

- s.179 - Schedule 8 (which relates to failures to comply with the requirements of community orders and to the revocation or amendment of such orders) shall have effect

CJA 2003 Sch.8⁷⁶⁵: Breach, revocation and amendment of community orders

- para.1 - in this Schedule—
- “the offender”*, in relation to a community order, means the person in respect of whom the order is made;
- “the local justice area concerned”*, in relation to a community order, means the local justice area for the time being specified in the order ;
- “the responsible officer”* has the meaning given by section 197.

⁷⁶⁴ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.8. The commencement has no effect in relation to offences committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

⁷⁶⁵ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.32. The commencement is of no effect in relation to an offence committed before the commencement date, SI 2005/950 Sch.2 para.5(2)(a). The commencement was subject to other provisions of SI 2005/950 however they have since been repealed.

para.1A - in this Schedule “*enforcement officer*” means a person who is for the time being responsible for discharging the functions conferred by this Schedule on an enforcement officer in accordance with arrangements made by the Secretary of State.

para.1A(2) - an enforcement officer must be an officer of a provider of probation services that is a public sector provider.

para.1A(3) - in sub-paragraph (2) “*public sector provider*” means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

para.2 - in this Schedule—

- (a) references to a drug rehabilitation requirement of a community order being subject to review are references to that requirement being subject to review in accordance with section 210(1)(b);
- (b) references to the court responsible for a community order imposing a drug rehabilitation requirement which is subject to review are to be construed in accordance with section 210(2).

para.3 - for the purposes of this Schedule—

- (a) a requirement falling within any paragraph of section 177(1) is of the same kind as any other requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 177(1) to which it relates.

para.4 - where a community order has been made on appeal, it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

Breach

para.5(1) - if the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the requirements of a community order, the officer must give him a warning under this paragraph unless—

- (a) the offender has within the previous twelve months been given a warning under this paragraph in relation to a failure to comply with any of the requirements of the order, or
- (b) the officer refers the matter to an enforcement officer (see paragraph 6A).

para.5(2) - a warning under this paragraph must—

- (a) describe the circumstances of the failure,
- (b) state that the failure is unacceptable, and
- (c) inform the offender that, if within the next twelve months he again fails to comply with any requirement of the order, he will be liable to be brought before a court.

para.5(3) - the responsible officer must, as soon as practicable after the warning has been given, record that fact.

para.5(4) - in relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates’ court, the reference in sub-paragraph (1)(b) to a justice of the peace is to be read as a reference to the Crown Court.

para.6(1) - if—

- (a) the responsible officer has given a warning under paragraph 5 to the offender in respect of a community order, and
- (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the requirements of the order,

the officer must refer the matter to an enforcement officer (see paragraph 6A).

para.6(2) - in relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

para.6A⁷⁶⁶(1) - where a matter is referred to an enforcement officer under paragraph 5(1)(b) or 6(1), it is the duty of the enforcement officer to consider the case and, where appropriate, to cause an information to be laid before a justice of the peace in respect of the offender's failure to comply with the requirement.

para.6A(2) - in relation to any community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

para.7(1) - this paragraph applies to—

- (a) a community order made by a magistrates' court, or
- (b) any community order which was made by the Crown Court and includes a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court.

para.7(2) - if at any time while a community order to which this paragraph applies is in force it appears on information to a justice of the peace that the offender has failed to comply with any of the requirements of the order, the justice may—

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

para.7(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

- (a) in the case of a community order imposing a drug rehabilitation requirement which is subject to review, before the magistrates' court responsible for the order, or
- (b) in any other case, before a magistrates' court acting in the local justice area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting in the local justice area concerned.

⁷⁶⁶ Inserted by ORA 2014 Sch.4 para.6, in force 1 June 2014.

- para.7(4) - where a summons issued under sub-paragraph (2)(a) requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender.
- para.8(1) - this paragraph applies to a community order made by the Crown Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court.
- para.8(2) - if at any time while a community order to which this paragraph applies is in force it appears on information to the Crown Court that the offender has failed to comply with any of the requirements of the order, the Crown Court may—
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- para.8(3) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.
- para.8(4) - where a summons issued under sub-paragraph (2)(a) requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender.
- para.9(1) - If it is proved to the satisfaction of a magistrates' court before which an offender appears or is brought under paragraph 7 that he has failed without reasonable excuse to comply with any of the requirements of the community order, the court must deal with him in respect of the failure in any one of the following ways—
- (a) by amending the terms of the community order so as to impose more onerous requirements which the court could include if it were then making the order;
 - (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
 - (b) where the community order was made by a magistrates' court, by dealing with him, for the offence in respect of which the order was made, in any way in which the court could deal with him if he had just been convicted by it of the offence;
 - (c) where—
 - (i) the community order was made by a magistrates' court,
 - (ii) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (iii) the offender is aged 18 or over, and
 - (iv) the offender has wilfully and persistently failed to comply with the requirements of the order,by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months
- para.9(2) - in dealing with an offender under sub-paragraph (1), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order.
- para.9(3) - in dealing with an offender under sub-paragraph (1)(a), the court may extend the duration of particular requirements (subject to any limit imposed by Chapter 4 of Part 12 of this Act) [but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB).

para.9(3ZA) - a date substituted under sub-paragraph (3)—

- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
- (b) subject to that, may fall more than three years after the date of the order.

para.9(3ZB) - the power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power in paragraph 10(3) to substitute a date has previously been exercised in relation to that order.

para.9(3ZC) - a date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section 177(5).

para.9(3A) - where—

- (a) the court is dealing with the offender under sub-paragraph (1)(a), and
- (b) the community order does not contain an unpaid work requirement,

section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.9(3B) - a fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.9(4) - in dealing with an offender under sub-paragraph (1)(b), the court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the community order, impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

para.9(5) - where a magistrates’ court deals with an offender under sub-paragraph (1)(b) or (c), it must revoke the community order if it is still in force.

para.9(6) - where a community order was made by the Crown Court and a magistrates’ court would (apart from this sub-paragraph) be required to deal with the offender under subparagraph (1)(a), (aa), (b) or (c), it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

para.9(7) - a magistrates’ court which deals with an offender’s case under subparagraph (6) must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the requirements of the community 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 is admissible as evidence of the failure before the Crown Court.

para.9(8) - a person sentenced under sub-paragraph (1)(b) or (c) for an offence may appeal to the Crown Court against—

- (a) the sentence, and
- (b) an order made by the court under section 21A of the Prosecution of Offences Act 1985 (criminal courts charge) when imposing that sentence.

para.10(1) - where under paragraph 8 or by virtue of paragraph 9(6) an offender appears or is brought before the Crown Court and it is proved to the satisfaction of that court that he

has failed without reasonable excuse to comply with any of the requirements of the community order, the Crown Court must deal with him in respect of the failure in any one of the following ways—

- (a) by amending the terms of the community order so as to impose more onerous requirements which the Crown Court could impose if it were then making the order;
- (aa) by ordering the offender to pay a fine of an amount not exceeding £2,500;
- (b) by dealing with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made;
- (c) where—
 - (i) the offence in respect of which the order was made was not an offence punishable by imprisonment,
 - (ii) the offender is aged 18 or over,
 - (iii) the offender has wilfully and persistently failed to comply with the requirements of the order,

by dealing with him, in respect of that offence, by imposing a sentence of imprisonment or, in the case of a person aged at least 18 but under 21, detention in a young offender institution, for a term not exceeding 6 months.

para.10(2) - in dealing with an offender under sub-paragraph (1), the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order.

para.10(3) - in dealing with an offender under sub-paragraph (1)(a), the court may extend the duration of particular requirements (subject to any limit imposed by Chapter 4 of Part 12 of this Act) [but may only amend the order to substitute a later date for that specified under section 177(5) in accordance with sub-paragraphs (3ZA) and (3ZB).

para.10(3ZA) - a date substituted under sub-paragraph (3)—

- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
- (b) subject to that, may fall more than three years after the date of the order.

para.10(3ZB) - the power under sub-paragraph (3) to substitute a date may not be exercised in relation to an order if that power or the power under paragraph 9(3) to substitute a date has previously been exercised in relation to that order.

(3ZC) - A date substituted under sub-paragraph (3) is to be treated as having been specified in relation to the order under section section 177(5).

para.10(3A) - where—

- (a) the court is dealing with the offender under sub-paragraph (1)(a), and
- (b) the community order does not contain an unpaid work requirement,

section 199(2)(a) applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.10(3B) - a fine imposed under sub-paragraph (1)(aa) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.10(4) - in dealing with an offender under sub-paragraph (1)(b), the Crown Court may, in the case of an offender who has wilfully and persistently failed to comply with the requirements of the community order, impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

para.10(5) - where the Crown Court deals with an offender under sub-paragraph (1)(b) or (c), it must revoke the community order if it is still in force.

para.10(6) - in proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the requirements of the community order is to be determined by the court and not by the verdict of a jury.

para.11(1) - an offender who is required by any of the following requirements of a community order—

- (a) a mental health treatment requirement,
- (b) a drug rehabilitation requirement, or
- (c) an alcohol treatment requirement,

to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for the purposes of paragraph 9 or 10 as having failed to comply with that requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.

para.11(2) - a court may not under paragraph 9(1)(a) or 10(1)(a) amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

para.11A(1) - the Secretary of State may by order amend any sum for the time being specified in paragraph 9(1)(aa) or 10(1)(aa).

para.11A(2) - the power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.

para.11A(3) - in sub-paragraph (2), “*the relevant date*” means—

- (a) if the sum specified in paragraph 9(1)(aa) or 10(1)(aa) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
- (b) otherwise, the date on which section 67 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (which inserted this paragraph) came into force.

para.11A(4) - an order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any community order made in respect of an offence committed before the fine amendment order comes into force.

Note: The “offence” mentioned in para.11A(4) must mean the original offence for which the community order was imposed.

Revocation of orders

para.13(1) - this paragraph applies where a community order, other than an order made by the Crown Court and falling within paragraph 14(1)(a) , is in force and on the application of

the offender or an officer of a provider of probation services it appears to the appropriate magistrates' court that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) for the order to be revoked, or
- (b) for the offender to be dealt with in some other way for the offence in respect of which the order was made.

para.13(2) - the appropriate magistrates' court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.

para.13(3) - the circumstances in which a community order may be revoked under subparagraph (2) include the offender's making good progress or his responding satisfactorily to supervision or treatment (as the case requires).

para.13(4) - in dealing with an offender under sub-paragraph (2)(b), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order.

para.13(5) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

para.13(6) - where a magistrates' court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

para.13(7) - in this paragraph "*the appropriate magistrates' court*" means—

- (a) in the case of an order imposing a drug rehabilitation requirement which is subject to review, the magistrates' court responsible for the order, and
- (b) in the case of any other community order, a magistrates' court acting in the local justice area concerned.

para.14(1) - this paragraph applies where—

- (a) there is in force a community order made by the Crown Court which does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, and
- (b) the offender or an officer of a provider of probation services applies to the Crown Court for the order to be revoked or for the offender to be dealt with in some other way for the offence in respect of which the order was made.

para.14(2) - if it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the Crown Court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and

- (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.14(3) - the circumstances in which a community order may be revoked under sub-paragraph (2) include the offender's making good progress or his responding satisfactorily to supervision or treatment (as the case requires).

para.14(4) - in dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the requirements of the order.

para.14(5) - where the Crown Court proposes to exercise its powers under this paragraph otherwise than on the application of the offender, it must summon him to appear before the court and, if he does not appear in answer to the summons, may issue a warrant for his arrest.

Amendment of the order

para.16(1) - this paragraph applies where at any time while a community order is in force in respect of an offender—

- (a) the offender is given permission under section 220A to change residence, and
- (b) the local justice area in which the new residence is situated ("the new local justice area") is different from the local justice area specified in the order.

para.16(2) - if the permission is given by a court, the court must amend the order to specify the new local justice area.

para.16(3) - the court may not under this paragraph amend a community order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area concerned unless, in accordance with paragraph 17, it either—

- (a) cancels those requirements, or
- (b) substitutes for those requirements other requirements which can be complied with if the offender ceases to reside in that area.

para.16(4) - in this paragraph "*the appropriate court*" means—

- (a) in relation to a community order imposing a drug rehabilitation requirement which is subject to review, the court responsible for the order,
- (b) in relation to a community order which was made by the Crown Court and does not include a direction that any failure to comply with the requirements of the order is to be dealt with by a magistrates' court, the Crown Court, and
- (c) in relation to any other community order, a magistrates' court acting in the local justice area specified in the order.

para.16A(1) - this paragraph applies where at any time while a community order is in force in respect of an offender—

- (a) a court amends the order,
- (b) the order as amended includes a residence requirement requiring the offender to reside at a specified place, and
- (c) the local justice area in which that place is situated ("the new local justice area") is different from the local justice area specified in the order.

para.16A(2) - the court must amend the order to specify the new local justice area.

para.17(1) - the appropriate court may, on the application of the offender or an officer of a provider of probation services, by order amend a community order—

- (a) by cancelling any of the requirements of the order, or
- (b) by replacing any of those requirements with a requirement of the same kind, which the court could include if it were then making the order.

para.17(2) - the court may not under this paragraph amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

para.17(3) - if the offender fails to express his willingness to comply with a mental health treatment requirement, drug rehabilitation requirement or alcohol treatment requirement as proposed to be amended by the court under this paragraph, the court may—

- (a) revoke the community order, and
- (b) deal with him, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.17(4) - in dealing with the offender under sub-paragraph (3)(b), the court—

- (a) must take into account the extent to which the offender has complied with the requirements of the order, and
- (b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 152(2).

para.17(6) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 16.

para.18(1) - where the medical practitioner or other person by whom or under whose direction an offender is, in pursuance of any requirement to which this subparagraph applies, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol—

- (a) is of the opinion mentioned in sub-paragraph (3), or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he must make a report in writing to that effect to the responsible officer and that officer must [cause an application to be made] under paragraph 17 to the appropriate court for the variation or cancellation of the requirement.

para.18(2) - the requirements to which sub-paragraph (1) applies are—

- (a) a mental health treatment requirement,
- (b) a drug rehabilitation requirement, and
- (c) an alcohol treatment requirement.

para.18(3) - the opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order,
- (b) that the offender needs different treatment,
- (c) that the offender is not susceptible to treatment, or

(d) that the offender does not require further treatment.

para.18(4) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 16.

para.19 - where an officer of a provider of probation services is of the opinion that a community order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each subsequent periodic review (required by section 211) to be made without a hearing instead of at a review hearing, or vice versa, he must apply under paragraph 17 to the court responsible for the order for the variation of the order.

para.19A(1) - the appropriate court may, on the application of the offender or an officer of a provider of probation services, amend a community order by substituting a later date for that specified under section 177(5).

para.19(2) - a date substituted under sub-paragraph (1)—

- (a) may not fall outside the period of six months beginning with the date previously specified under section 177(5);
- (b) subject to that, may fall more than three years after the date of the order.

para.19(3) - the power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.

para.19(4) - a date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under section 177(5).

para.19(5) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 16.

para.20(1) - where—

- (a) a community order imposing an unpaid work requirement is in force in respect of any offender, and
- (b) on the application of the offender or an officer of a provider of probation services, it appears to the appropriate 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 200(2).

para.20(2) - in this paragraph “*the appropriate court*” has the same meaning as in paragraph 16.

Powers of courts following subsequent conviction: Magistrates’ Court

para.21(1) - this paragraph applies where—

- (a) an offender in respect of whom a community order made by a magistrates’ court is in force is convicted of an offence by a magistrates’ court, and
- (b) it appears to the court that it would be in the interests of justice to exercise its powers under this paragraph, having regard to circumstances which have arisen since the community order was made.

para.21(2) - the magistrates’ court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and

- (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.21(3) - in dealing with an offender under sub-paragraph (2)(b), a magistrates' court must take into account the extent to which the offender has complied with the requirements of the community order.

para.21(4) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.

para.22(1) - where an offender in respect of whom a community order made by the Crown Court is in force is convicted of an offence by a magistrates' court, the magistrates' court may commit the offender in custody or release him on bail until he can be brought before the Crown Court.

para.22(2) - where the magistrates' court deals with an offender's case under subparagraph (1), it must send to the Crown Court such particulars of the case as may be desirable.

Powers of courts following subsequent conviction: Crown' Court

para.23(1) - this paragraph applies where—

- (a) an offender in respect of whom a community order is in force—
 - (i) is convicted of an offence by the Crown Court, or
 - (ii) is brought or appears before the Crown Court by virtue of paragraph 22 or having been committed by the magistrates' court to the Crown Court for sentence, and
- (b) it appears to the Crown Court that it would be in the interests of justice to exercise its powers under this paragraph, having regard to circumstances which have arisen since the community order was made.

para.23(2) - the Crown Court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made.

para.23(3) - in dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the requirements of the community order.

Note: See also Criminal Appeal Act 1968 s.10⁷⁶⁷ (2) which provides a right of appeal against sentence where an offender is dealt with by the Crown Court, otherwise than on appeal from the magistrates' court, for a summary conviction having been made the subject of a community order and is subsequently brought before the Crown Court to be further dealt with for the offence.

⁷⁶⁷ As amended by CJA 2003 Sch.32 para.8, 4 April 2005. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 Sch.2 para.5.

Supplementary

para.24(1) - No application may be made under paragraph 13, 17 or 20, while an appeal against the community order is pending.

para.24(2) - sub-paragraph (1) does not apply to an application under paragraph 17 which—

- (a) relates to a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement, and
- (b) is made by an officer of a provider of probation services with the consent of the offender.

para.25(1) - subject to sub-paragraph (2), where a court proposes to exercise its powers under Part 4 or 5 of this Schedule, otherwise than on the application of the offender, the court—

- (a) must summon him to appear before the court, and
- (b) if he does not appear in answer to the summons, may issue a warrant for his arrest.

para.25(2) - this paragraph does not apply to an order cancelling a requirement of a community order or reducing the period of any requirement, or substituting a new local justice area or a new place for the one specified in the order.

para.25A(1) - This paragraph applies to any hearing relating to an offender held by a magistrates' court in any proceedings under this Schedule.

para.25A(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.25A(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.25A(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, it must not resume the hearing unless it is satisfied that the offender and any officer of a provider of probation services who the court thinks has an interest in the proceedings have had adequate notice of the time and place for the resumed hearing.

para.25A(5) - the powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

para.25A(6) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

para.26 - Paragraphs 9(1)(a), 10(1)(a) and 17(1)(b) have effect subject to the provisions mentioned in subsection (2) of section 177, and to subsections (3) and (6) of that section.

para.27(1) - on the making under this Schedule of an order revoking or amending a community order, the proper officer of the court must—

- (a) provide copies of the revoking or amending order to the offender and the responsible officer,
- (b) in the case of an amending order which substitutes a new local justice area, provide a copy of the amending order to—
 - (i) a provider of probation services that is a public sector provider operating in that area, and
 - (ii) the magistrates' court acting in that area,
- (c) in the case of an amending order which imposes or amends a requirement specified in the first column of Schedule 14, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Schedule, and
- (d) where the court acts in a local justice area other than the one specified in the order prior to the revocation or amendment, provide a copy of the revoking or amending order to a magistrates' court acting in the area so specified.

para.27(2) - where under sub-paragraph (1)(b) the proper officer of the court provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

para.27(3) - in this paragraph "*proper officer*" means—

- (a) in relation to a magistrates' court, the designated officer for the court; and
- (b) in relation to the Crown Court, the appropriate officer.

para.27(4) - in this paragraph "*public sector provider*" means—

- (a) a probation trust or other public body, or
- (b) the Secretary of State.

3.3.2.1.6 Powers of the Secretary of State

CJA 2003 s.221⁷⁶⁸: Provision of attendance centres

s.221(1) - the Secretary of State may continue to provide attendance centres.

para.221(2) - in this Part "*attendance centre*" means a place at which offenders aged under 25 may be required to attend and be given under supervision appropriate occupation or instruction in pursuance of—

- (a) attendance centre requirements of relevant orders, or

⁷⁶⁸ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.17 otherwise.

- (aa) attendance centre requirements of youth rehabilitation orders, within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008,
- (b) attendance centre orders under section 60 of the Sentencing Act,
- (c) default orders under section 300 of this Act, or
- (d) youth default orders under section 39 of the Criminal Justice and Immigration Act 2008.

s.221(3) - for the purpose of providing attendance centres, the Secretary of State may make arrangements with any local authority or local policing body for the use of premises of that authority or body

CJA 2003 s.222⁷⁶⁹: Rules

s.222(1) - the Secretary of State may make rules for regulating—

- (a) the supervision of persons who are subject to relevant orders,
- (b) without prejudice to the generality of paragraph (a), the functions of responsible officers in relation to offenders subject to relevant orders,
- (c) the arrangements to be made by local probation boards or providers of probation services for persons subject to unpaid work requirements to perform work and the performance of such work,
- (d) the provision and carrying on of attendance centres,
- (e) the attendance of persons subject to rehabilitation activity requirements or attendance centre requirements, or to attendance centre requirements imposed by youth rehabilitation orders under Part 1 of the Criminal Justice and Immigration Act 2008, at the places at which they are required to attend, including hours of attendance, reckoning days of attendance and the keeping of attendance records,
- (f) electronic monitoring in pursuance of an electronic monitoring requirement, and
- (g) without prejudice to the generality of paragraph (f), the functions of persons made responsible for securing electronic monitoring in pursuance of such a requirement.

para.222(2) - rules under subsection (1)(c) may, in particular, make provision—

- (a) limiting the number of hours of work to be done by a person on any one day,
- (b) as to the reckoning of hours worked and the keeping of work records, and
- (c) for the payment of travelling and other expenses in connection with the performance of work.

⁷⁶⁹ Commencement: 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 7 March 2005, SI 2005/373 art.2(2)(i) otherwise.

CJA 2003 s.223⁷⁷⁰: Power to amend limits

Note: There is a pilot being conducted in the south London justice area concerning alcohol abstinence (see s.212A above). LASPOA 2012 s.76 inserted s.212A for that purpose and with it made a number of consequential amendments. See s.76(7) for the amendments to s.223 in relation to the south London justice area only for a period of 12 months. See SI 2014/1777 art.4(1).

- s.223(1) - the Secretary of State may by order amend—
- (a) subsection (2) of section 199 (unpaid work requirement), or
 - (b) subsection (2) of section 204 (curfew requirement),
- by substituting, for the maximum number of hours for the time being specified in that subsection, such other number of hours as may be specified in the order.
- s.223(2) - the Secretary of State may by order amend any of the provisions mentioned in subsection (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.
- s.223(3) - those provisions are—
- (a) section 204(3) (curfew requirement);
 - (b) section 205(2) (exclusion requirement)

3.3.2.1.7 Transfer of community orders to Scotland or Northern Ireland

Note: CJA 2003 s.180 and Sch.9 deals with the situation where a court is considering making a community order but is satisfied that the offender resides in Scotland or Northern Ireland. The schedule makes modifications to the provisions of the CJA 2003 in relation to community orders

3.3.2.1.8 Miscellaneous provisions

Firearms

FA 1968 s.21⁷⁷¹: Possession of firearms by persons previously convicted of crime

- s.21(3) - a person who—
- (a) is the holder of a licence issued under section 53 of the Children and Young Persons Act 1933 or section 57 of the Children and Young Persons (Scotland) Act 1937 (which sections provide for the detention of children and young persons convicted of serious crime, but enable them to be discharged on licence by the Secretary of State); or
 - (b) is subject to a recognizance to keep the peace or to be of good behaviour, a condition of which is that he shall not possess, use or carry a firearm, or is subject to a [community order]¹³ containing a requirement that he shall not possess, use or carry a firearm; or

⁷⁷⁰ Commencement: Section 223(1)-(3)(b) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. Section 223(3)(c)-(d) were in force 7 March 2005, SI 2005/373 art.2(2)(j) but have since been repealed, see LASPOA 2012 s.74(3) and 75(2).

⁷⁷¹ Commencement: Section 21(3) and (3ZA) were amended/inserted by CJA 2003 Sch.32 para.12(4), in force 4 April 2005. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

- (c) has, in Scotland, been ordained to find caution a condition of which is that he shall not possess, use or carry a firearm;

shall not, at any time during which he holds the licence or is so subject or has been so ordained, have a firearm or ammunition in his possession.

s.21(3ZA) - in subsection (3)(b) above, “community order” means—

- (a) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, made in England and Wales, or
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).

s.21(3A) - where by section 19 of the Firearms Act (Northern Ireland) 1969, or by any other enactment for the time being in force in Northern Ireland and corresponding to this section, a person is prohibited in Northern Ireland from having a firearm or ammunition in his possession, he shall also be so prohibited in Great Britain at any time when to have it in his possession in Northern Ireland would be a contravention of the said section 19 or corresponding enactment;

s.21(4) - it is an offence for a person to contravene any of the foregoing provisions of this section.

FA 1968 s.52⁷⁷²: Forfeiture and disposal of firearms; cancellation of certificate by convicting court

s.52(1) - where a person—

- (a) is convicted of an offence under this Act (other than an offence under section 22(3) or an offence relating specifically to air weapons) or is convicted of a crime for which he is sentenced to imprisonment, or detention in a detention centre or in a young offenders’ institution in Scotland [or is subject to a detention and training order; or
- (b) has been ordered to enter into a recognizance to keep the peace or to be of good behaviour, a condition of which is that he shall not possess, use or carry a firearm; or
- (c) is subject to a community order containing a requirement that he shall not possess, use or carry a firearm; or
- (d) has, in Scotland, been ordained to find caution a condition of which is that he shall not possess, use or carry a firearm,

the court by or before which he is convicted, or by which the order is made, may make such order as to the forfeiture or disposal of any firearm or ammunition found in his possession as the court thinks fit and may cancel any firearm certificate or shot gun certificate held by him.

s.52(1A) - in subsection (1)(c) “community order” means—

⁷⁷² Commencement: Section 52(1) and (1A) were amended/inserted by CJA 2003 Sch.32 para.13. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2).

- (a) a community order within the meaning of Part 12 of the Criminal Justice Act 2003, or a youth rehabilitation order within the meaning of Part 1 of the Criminal Justice and Immigration Act 2008, made in England and Wales, or
- (b) a community payback order under section 227A of the Criminal Procedure (Scotland) Act 1995 (c.46).

Release

CJA 2003 s.246⁷⁷³: Power to release prisoners on licence before required to do so

s.246(1) - subject to subsections (2) to (4), the Secretary of State may—

- (a) release on licence under this section a fixed-term prisoner at any time during the period of 135 days ending with the day on which the prisoner will have served the requisite custodial period

s.246(4)(d) - subsec.(1) does not apply where (d) the sentence was imposed by virtue of paragraph 9(1)(b) or (c) or 10(1)(b) or (c) of Schedule 8 in a case where the prisoner has failed to comply with a curfew requirement of a community order.

Consequential amendments etc.

Note: Schedule 32 contains many consequential amendments relating to community orders.

⁷⁷³ Commencement: Section 246(1) and (4) in force 26 January 2004, SI 2003/3282 art.2 and Sch.1 para.1 for the purpose of a sentence of imprisonment to which an intermittent custody order relates and the release on licence of a person serving such a sentence. 4 April 2005, SI 2005/950 art.2 and Sch.1 para.19 otherwise.

3.3.3. Youths

3.3.3.1. Youth Rehabilitation Order

3.3.3.1.1 General

Interpretation

CJIA 2008 s.7⁷⁷⁴: YROs: Interpretation

s.7(1) - in this Part, except where the contrary intention appears—

“accommodation provided by or on behalf of a local authority” has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 105 of that Act;

“activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 6 of Schedule 1;

“associated”, in relation to offences, is to be read in accordance with section 161(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6);

“attendance centre” has the meaning given by section 221(2) of the Criminal Justice Act 2003 (c. 44);

“attendance centre requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 12 of Schedule 1;

“curfew requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 14 of Schedule 1;

“custodial sentence” has the meaning given by section 76 of the Powers of Criminal Courts (Sentencing) Act 2000;

“detention and training order” has the same meaning as it has in that Act by virtue of section 163 of that Act;

“drug treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 22 of Schedule 1;

“drug testing requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 23 of Schedule 1;

“education requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 25 of Schedule 1;

“electronic monitoring requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 26 of Schedule 1;

“exclusion requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 15 of Schedule 1;

“extended activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 3 of Schedule 1;

“fostering requirement”, in relation to a youth rehabilitation order with fostering, has the meaning given by paragraph 18 of Schedule 1;

“guardian” has the same meaning as in the Children and Young Persons Act 1933 (c.12);

⁷⁷⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(g)

“intoxicating substance treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 24 of Schedule 1;

“local authority” means—

- (a) in relation to England—
 - (i) a county council,
 - (ii) a district council whose district does not form part of an area that has a county council,
 - (iii) a London borough council, or
 - (iv) the Common Council of the City of London in its capacity as a local authority, and
- (b) in relation to Wales—
 - (i) a county council, or
 - (ii) a county borough council;

“local authority residence requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 17 of Schedule 1;

“local probation board” means a local probation board established under section 4 of the Criminal Justice and Court Services Act 2000 (c. 43);

“mental health treatment requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 20 of Schedule 1;

“programme requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 11 of Schedule 1;

“prohibited activity requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 13 of Schedule 1;

“residence requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 16 of Schedule 1;

“the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, has the meaning given by section 4;

“supervision requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 9 of Schedule 1;

“unpaid work requirement”, in relation to a youth rehabilitation order, has the meaning given by paragraph 10 of Schedule 1;

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998 (c. 37);

“youth rehabilitation order” has the meaning given by section 1;

“youth rehabilitation order with fostering” has the meaning given by paragraph 4 of Schedule 1;

“youth rehabilitation order with intensive supervision and surveillance” has the meaning given by paragraph 3 of Schedule 1.

- s.7(2) - for the purposes of any provision of this Part which requires the determination of the age of a person by the court, the Secretary of State or a local authority, the person’s age is to be taken to be that which it appears to the court or (as the case may be) the Secretary of State or a local authority to be after considering any available evidence.
- s.7(3) - any reference in this Part to an offence punishable with imprisonment is to be read without regard to any prohibition or restriction imposed by or under any Act on the imprisonment of young offenders.

- s.7(4) - if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, any reference in this Part (except in paragraphs 4 and 25 of Schedule 1) to the offender's parent or guardian is to be read as a reference to that authority.
- s.7(5) - in subsection (4)—
- “parental responsibility” has the same meaning as it has in the Children Act 1989 (c. 41) by virtue of section 3 of that Act, and
- “social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 (c. 42) by virtue of section 1A of that Act.

CJIA 2008 s.4⁷⁷⁵: Meaning of “the responsible officer”

- s.4(1) - for the purposes of this Part, “the responsible officer”, in relation to an offender to whom a youth rehabilitation order relates, means—
- (a) in a case where the order—
- (i) imposes a curfew requirement or an exclusion requirement but no other requirement mentioned in section 1(1), and
- (ii) imposes an electronic monitoring requirement,
- the person who under paragraph 26(4) of Schedule 1 is responsible for the electronic monitoring required by the order;
- (b) in a case where the only requirement imposed by the order is an attendance centre requirement, the officer in charge of the attendance centre in question;
- (c) in any other case, the qualifying officer who, as respects the offender, is for the time being responsible for discharging the functions conferred by this Part on the responsible officer.
- s.4(2) - in this section “qualifying officer”, in relation to a youth rehabilitation order, means—
- (a) a member of a youth offending team established by a local authority for the time being specified in the order for the purposes of this section, or
- (b) an officer of a local probation board appointed for or assigned to the local justice area for the time being so specified or (as the case may be) an officer of a provider of probation services acting in the local justice area for the time being so specified.
- s.4(3) - the Secretary of State may by order—
- (a) amend subsections (1) and (2), and
- (b) make any other amendments of—
- (i) this Part, or
- (ii) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (c. 44) (general provisions about sentencing),
- that appear to be necessary or expedient in consequence of any amendment made by virtue of paragraph (a).

⁷⁷⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(d)

- s.4(4) - an order under subsection (3) may, in particular, provide for the court to determine which of two or more descriptions of responsible officer is to apply in relation to any youth rehabilitation order.

CJIA 2008 s.8⁷⁷⁶: Isles of Scilly

- s.8 - this Part has effect in relation to the Isles of Scilly with such exceptions, adaptations and modifications as the Secretary of State may by order specify.

Revocation of other youth orders

CJIA 2008 s.6⁷⁷⁷: Abolition of certain youth orders and related amendments

- s.6(1) - Chapters 1, 2, 4 and 5 of Part 4 of (and Schedules 3 and 5 to 7 to) the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6) (curfew orders, exclusion orders, attendance centre orders, supervision orders and action plan orders) cease to have effect.
- s.6(2) - Part 1 of Schedule 4 makes amendments consequential on provisions of this Part.
- s.6(3) - Part 2 of Schedule 4 makes minor amendments regarding other community orders which are related to the consequential amendments in Part 1 of that Schedule.

When does the order take effect?

CJIA 2008 Sch.1 para.30⁷⁷⁸: Date order is effective etc.

para.30(1) - subject to sub-paragraphs (1A) and (2), a youth rehabilitation order takes effect on the day on which the order is made.

para.30(1A) - a court making a youth rehabilitation order may order that it is to take effect instead on a later date.

para.30(2) - in particular, if a detention and training order is in force in respect of an offender, a court making a youth rehabilitation order in respect of the offender may order that it is to take effect instead—

- (a) when the period of supervision begins in relation to the detention and training order in accordance with section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
- (b) on the expiry of the term of the detention and training order.

para.30(3) - in sub-paragraph (2)—

- (a) the references to a detention and training order include an order made under section 211 of the Armed Forces Act 2006 (c. 52) (detention and training orders made by service courts); and

⁷⁷⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(h)

⁷⁷⁷ Commencement: Pursuant to CJIA 2008 s.153(7): 30 November 2009, section 6(1) save to the extent it abolishes attendance centre orders and section 6(2) and (3) to the extent they relate to the provisions specified in art.2(p), SI 2009/3074 art.2(f). See CJIA 2008 Sch.27 para.1 for transitional provisions. Otherwise not in force.

⁷⁷⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) the reference to section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 includes that provision as applied by section 213(1) of the Armed Forces Act 2006.

para.30(4) - a court must not make a youth rehabilitation order in respect of an offender at a time when—

- (a) another youth rehabilitation order, or
- (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),

is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

para.30(5) - where the earlier order is revoked under sub-paragraph (4), paragraph 24 of Schedule 2 (provision of copies of orders) applies to the revocation as it applies to the revocation of a youth rehabilitation order.

Concurrent and consecutive orders

CJIA 2008 Sch.1 para.31⁷⁷⁹: Concurrent and consecutive orders

para.31(1) - this paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.

para.31(2) - if, in respect of one of the offences, the court makes an order of any of the following kinds—

- (a) a youth rehabilitation order with intensive supervision and surveillance,
- (b) a youth rehabilitation order with fostering, or
- (c) any other youth rehabilitation order,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.

para.31(3) - if the court makes two or more youth rehabilitation orders with intensive supervision and surveillance, or with fostering, both or all of the orders must take effect at the same time (in accordance with paragraph 30(1) or (2)).

para.31(4) - where the court includes requirements of the same kind in two or more youth rehabilitation orders, it must direct, in relation to each requirement of that kind, whether—

- (a) it is to be concurrent with the other requirement or requirements of that kind, or any of them, or
- (b) it and the other requirement or requirements of that kind, or any of them, are to be consecutive.

para.31(5) - but the court may not direct that two or more fostering requirements are to be consecutive.

para.31(6) - where the court directs that two or more requirements of the same kind are to be consecutive—

⁷⁷⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (a) the number of hours, days or months specified in relation to one of them is additional to the number of hours, days, or months specified in relation to the other or others, but
- (b) the aggregate number of hours, days or months specified in relation to both or all of them must not exceed the maximum number which may be specified in relation to any one of them.

para.31(7) - for the purposes of sub-paragraphs (4) and (6), requirements are of the same kind if they fall within the same paragraph of Part 2 of this Schedule.

3.3.3.1.2 Availability and power to order

Youth rehabilitation orders

CJIA 2008 s.1⁷⁸⁰: Youth Rehabilitation Orders

- s.1(1) - where a person aged under 18 is convicted of an offence, the court by or before which the person is convicted may in accordance with Schedule 1 make an order (in this Part referred to as a “*youth rehabilitation order*”) imposing on the person any one or more of the following requirements—
- (a) an activity requirement (see paragraphs 6 to 8 of Schedule 1),
 - (b) a supervision requirement (see paragraph 9 of that Schedule),
 - (c) in a case where the offender is aged 16 or 17 at the time of the conviction, an unpaid work requirement (see paragraph 10 of that Schedule),
 - (d) a programme requirement (see paragraph 11 of that Schedule),
 - (e) an attendance centre requirement (see paragraph 12 of that Schedule),
 - (f) a prohibited activity requirement (see paragraph 13 of that Schedule),
 - (g) a curfew requirement (see paragraph 14 of that Schedule),
 - (h) an exclusion requirement (see paragraph 15 of that Schedule),
 - (i) a residence requirement (see paragraph 16 of that Schedule),
 - (j) a local authority residence requirement (see paragraph 17 of that Schedule),
 - (k) a mental health treatment requirement (see paragraph 20 of that Schedule),
 - (l) a drug treatment requirement (see paragraph 22 of that Schedule),
 - (m) a drug testing requirement (see paragraph 23 of that Schedule),
 - (n) an intoxicating substance treatment requirement (see paragraph 24 of that Schedule), and
 - (o) an education requirement (see paragraph 25 of that Schedule).
- s.1(2) - a youth rehabilitation order—
- (a) may also impose an electronic monitoring requirement (see paragraph 26 of Schedule 1), and

⁷⁸⁰ Commencement: Section 1(5) in force 1 April 2009, SI 2009/860 art.2(1)(a) in so far as it relates to paragraphs 26(5) and 35 of Schedule 1 (Further provision about youth rehabilitation orders). Section 1 in force 30 November 2009, CJIA 2008 s.153(7) and SI 2009/3074 art.2(a) otherwise. The commencement has no effect in relation to offences committed prior to the commencement date, CJIA 2008 Sch.27 para.1(1).

- (b) must do so if paragraph 2 of that Schedule so requires.
- s.1(3) - a youth rehabilitation order may be—
 - (a) a youth rehabilitation order with intensive supervision and surveillance (see paragraph 3 of Schedule 1), or
 - (b) a youth rehabilitation order with fostering (see paragraph 4 of that Schedule).
- s.1(4) - but a court may only make an order mentioned in subsection (3)(a) or (b) if—
 - (a) the court is dealing with the offender for an offence which is punishable with imprisonment,
 - (b) the court is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that, but for paragraph 3 or 4 of Schedule 1, a custodial sentence would be appropriate (or, if the offender was aged under 12 at the time of conviction, would be appropriate if the offender had been aged 12), and
 - (c) if the offender was aged under 15 at the time of conviction, the court is of the opinion that the offender is a persistent offender.
- s.1(5) - Schedule 1 makes further provision about youth rehabilitation orders.
- s.1(6) - this section is subject to—
 - (a) sections 148 and 150 of the Criminal Justice Act 2003 (c. 44) (restrictions on community sentences etc.), and
 - (b) the provisions of Parts 1 and 3 of Schedule 1.

CJA 2003 s.156⁷⁸¹: Pre-sentence reports and other requirements

- s.156(1) - in forming any such opinion as is mentioned in section 148(1) or (2)(b), section 152(2) or section 153(2), or in section 1(4)(b) or (c) of the Criminal Justice and Immigration Act 2008 (youth rehabilitation orders with intensive supervision and surveillance or fostering), a court must take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.

Youth rehabilitation orders with intensive supervision and surveillance

CJIA 2008 Sch.1 para.3⁷⁸²: YRO with intensive supervision and surveillance

- para.3(1) - this paragraph applies where paragraphs (a) to (c) of section 1(4) are satisfied.
- para.3(2) - the court, if it makes a youth rehabilitation order which imposes an activity requirement, may specify in relation to that requirement a number of days which is more than 90 but not more than 180.
- para.3(3) - such an activity requirement is referred to in this Part of this Act as “an extended activity requirement”.

⁷⁸¹ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7.

⁷⁸² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.3(4) - a youth rehabilitation order which imposes an extended activity requirement must also impose—

- (a) a supervision requirement, and
- (b) a curfew requirement (and, accordingly, if so required by paragraph 2, an electronic monitoring requirement).

para.3(5) - a youth rehabilitation order which imposes an extended activity requirement (and other requirements in accordance with sub-paragraph (4)) is referred to in this Part of this Act as “a youth rehabilitation order with intensive supervision and surveillance” (whether or not it also imposes any other requirement mentioned in section 1(1)).

CJIA 2008 Sch.1 para.5⁷⁸³: Intensive supervision and surveillance and fostering: further provisions

para.5(1) - a youth rehabilitation order with intensive supervision and surveillance may not impose a fostering requirement.

para.5(2) - nothing in—

- (a) section 1(4)(b), or
- (b) section 148(1) or (2)(b) of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences),

prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender if the offender fails to comply with an order under section 161(2) of the Criminal Justice Act 2003 (pre-sentence drug testing).

CJIA 2008 Sch.1 para.2⁷⁸⁴: Electronic monitoring requirement

para.2(1) - sub-paragraph (2) applies to a youth rehabilitation order which—

- (a) imposes a curfew requirement (whether by virtue of paragraph 3(4)(b) or otherwise), or
- (b) imposes an exclusion requirement.

para.2(2) - the order must also impose an electronic monitoring requirement unless—

- (a) in the particular circumstances of the case, the court considers it inappropriate for the order to do so, or
- (b) the court is prevented by paragraph 26(3) or (6) from including such a requirement in the order.

para.2(3) - Subsection (2)(a) of section 1 has effect subject to paragraph 26(3) and (6).

CJIA 2008 Sch.1 para.26⁷⁸⁵: Electronic monitoring requirement

para.26(3) - where—

- (a) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order, but

⁷⁸³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁸⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁸⁵ Commencement: Para.26(5) in force 1 April 2009, SI 2009/860 art.2(1)(g). Para.26(1)-(4) and (6)-(7) in force 30 November 2009, SI 2009/3074 art.2(m).

- (b) there is a person (other than the offender) without whose cooperation it will not be practicable to secure that the monitoring takes place,

the requirement may not be included in the order without that person's consent.

para.26(6) - a court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court—

- (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available—
 - (i) in the local justice area proposed to be specified in the order, and
 - (ii) for each requirement mentioned in the first column of the Table in subparagraph (7) which the court proposes to include in the order, in the area in which the relevant place is situated, and
- (b) is satisfied that the necessary provision can be made under the arrangements currently available.

CJA 2003 s.174⁷⁸⁶: Duty to give reasons etc.

s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—

- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
 - (b) section 152(2) of this Act (discretionary custodial sentence),
- the court must state why it is of that opinion.

Youth rehabilitation orders with fostering

CJIA 2008 Sch.1 para.4⁷⁸⁷: YRO with fostering

para.4(1) - this paragraph applies where paragraphs (a) to (c) of section 1(4) are satisfied.

para.4(2) - if the court is satisfied—

- (a) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and
- (b) that the imposition of a fostering requirement (see paragraph 18) would assist in the offender's rehabilitation,

it may make a youth rehabilitation order in accordance with section 1 which imposes a fostering requirement.

para.4(3) - but a court may not impose a fostering requirement unless—

- (a) it has consulted the offender's parents or guardians (unless it is impracticable to do so), and
- (b) it has consulted the local authority which is to place the offender with a local authority foster parent.

⁷⁸⁶ Commencement: LASPOA 2012 s.64(2) inserted a new CJA 2003 s.174, in force 3 December 2012, SI 2012/2906 art.2(a).

⁷⁸⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.4(4) - youth rehabilitation order which imposes a fostering requirement must also impose a supervision requirement.

para.4(5) - this paragraph has effect subject to paragraphs 18(7) and 19 (pre-conditions to imposing fostering requirement).

para.4(6) - a youth rehabilitation order which imposes a fostering requirement is referred to in this Part of this Act as “a youth rehabilitation order with fostering” (whatever other requirements mentioned in section 1(1) or (2) it imposes).

CJIA 2008 Sch.1 para.18⁷⁸⁸: Fostering requirement

para.18(7) - a court may not include a fostering requirement in a youth rehabilitation order unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent.

Note: para.18 has two versions, one for England and one for Wales, however the difference between the two pertains to the para.18(3) and so is not relevant for YROs with fostering.

CJIA 2008 Sch.1 para.19⁷⁸⁹: Pre-conditions to imposing local authority residence requirement or fostering requirement

para.19(1) - a court may not include a local authority residence requirement or a fostering requirement in a youth rehabilitation order in respect of an offender unless—

- (a) the offender was legally represented at the relevant time in court, or
- (b) either of the conditions in sub-paragraph (2) is satisfied.

para.19(2) - those conditions are—

- (a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender’s conduct, or
- (b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply.

para.19(3) - in this paragraph—

“the proceedings” means—

- (a) the whole proceedings, or
- (b) the part of the proceedings relating to the imposition of the local authority residence requirement or the fostering requirement;

“the relevant time” means the time when the court is considering whether to impose that requirement.

⁷⁸⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁸⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

CJIA 2008 Sch.1 para.5⁷⁹⁰: Intensive supervision and surveillance and fostering: further provisions

para.5(1) - a youth rehabilitation order with intensive supervision and surveillance may not impose a fostering requirement.

para.5(2) - nothing in—

- (a) section 1(4)(b), or
- (b) section 148(1) or (2)(b) of the Criminal Justice Act 2003 (c. 44) (restrictions on imposing community sentences),

prevents a court from making a youth rehabilitation order with intensive supervision and surveillance in respect of an offender if the offender fails to comply with an order under section 161(2) of the Criminal Justice Act 2003 (pre-sentence drug testing).

CJIA 2008 Sch.1 para.32: Date for compliance with requirements to be specified in order

para.32(3) - in the case of a youth rehabilitation order with intensive supervision and surveillance, the date specified for the purposes of sub-paragraph (1) must not be earlier than 6 months after the date on which the order takes effect.

CJA 2003 s.174⁷⁹¹: Duty to give reasons etc.

s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—

- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
- (b) section 152(2) of this Act (discretionary custodial sentence),

the court must state why it is of that opinion.

Offender previously fined

3.3.3.1.3 Requirements that may be imposed as part of the order

Requirements which may be imposed as part of the order

CJIA 2008 Sch.1 para.1: The imposition of requirements

para.1(1) - Subsection (1) of section 1 has effect subject to the following provisions of Part 2 of this Schedule which relate to particular requirements—

- (a) paragraph 8(3) and (4) (activity requirement),
- (b) paragraph 10(3) (unpaid work requirement),
- (c) paragraph 11(3) and (4) (programme requirement),
- (d) paragraph 12(3) (attendance centre requirement),
- (e) paragraph 13(2) (prohibited activity requirement),

⁷⁹⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁹¹ Commencement: LASPOA 2012 s.64(2) inserted a new CJA 2003 s.174, in force 3 December 2012, SI 2012/2906 art.2(a).

- (f) paragraph 16(2), (4) and (7) (residence requirement),
- (g) paragraphs 17(3) and (4) and 19 (local authority residence requirement),
- (h) paragraph 20(3) (mental health treatment requirement),
- (i) paragraph 22(2) and (4) (drug treatment requirement),
- (j) paragraph 23(3) (drug testing requirement),
- (k) paragraph 24(2) and (4) (intoxicating substance treatment requirement), and
- (l) paragraph 25(4) (education requirement).

CJIA 2008 Sch.1 para.6⁷⁹²: Activity requirement

para.6(1) - In this Part of this Act “*activity requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must do any or all of the following—

- (a) participate, on such number of days as may be specified in the order, in activities at a place, or places, so specified;
- (b) participate in an activity, or activities, specified in the order on such number of days as may be so specified;
- (c) participate in one or more residential exercises for a continuous period or periods comprising such number or numbers of days as may be specified in the order;
- (d) in accordance with paragraph 7, engage in activities in accordance with instructions of the responsible officer on such number of days as may be specified in the order.

para.6(2) - subject to paragraph 3(2), the number of days specified in the order under sub-paragraph (1) must not, in aggregate, be more than 90.

para.6(3) - a requirement such as is mentioned in sub-paragraph (1)(a) or (b) operates to require the offender, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement—

- (a) in the case of a requirement such as is mentioned in sub-paragraph (1)(a), to present himself or herself at a place specified in the order to a person of a description so specified, or
- (b) in the case of a requirement such as is mentioned in sub-paragraph (1)(b), to participate in an activity specified in the order,

and, on each such day, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).

para.6(4) - where the order requires the offender to participate in a residential exercise, it must specify, in relation to the exercise—

- (a) a place, or
- (b) an activity.

para.6(5) - a requirement to participate in a residential exercise operates to require the offender, in accordance with instructions given by the responsible officer—

- (a) if a place is specified under sub-paragraph (4)(a)—

⁷⁹² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (i) to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place so specified to a person of a description specified in the instructions, and
 - (ii) to reside there for that period,
- (b) if an activity is specified under sub-paragraph (4)(b), to participate, for the period specified in the order in relation to the exercise, in the activity so specified, and, during that period, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).

CJIA 2008 Sch.1 para.7⁷⁹³: Activity requirement: instructions of responsible officer under paragraph 6(1)(d)

para.7(1) - subject to sub-paragraph (3), instructions under paragraph 6(1)(d) relating to any day must require the offender to do either of the following—

- (a) present himself or herself to a person or persons of a description specified in the instructions at a place so specified;
- (b) participate in an activity specified in the instructions.

para.7(2) - any such instructions operate to require the offender, on that day or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or, as the case may be, the activity.

para.7(3) - if the order so provides, instructions under paragraph 6(1)(d) may require the offender to participate in a residential exercise for a period comprising not more than 7 days, and, for that purpose—

- (a) to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place so specified and to reside there for that period, or
- (b) to participate for that period in an activity specified in the instructions.

para.7(4) - instructions such as are mentioned in sub-paragraph (3)—

- (a) may not be given except with the consent of a parent or guardian of the offender, and
- (b) operate to require the offender, during the period specified under that sub-paragraph, to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified under sub-paragraph (3)(a) or (b) (as the case may be).

CJIA 2008 Sch.1 para.8⁷⁹⁴: Activity requirement: further provisions

para.8(1) - instructions given by, or under the authority of, a person in charge of any place under any of the following provisions—

- (a) paragraph 6(3),
- (b) paragraph 6(5),
- (c) paragraph 7(2), or

⁷⁹³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁹⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

(d) paragraph 7(4)(b),
may require the offender to engage in activities otherwise than at that place.

para.8(2) - an activity specified—

- (a) in an order under paragraph 6(1)(b), or
- (b) in instructions given under paragraph 6(1)(d),

may consist of or include an activity whose purpose is that of reparation, such as an activity involving contact between an offender and persons affected by the offences in respect of which the order was made.

para.8(3) - a court may not include an activity requirement in a youth rehabilitation order unless—

- (a) it has consulted a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services,
- (b) it is satisfied that it is feasible to secure compliance with the requirement, and
- (c) it is satisfied that provision for the offender to participate in the activities proposed to be specified in the order can be made under the arrangements for persons to participate in such activities which exist in the local justice area in which the offender resides or is to reside.

para.8(4) - a court may not include an activity requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the responsible officer, unless that other person consents to its inclusion.

CJIA 2008 Sch.1 para.9⁷⁹⁵: Supervision requirement

para.9 - in this Part of this Act “*supervision requirement*”, in relation to a youth rehabilitation order, means a requirement that, during the period for which the order remains in force, the offender must attend appointments with the responsible officer or another person determined by the responsible officer, at such times and places as may be determined by the responsible officer.

CJIA 2008 Sch.1 para.10⁷⁹⁶: Unpaid work (offender is aged 16 or 17 at conviction)

para.10(1) - in this Part of this Act “*unpaid work requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must perform unpaid work in accordance with this paragraph.

para.10(2) - the number of hours which a person may be required to work under an unpaid work requirement must be specified in the youth rehabilitation order and must be, in aggregate—

- (a) not less than 40, and
- (b) not more than 240.

⁷⁹⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁷⁹⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.10(3) - a court may not impose an unpaid work requirement in respect of an offender unless—

- (a) after hearing (if the court thinks necessary) an appropriate officer, the court is satisfied that the offender is a suitable person to perform work under such a requirement, and
- (b) the court is satisfied that provision for the offender to work under such a requirement can be made under the arrangements for persons to perform work under such a requirement which exist in the local justice area in which the offender resides or is to reside.

para.10(4) - in sub-paragraph (3)(a) “*an appropriate officer*” means a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services.

para.10(5) - an offender in respect of whom an unpaid work requirement of a youth rehabilitation order is in force must perform for the number of hours specified in the order such work at such times as the responsible officer may specify in instructions.

para.10(6) - subject to paragraph 17 of Schedule 2, the work required to be performed under an unpaid work requirement of a youth rehabilitation order must be performed during the period of 12 months beginning with the day on which the order takes effect.

para.10(7) - unless revoked, a youth rehabilitation order imposing an unpaid work requirement remains in force until the offender has worked under it for the number of hours specified in it.

CJIA 2008 Sch.1 para.11⁷⁹⁷: Programme requirement

para.11(1) - in this Part of this Act “*programme requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must participate in a systematic set of activities (“a programme”) specified in the order at a place or places so specified on such number of days as may be so specified.

para.11(2) - a programme requirement may require the offender to reside at any place specified in the order under sub-paragraph (1) for any period so specified if it is necessary for the offender to reside there for that period in order to participate in the programme.

para.11(3) - a court may not include a programme requirement in a youth rehabilitation order unless—

- (a) the programme which the court proposes to specify in the order has been recommended to the court by—
 - (i) a member of a youth offending team,
 - (ii) an officer of a local probation board, or
 - (iii) an officer of a provider of probation services,

as being suitable for the offender, and

- (b) the court is satisfied that the programme is available at the place or places proposed to be specified.

⁷⁹⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.11(4) - a court may not include a programme requirement in a youth rehabilitation order if compliance with that requirement would involve the co-operation of a person other than the offender and the offender's responsible officer, unless that other person consents to its inclusion.

para.11(5) - a requirement to participate in a programme operates to require the offender—

- (a) in accordance with instructions given by the responsible officer to participate in the programme at the place or places specified in the order on the number of days so specified, and
- (b) while at any of those places, to comply with instructions given by, or under the authority of, the person in charge of the programme.

CJIA 2008 Sch.1 para.12⁷⁹⁸: Attendance centre requirement

para.12(1) - in this Part of this Act "*attendance centre requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must attend at an attendance centre specified in the order for such number of hours as may be so specified.

para.12(2) - the aggregate number of hours for which the offender may be required to attend at an attendance centre—

- (a) if the offender is aged 16 or over at the time of conviction, must be—
 - (i) not less than 12, and
 - (ii) not more than 36;
- (b) if the offender is aged 14 or over but under 16 at the time of conviction, must be—
 - (i) not less than 12, and
 - (ii) not more than 24;
- (c) if the offender is aged under 14 at the time of conviction, must not be more than 12.

para.12(3) - a court may not include an attendance centre requirement in a youth rehabilitation order unless it—

- (a) has been notified by the Secretary of State that—
 - (i) an attendance centre is available for persons of the offender's description, and
 - (ii) provision can be made at the centre for the offender, and
- (b) is satisfied that the attendance centre proposed to be specified is reasonably accessible to the offender, having regard to the means of access available to the offender and any other circumstances.

para.12(4) - the first time at which the offender is required to attend at the attendance centre is a time notified to the offender by the responsible officer.

para.12(5) - the subsequent hours are to be fixed by the officer in charge of the centre—

- (a) in accordance with arrangements made by the responsible officer, and

⁷⁹⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) having regard to the offender's circumstances.

para.12(6) - an offender may not be required under this paragraph to attend at an attendance centre—

- (a) on more than one occasion on any day, or
- (b) for more than three hours on any occasion.

para.12(7) - a requirement to attend at an attendance centre for any period on any occasion operates as a requirement—

- (a) to attend at the centre at the beginning of the period, and
- (b) during that period, to engage in occupation, or receive instruction, under the supervision of and in accordance with instructions given by, or under the authority of, the officer in charge of the centre, whether at the centre or elsewhere.

CJIA 2008 Sch.1 para.13⁷⁹⁹: Prohibited activity requirement

para.13(1) - in this Part of this Act "*prohibited activity requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must refrain from participating in activities specified in the order—

- (a) on a day or days so specified, or
- (b) during a period so specified.

para.13(2) - a court may not include a prohibited activity requirement in a youth rehabilitation order unless it has consulted—

- (a) a member of a youth offending team,
- (b) an officer of a local probation board, or
- (c) an officer of a provider of probation services.

para.13(3) - the requirements that may by virtue of this paragraph be included in a youth rehabilitation order include a requirement that the offender does not possess, use or carry a firearm within the meaning of the Firearms Act 1968 (c. 27).

CJIA 2008 Sch.1 para.14⁸⁰⁰: Curfew requirement

para.14(1) - in this Part of this Act "*curfew requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must remain, for periods specified in the order, at a place so specified.

para.14(2) - a youth rehabilitation order imposing a curfew requirement may specify different places or different periods for different days, but may not specify periods which amount to less than 2 hours or more than 16 hours in any day.

para.14(3) - a youth rehabilitation order imposing a curfew requirement may not specify periods which fall outside the period of 12 months beginning with the day on which the requirement first takes effect.

⁷⁹⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.14(4) - before making a youth rehabilitation order imposing a curfew requirement, the court must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the offender).

CJIA 2008 Sch.1 para.15⁸⁰¹: Exclusion requirement

para.15(1) - in this Part of this Act “*exclusion requirement*”, in relation to a youth rehabilitation order, means a provision prohibiting the offender from entering a place specified in the order for a period so specified.

para.15(2) - the period specified must not be more than 3 months.

para.15(3) - an exclusion requirement—

- (a) may provide for the prohibition to operate only during the periods specified in the order, and
- (b) may specify different places for different periods or days.

para.15(4) - in this paragraph “*place*” includes an area.

CJIA 2008 Sch.1 para.16⁸⁰²: Residence requirement

para.16(1) - in this Part of this Act, “*residence requirement*”, in relation to a youth rehabilitation order, means a requirement that, during the period specified in the order, the offender must reside—

- (a) with an individual specified in the order, or
- (b) at a place specified in the order.

para.16(2) - a court may not by virtue of sub-paragraph (1)(a) include in a youth rehabilitation order a requirement that the offender reside with an individual unless that individual has consented to the requirement.

para.16(3) - in this paragraph, a residence requirement falling within sub-paragraph (1)(b) is referred to as “*a place of residence requirement*”.

para.16(4) - a court may not include a place of residence requirement in a youth rehabilitation order unless the offender was aged 16 or over at the time of conviction.

para.16(5) - if the order so provides, a place of residence requirement does not prohibit the offender from residing, with the prior approval of the responsible officer, at a place other than that specified in the order.

para.16(6) - before making a youth rehabilitation order containing a place of residence requirement, the court must consider the home surroundings of the offender.

para.16(7) - a court may not specify a hostel or other institution as the place where an offender must reside for the purposes of a place of residence requirement except on the recommendation of—

- (a) a member of a youth offending team,

⁸⁰¹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) an officer of a local probation board,
- (c) an officer of a provider of probation services, or
- (d) a social worker of a local authority.

CJIA 2008 Sch.1 para.17⁸⁰³: Local authority residence requirement

para.17(1) - in this Part of this Act, “*local authority residence requirement*”, in relation to a youth rehabilitation order, means a requirement that, during the period specified in the order, the offender must reside in accommodation provided by or on behalf of a local authority specified in the order for the purposes of the requirement.

para.17(2) - a youth rehabilitation order which imposes a local authority residence requirement may also stipulate that the offender is not to reside with a person specified in the order.

para.17(3) - a court may not include a local authority residence requirement in a youth rehabilitation order made in respect of an offence unless it is satisfied—

- (a) that the behaviour which constituted the offence was due to a significant extent to the circumstances in which the offender was living, and
- (b) that the imposition of that requirement will assist in the offender’s rehabilitation.

para.17(4) - a court may not include a local authority residence requirement in a youth rehabilitation order unless it has consulted—

- (a) a parent or guardian of the offender (unless it is impracticable to consult such a person), and
- (b) the local authority which is to receive the offender.

para.17(5) - a youth rehabilitation order which imposes a local authority residence requirement must specify, as the local authority which is to receive the offender, the local authority in whose area the offender resides or is to reside.

para.17(6) - any period specified in a youth rehabilitation order as a period for which the offender must reside in accommodation provided by or on behalf of a local authority must—

- (a) not be longer than 6 months, and
- (b) not include any period after the offender has reached the age of 18.

CJIA 2008 Sch.1 para.18⁸⁰⁴: Fostering requirement

para.18(1) - in this Part of this Act “*fostering requirement*”, in relation to a youth rehabilitation order, means a requirement that, for a period specified in the order, the offender must reside with a local authority foster parent.

para.18(2) - a period specified in a youth rehabilitation order as a period for which the offender must reside with a local authority foster parent must—

- (a) end no later than the end of the period of 12 months beginning with the date on which the requirement first has effect (but subject to paragraphs 6(9), 8(9) and 16(2) of Schedule 2), and
- (b) not include any period after the offender has reached the age of 18.

⁸⁰³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.18(3) - a youth rehabilitation order which imposes a fostering requirement must specify the local authority which is to place the offender with a local authority foster parent under section 22C of the Children Act 1989 (c. 41).

para.18(4) - the authority so specified must be the local authority in whose area the offender resides or is to reside.

para.18(5) - if at any time during the period specified under sub-paragraph (1), the responsible officer notifies the offender—

(a) that no suitable local authority foster parent is available, and

(b) that the responsible officer has applied or proposes to apply under Part 3 or 4 of Schedule 2 for the revocation or amendment of the order,

the fostering requirement is, until the determination of the application, to be taken to require the offender to reside in accommodation provided by or on behalf of a local authority.

para.18(6) - this paragraph does not affect the power of a local authority to place with a local authority foster parent an offender in respect of whom a local authority residence requirement is imposed.

para.18(7) - a court may not include a fostering requirement in a youth rehabilitation order unless the court has been notified by the Secretary of State that arrangements for implementing such a requirement are available in the area of the local authority which is to place the offender with a local authority foster parent.

para.18(8) - in this paragraph, “*local authority foster parent*” has the same meaning as it has in the Children Act 1989.

Note: para. 18 has two versions, one for England and one for Wales; the difference between the two pertains to the para. 18(3) and the section under the Children Act 1989 under which the LA is going to place the offender with a local authority foster parent.

CJIA 2008 Sch.1 para.19⁸⁰⁵: Pre-conditions to imposing local authority residence requirement or fostering requirement

para.19(1) - a court may not include a local authority residence requirement or a fostering requirement in a youth rehabilitation order in respect of an offender unless—

(a) the offender was legally represented at the relevant time in court, or

(b) either of the conditions in sub-paragraph (2) is satisfied.

para.19(2) - those conditions are—

(a) that representation was made available to the offender for the purposes of the proceedings under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 but was withdrawn because of the offender’s conduct, or

(b) that the offender has been informed of the right to apply for such representation for the purposes of the proceedings and has had the opportunity to do so, but nevertheless refused or failed to apply.

⁸⁰⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.19(3) - in this paragraph—

“*the proceedings*” means—

- (a) the whole proceedings, or
- (b) the part of the proceedings relating to the imposition of the local authority residence requirement or the fostering requirement;

“*the relevant time*” means the time when the court is considering whether to impose that requirement.

CJIA 2008 Sch.1 para.20⁸⁰⁶: Mental health treatment requirement

para.20(1) - in this Part of this Act “*mental health treatment requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a registered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition .

para.20(2) - the treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order—

- (a) treatment as a resident patient in a care home within the meaning of the Care Standards Act 2000 (c. 14) , an independent hospital or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;
- (b) treatment as a non-resident patient at such institution or place as may be specified in the order;
- (c) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified;

but the order must not otherwise specify the nature of the treatment.

para.20(3) - a court may not include a mental health treatment requirement in a youth rehabilitation order unless—

- (a) the court is satisfied that the mental condition of the offender—
 - (i) is such as requires and may be susceptible to treatment, but
 - (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of the Mental Health Act 1983,
- (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident patient, arrangements for the reception of the offender), and
- (c) the offender has expressed willingness to comply with the requirement.

para.20(4) - while the offender is under treatment as a resident patient in pursuance of a mental health treatment requirement of a youth rehabilitation order, the responsible officer is to carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

⁸⁰⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.20(4A) - in sub-paragraph (2) “*independent hospital*”—

- (a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not a health service hospital as defined by that section; and
- (b) in relation to Wales, has the same meaning as in the Care Standards Act 2000.

para.20(6) - in this paragraph and paragraph 21, “*registered psychologist*” means a person for the time being registered in the part of the register maintained under the Health Professions Order 2001 which relates to practitioner psychologists.

CJIA 2008 Sch.1 para.21⁸⁰⁷: Mental health treatment at place other than specified in the order

para.21(1) - where the registered medical practitioner or [registered psychologist]¹ by whom or under whose direction an offender is being treated in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which—

- (a) is not specified in the youth rehabilitation order, and
 - (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or registered psychologist,
- the medical practitioner or psychologist may make arrangements for the offender to be treated accordingly.

para.21(2) - such arrangements as are mentioned in sub-paragraph (1) may only be made if the offender has expressed willingness for the treatment to be given as mentioned in that sub-paragraph.

para.21(3) - such arrangements as are mentioned in sub-paragraph (1) may provide for part of the treatment to be provided to the offender as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the youth rehabilitation order.

para.21(4) - where any such arrangements as are mentioned in sub-paragraph (1) are made for the treatment of an offender—

- (a) the registered medical practitioner or registered psychologist by whom the arrangements are made must give notice in writing to the offender’s responsible officer, specifying the institution or place in or at which the treatment is to be carried out, and
- (b) the treatment provided for by the arrangements is deemed to be treatment to which the offender is required to submit in pursuance of the youth rehabilitation order.

CJIA 2008 Sch.1 para.22⁸⁰⁸: Drug treatment requirement

para.22(1) - in this Part of this Act, “*drug treatment requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience (“the treatment provider”), with a

⁸⁰⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸⁰⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

view to the reduction or elimination of the offender's dependency on, or propensity to misuse, drugs.

para.22(2) - a court may not include a drug treatment requirement in a youth rehabilitation order unless it is satisfied—

- (a) that the offender is dependent on, or has a propensity to misuse, drugs, and
- (b) that the offender's dependency or propensity is such as requires and may be susceptible to treatment.

para.22(3) - the treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order—

- (a) treatment as a resident in such institution or place as may be specified in the order, or
- (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified,

but the order must not otherwise specify the nature of the treatment.

para.22(4) - a court may not include a drug treatment requirement in a youth rehabilitation order unless—

- (a) the court has been notified by the Secretary of State that arrangements for implementing drug treatment requirements are in force in the local justice area in which the offender resides or is to reside,
- (b) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender),
- (c) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services, and
- (d) the offender has expressed willingness to comply with the requirement.

para.22(5) - in this paragraph “drug” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

CJIA 2008 Sch.1 para.23⁸⁰⁹: Drug testing requirement

para.23(1) - in this Part of this Act, “drug testing requirement”, in relation to a youth rehabilitation order, means a requirement that, for the purpose of ascertaining whether there is any drug in the offender's body during any treatment period, the offender must, during that period, provide samples in accordance with instructions given by the responsible officer or the treatment provider.

para.23(2) - in sub-paragraph (1)—

“drug” has the same meaning as in paragraph 22,

⁸⁰⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

“treatment period” means a period specified in the youth rehabilitation order as a period during which the offender must submit to treatment as mentioned in sub-paragraph (1) of that paragraph, and

“the treatment provider” has the meaning given by that sub-paragraph.

para.23(3) - a court may not include a drug testing requirement in a youth rehabilitation order unless—

- (a) the court has been notified by the Secretary of State that arrangements for implementing drug testing requirements are in force in the local justice area in which the offender resides or is to reside,
- (b) the order also imposes a drug treatment requirement, and
- (c) the offender has expressed willingness to comply with the requirement.

para.23(4) - a youth rehabilitation order which imposes a drug testing requirement—

- (a) must specify for each month the minimum number of occasions on which samples are to be provided, and
- (b) may specify—
 - (i) times at which and circumstances in which the responsible officer or treatment provider may require samples to be provided, and
 - (ii) descriptions of the samples which may be so required.

para.23(5) - a youth rehabilitation order which imposes a drug testing requirement must provide for the results of tests carried out otherwise than by the responsible officer on samples provided by the offender in pursuance of the requirement to be communicated to the responsible officer.

CJIA 2008 Sch.1 para.24⁸¹⁰: Intoxicating substance treatment requirement

para.24(1) - in this Part of this Act, *“intoxicating substance treatment requirement”*, in relation to a youth rehabilitation order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment, by or under the direction of a person so specified having the necessary qualifications or experience, with a view to the reduction or elimination of the offender’s dependency on or propensity to misuse intoxicating substances.

para.24(2) - a court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless it is satisfied—

- (a) that the offender is dependent on, or has a propensity to misuse, intoxicating substances, and
- (b) that the offender’s dependency or propensity is such as requires and may be susceptible to treatment.

para.24(3) - the treatment required during a period specified under sub-paragraph (1) must be such one of the following kinds of treatment as may be specified in the youth rehabilitation order—

- (a) treatment as a resident in such institution or place as may be specified in the order, or

⁸¹⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (b) treatment as a non-resident at such institution or place, and at such intervals, as may be so specified,

but the order must not otherwise specify the nature of the treatment.

para.24(4) - a court may not include an intoxicating substance treatment requirement in a youth rehabilitation order unless—

- (a) the court is satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including, where the offender is to be required to submit to treatment as a resident, arrangements for the reception of the offender),
- (b) the requirement has been recommended to the court as suitable for the offender by a member of a youth offending team, an officer of a local probation board or an officer of a provider of probation services, and
- (c) the offender has expressed willingness to comply with the requirement.

para.24(5) - in this paragraph “*intoxicating substance*” means—

- (a) alcohol, or
- (b) any other substance or product (other than a drug) which is, or the fumes of which are, capable of being inhaled or otherwise used for the purpose of causing intoxication.

para.24(6) - in sub-paragraph (5)(b) “*drug*” means a controlled drug as defined by section 2 of the Misuse of Drugs Act 1971 (c. 38).

CJIA 2008 Sch.1 para.25⁸¹¹: Education requirement

para.25(1) - in this Part of this Act “*education requirement*”, in relation to a youth rehabilitation order, means a requirement that the offender must comply, during a period or periods specified in the order, with approved education arrangements.

para.25(2) - for this purpose, “*approved education arrangements*” means arrangements for the offender’s education—

- (a) made for the time being by the offender’s parent or guardian, and
- (b) approved by the local authority specified in the order.

para.25(3) - the local authority so specified must be the local authority for the area in which the offender resides or is to reside.

para.25(4) - a court may not include an education requirement in a youth rehabilitation order unless—

- (a) it has consulted the local authority proposed to be specified in the order with regard to the proposal to include the requirement, and
- (b) it is satisfied—
 - (i) that, in the view of that local authority, arrangements exist for the offender to receive efficient fulltime education suitable to the offender’s age, ability, aptitude and special educational needs (if any), and

⁸¹¹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

- (ii) that, having regard to the circumstances of the case, the inclusion of the education requirement is necessary for securing the good conduct of the offender or for preventing the commission of further offences.

para.25(5) - any period specified in a youth rehabilitation order as a period during which an offender must comply with approved education arrangements must not include any period after the offender has ceased to be of compulsory school age.

para.25(6) - in this paragraph, “*local authority*” and “*parent*” have the same meanings as in the Education Act 1996 (c. 56).

CJIA 2008 Sch.1 para.26⁸¹²: Electronic monitoring requirement

para.26(1) - in this Part of this Act “*electronic monitoring requirement*”, in relation to a youth rehabilitation order, means a requirement for securing the electronic monitoring of the offender’s compliance with other requirements imposed by the order during a period specified in the order or determined by the responsible officer in accordance with the order.

para.26(2) - where an electronic monitoring requirement is required to take effect during a period determined by the responsible officer in accordance with the youth rehabilitation order, the responsible officer must, before the beginning of that period, notify—

- (a) the offender,
 - (b) the person responsible for the monitoring, and
 - (c) any person falling within sub-paragraph (3)(b),
- of the time when the period is to begin.

para.26(3) - where—

- (a) it is proposed to include an electronic monitoring requirement in a youth rehabilitation order, but
 - (b) there is a person (other than the offender) without whose cooperation it will not be practicable to secure that the monitoring takes place,
- the requirement may not be included in the order without that person’s consent.

para.26(4) - a youth rehabilitation order which imposes an electronic monitoring requirement must include provision for making a person responsible for the monitoring.

para.26(5) - the person who is made responsible for the monitoring must be of a description specified in an order made by the Secretary of State.

para.26(6) - a court may not include an electronic monitoring requirement in a youth rehabilitation order unless the court—

- (a) has been notified by the Secretary of State that arrangements for electronic monitoring of offenders are available—
 - (i) in the local justice area proposed to be specified in the order, and

⁸¹² Commencement: Para.26(5) in force 1 April 2009, SI 2009/860 art.2(1)(g). Para.26(1)-(4) and (6)-(7) in force 30 November 2009, SI 2009/3074 art.2(m).

- (ii) for each requirement mentioned in the first column of the Table in sub-paragraph (7) which the court proposes to include in the order, in the area in which the relevant place is situated, and
- (b) is satisfied that the necessary provision can be made under the arrangements currently available.

para.26(7) - for the purposes of sub-paragraph (6), “*relevant place*”, in relation to a requirement mentioned in the first column of the following Table which the court proposes to include in the order, means the place mentioned in relation to it in the second column of the Table.

Proposed requirement of youth rehabilitation order	Relevant place
Curfew requirement.	The place which the court proposes to specify in the order for the purposes of that requirement.
Exclusion requirement.	The place (within the meaning of paragraph 15) which the court proposes to specify in the order.
Attendance centre requirement.	The attendance centre which the court proposes to specify in the order.

Power to amend limits in requirements

CJIA 2008 Sch.1 para.27⁸¹³: SoS has power to amend limits of certain requirements

para.27(1) - the Secretary of State may by order amend—

- (a) paragraph 10(2) (unpaid work requirement), or
- (b) paragraph 14(2) (curfew requirement),

by substituting, for the maximum number of hours for the time being specified in that provision, such other number of hours as may be specified in the order.

para.27(2) - the Secretary of State may by order amend any of the provisions mentioned in sub-paragraph (3) by substituting, for any period for the time being specified in the provision, such other period as may be specified in the order.

para.27(3) - those provisions are—

- (a) paragraph 14(3) (curfew requirement);
- (b) paragraph 15(2) (exclusion requirement);
- (c) paragraph 17(6) (local authority residence requirement);
- (d) paragraph 18(2) (fostering requirement).

para.27(4) - an order under this paragraph which amends paragraph 18(2) may also make consequential amendments of paragraphs 6(9), 8(9) and 16(2) of Schedule 2.

⁸¹³ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

3.3.3.1.4 Duties when making an order

Duties of the court

CJIA 2008 Sch.1 para.28⁸¹⁴: Family circumstances

para.28 - before making a youth rehabilitation order, the court must obtain and consider information about the offender's family circumstances and the likely effect of such an order on those circumstances.

CJIA 2008 Sch.1 para.29⁸¹⁵: Compatibility of requirements

para.29(1) - before making—

- (a) a youth rehabilitation order imposing two or more requirements, or
 - (b) two or more youth rehabilitation orders in respect of associated offences,
- the court must consider whether, in the circumstances of the case, the requirements to be imposed by the order or orders are compatible with each other.

para.29(2) - sub-paragraph (1) is subject to paragraphs 2, 3(4) and 4(4).

para.29(3) - the court must ensure, as far as practicable, that any requirement imposed by a youth rehabilitation order is such as to avoid—

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

para.29(4) - the Secretary of State may by order provide that sub-paragraph (3) is to have effect with such additional restrictions as may be specified in the order.

CJIA 2008 Sch.1 para.33⁸¹⁶: Requirement to specify local justice area

para.33 - a YRO must specify the local justice area in which the offender resides or will reside

CJIA 2008 Sch.1 para.34⁸¹⁷: Copies of the order

para.34(1) - the court by which any youth rehabilitation order is made must forthwith provide copies of the order—

- (a) to the offender,
- (b) if the offender is aged under 14, to the offender's parent or guardian, and
- (c) to a member of a youth offending team assigned to the court, to an officer of a local probation board assigned to the court or to an officer of a provider of probation services.

⁸¹⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸¹⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸¹⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸¹⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

para.34(2) - sub-paragraph (3) applies where a youth rehabilitation order—

- (a) is made by the Crown Court, or
- (b) is made by a magistrates' court which does not act in the local justice area specified in the order.

para.34(3) - the court making the order must—

- (a) provide to the magistrates' court acting in the local justice area specified in the order—
 - (i) a copy of the order, and
 - (ii) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order, and
- (b) provide a copy of the order to the local probation board acting for that area or (as the case may be) a provider of probation services operating in that area.

para.34(4) - where a youth rehabilitation order imposes any requirement specified in the first column of the following Table, the court by which the order is made must also forthwith provide the person specified in relation to that requirement in the second column of that Table with a copy of so much of the order as relates to that requirement.

Requirement	Person to whom copy of requirement is to be given
An activity requirement specifying a place under paragraph 6(1)(a).	The person in charge of that place.
An activity requirement specifying an activity under paragraph 6(1)(b).	The person in charge of that activity.
An activity requirement specifying a residential exercise under paragraph 6(1)(c).	The person in charge of the place or activity specified under paragraph 6(4) in relation to that residential exercise.
An attendance centre requirement.	The officer in charge of the attendance centre specified under paragraph 12(1).
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender.	The person intended to be protected.
A residence requirement requiring residence with an individual.	The individual specified under paragraph 16(1)(a).
A place of residence requirement (within the meaning of paragraph 16) relating to residence in an institution.	The person in charge of the institution.
A local authority residence requirement.	The local authority specified under paragraph 17(1).
A mental health treatment requirement.	The person in charge of the institution or place specified under sub-paragraph (2)(a) or (b) of paragraph 20, or the person specified under sub-paragraph (2)(c) of that paragraph.

Requirement	Person to whom copy of requirement is to be given
A drug treatment requirement.	The treatment provider specified under paragraph 22(1).
A drug testing requirement.	The treatment provider specified under paragraph 22(1).
An intoxicating substance treatment requirement	The person specified under paragraph 24(1).
An education requirement.	The local authority specified under paragraph 25(2).
An electronic monitoring requirement.	Any person who by virtue of paragraph 26(4) will be responsible for the electronic monitoring.
	Any person without whose consent the requirement could not have been included in the order.

CJA 2003 s.174⁸¹⁸: Duty to give reasons etc.

- s.174(8) - where the offender is under 18 and the court imposes a sentence that may only be imposed in the offender's case if the court is of the opinion mentioned in—
- (a) section 1(4)(a) to (c) of the Criminal Justice and Immigration Act 2008 and section 148(1) of this Act (youth rehabilitation order with intensive supervision and surveillance or with fostering), or
 - (b) section 152(2) of this Act (discretionary custodial sentence),
- the court must state why it is of that opinion.

Duties of the responsible officer

CJA 2008 s.5⁸¹⁹: Responsible officer and offender: duties in relation to the other

- s.5(1) - where a youth rehabilitation order has effect, it is the duty of the responsible officer—
- (a) to make any arrangements that are necessary in connection with the requirements imposed by the order,
 - (b) to promote the offender's compliance with those requirements, and
 - (c) where appropriate, to take steps to enforce those requirements.
- s.5(2) - in subsection (1) "*responsible officer*" does not include a person falling within section 4(1)(a).

⁸¹⁸ Commencement: LASPOA 2012 s.64(2) inserted a new CJA 2003 s.174, in force 3 December 2012, SI 2012/2906 art.2(a).

⁸¹⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(e)

- s.5(3) - in giving instructions in pursuance of a youth rehabilitation order relating to an offender, the responsible officer must ensure, as far as practicable, that any instruction is such as to avoid—
- (a) any conflict with the offender’s religious beliefs,
 - (b) any interference with the times, if any, at which the offender normally works or attends school or any other educational establishment, and
 - (c) any conflict with the requirements of any other youth rehabilitation order to which the offender may be subject.
- s.5(4) - the Secretary of State may by order provide that subsection (3) is to have effect with such additional restrictions as may be specified in the order.
- s.5(5) - an offender in respect of whom a youth rehabilitation order is in force—
- (a) must keep in touch with the responsible officer in accordance with such instructions as the offender may from time to time be given by that officer, and
 - (b) must notify the responsible officer of any change of address.
- s.5(6) - the obligation imposed by subsection (5) is enforceable as if it were a requirement imposed by the order.

3.3.3.1.5 Power to provide for review

CJIA 2008 Sch.1 para.35⁸²⁰: Power to provide for court review of orders

- para.35(1) - the Secretary of State may by order—
- (a) enable or require a court making a youth rehabilitation order to provide for the order to be reviewed periodically by that or another court,
 - (b) enable a court to amend a youth rehabilitation order so as to include or remove a provision for review by a court, and
 - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- para.35(2) - an order under this paragraph may, in particular, make provision in relation to youth rehabilitation orders corresponding to any provision made by sections 191 and 192 of the Criminal Justice Act 2003 (c. 44) (reviews of suspended sentence orders) in relation to suspended sentence orders.
- para.35(3) - an order under this paragraph may repeal or amend any provision of—
- (a) this Part of this Act, or
 - (b) Chapter 1 of Part 12 of the Criminal Justice Act 2003 (general provisions about sentencing).

⁸²⁰ Commencement: 1 April 2009, SI 2009/860 art.2(g)

3.3.3.1.6 Date for compliance with requirements to be specified in order

CJIA 2008 Sch.1 para.32⁸²¹: Date for compliance with requirements to be specified in order

para.32(1) - a youth rehabilitation order must specify a date (“the end date”), not more than 3 years after the date on which the order takes effect, by which all the requirements in it must have been complied with.

para.32(2) - if a youth rehabilitation order imposes two or more different requirements falling within Part 2 of this Schedule, the order may also specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.

para.32(3) - in the case of a youth rehabilitation order with intensive supervision and surveillance, the date specified for the purposes of sub-paragraph (1) must not be earlier than 6 months after the date on which the order takes effect.

para.32(4) - subject to paragraph 10(7) (duration of youth rehabilitation order imposing unpaid work requirement), a youth rehabilitation order ceases to be in force on the end date.

3.3.3.1.7 Further proceedings (Crown Court)

CJIA 2008 Sch.1 para.36⁸²²: Order made by Crown Court: direction in relation to further proceedings

para.36(1) - where the Crown Court makes a youth rehabilitation order, it may include in the order a direction that further proceedings relating to the order be in a youth court or other magistrates’ court (subject to paragraph 7 of Schedule 2).

para.36(2) - in sub-paragraph (1), “*further proceedings*”, in relation to a youth rehabilitation order, means proceedings—

- (a) for any failure to comply with the order within the meaning given by paragraph 1(2)(b) of Schedule 2, or
- (b) on any application for amendment or revocation of the order under Part 3 or 4 of that Schedule.

3.3.3.1.8 Credit for remand time

CJA 2003 s.149⁸²³: Imposing a youth rehabilitation order on offender remanded in custody

s.149(1) - in determining the restrictions on liberty to be imposed by a community order or youth rehabilitation order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

s.149(2) - in subsection (1) “*remanded in custody*” has the meaning given by section 242(2).

⁸²¹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²³ Commencement: 4 April 2005, SI 2005/950 art.2 and Sch.1 para.7. The commencement is of no effect in relation to offences committed before 4 April 2005, SI 2005/950 art.2 and Sch.2 para.5(2)(a).

3.3.3.1.9 Interaction with other sentencing orders

Youth-specific orders

CJIA 2008 Sch.1 para.30⁸²⁴: YRO with a DTO

para.30(2) - subject to [sub-paragraphs (1A) and (2)], a youth rehabilitation order takes effect on the day on which the order is made.

para.30(2) - in particular, if a detention and training order is in force in respect of an offender, a court making a youth rehabilitation order in respect of the offender may order that it is to take effect instead—

- (a) when the period of supervision begins in relation to the detention and training order in accordance with section 103(1)(a) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6), or
- (b) on the expiry of the term of the detention and training order.

PCC(S)A 2000 s.19⁸²⁵: YRO with a referral order

s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.

s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.

s.19(3) - the court—

- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
- (b) may not deal with the offender for any such offence in any of the prohibited ways.

s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—

- (a) imposing a sentence which consists of or includes a youth rehabilitation order on the offender [...]

CJIA 2008 Sch.1 para.30⁸²⁶: YRO with a reparation order

para.30(4)(b) - a court must not make a youth rehabilitation order in respect of an offender at a time when—

- (a) another youth rehabilitation order, or
- (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),

is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

⁸²⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1) and Sch.11 para.11(1)

⁸²⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

PCC(S)A 2000 s.73⁸²⁷: Reparation order

s.73(4) - the court may not make a reparation order if it proposes to impose a custodial sentence, a YRO or a referral order

CJIA 2008 Sch.1 para.30⁸²⁸: YRO where another YRO is in force at the time

para.30(4) - the court shall not make a reparation order in respect of the offender if it proposes—

- (a) to pass on him a custodial sentence; or
- (b) to make in respect of him a youth rehabilitation order or a referral order.

CJIA 2008 Sch.1 para.31⁸²⁹: YRO with another YRO (multiple offences)

para.31(1) - this paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.

para.31(2) - if, in respect of one of the offences, the court makes an order of any of the following kinds—

- (a) a youth rehabilitation order with intensive supervision and surveillance,
- (b) a youth rehabilitation order with fostering, or
- (c) any other youth rehabilitation order,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.

CJIA 2008 Sch.1 para.31⁸³⁰: YRO with a YRO (ISS or Fostering)

para.31(1) - this paragraph applies where the court is dealing with an offender who has been convicted of two or more associated offences.

para.31(2) - if, in respect of one of the offences, the court makes an order of any of the following kinds—

- (a) a youth rehabilitation order with intensive supervision and surveillance,
- (b) a youth rehabilitation order with fostering, or
- (c) any other youth rehabilitation order,

it may not make an order of any other of those kinds in respect of the other offence, or any of the other offences.

General orders

MHA 1983 s.37⁸³¹: Hospital and Guardianship orders

s.37(8) - where the court imposes a hospital or guardianship order, it may not impose a YRO

⁸²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸²⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸²⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸³⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁸³¹ Commencement: 30 September 1983, MHA 1983 s.149(2)

3.3.3.1.10 Breach/Revocation/Amendment

CJIA 2008 s.2⁸³²: Breach, revocation or amendment of youth rehabilitation orders

s.2 - Schedule 2 makes provision about failures to comply with the requirements of youth rehabilitation orders and about the revocation or amendment of such orders.

General

CJIA 2008 Sch.2 para.1⁸³³: Interpretation for the purposes of Schedule 2

para.1(1) - in this Schedule, “*the offender*”, in relation to a youth rehabilitation order, means the person in respect of whom the order is made.

para.1(2) - in this Schedule—

- (a) any reference (however expressed) to an offender’s compliance with a youth rehabilitation order is a reference to the offender’s compliance with—
 - (i) the requirement or requirements imposed by the order, and
 - (ii) if the order imposes an attendance centre requirement, rules made under section 222(1)(d) or (e) of the Criminal Justice Act 2003 (c. 44) (“attendance centre rules”), and
- (b) any reference (however expressed) to the offender’s failure to comply with the order is a reference to any failure of the offender to comply—
 - (i) with a requirement imposed by the order, or
 - (ii) if the order imposes an attendance centre requirement, with attendance centre rules.

para.1(3) - for the purposes of this Schedule—

- (a) a requirement falling within any paragraph of Part 2 of Schedule 1 is of the same kind as any other requirement falling within that paragraph, and
- (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within Part 2 of Schedule 1 to which it relates.

CJIA 2008 Sch.2 para.2⁸³⁴: Orders made on appeal

para.2 - where a youth rehabilitation order has been made on appeal, for the purposes of this Schedule it is to be treated—

- (a) if it was made on an appeal from a magistrates’ court, as having been made by a magistrates’ court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, as having been made by the Crown Court.

⁸³² Commencement: 30 November 2009, SI 2009/3074 art.2(b)

⁸³³ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸³⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

CJIA 2008 Sch.2 para.23⁸³⁵: Restrictions on imposition of intensive supervision and surveillance or fostering

para.23 - Subsection (4), and the provisions mentioned in subsection (6), of section 1 apply in relation to a power conferred by paragraph 6(2)(b), 8(2)(b), 13(4)(b) or 14(4)(b) to impose a requirement as they apply in relation to any power conferred by section 1 or Part 1 of Schedule 1 to make a youth rehabilitation order which includes such a requirement.

Breach: Failure to comply

CJIA 2008 Sch.2 para.3⁸³⁶: Duty to give warning

para.3(1) - If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, the responsible officer must give the offender a warning under this paragraph unless under paragraph 4(1) or (3) the responsible officer causes an information to be laid before a justice of the peace in respect of the failure.

para.3(2) - a warning under this paragraph must—

- (a) describe the circumstances of the failure,
- (b) state that the failure is unacceptable, and
- (c) state that the offender will be liable to be brought before a court—
 - (i) in a case where the warning is given during the warned period relating to a previous warning under this paragraph, if during that period the offender again fails to comply with the order, or
 - (ii) in any other case, if during the warned period relating to the warning, the offender fails on more than one occasion to comply with the order.

para.3(3) - the responsible officer must, as soon as practicable after the warning has been given, record that fact.

para.3(4) - in this paragraph, “*warned period*”, in relation to a warning under this paragraph, means the period of 12 months beginning with the date on which the warning was given.

CJIA 2003 Sch.2 para.4⁸³⁷: Breach

para.4(1) - if the responsible officer—

- (a) has given a warning (“the first warning”) under paragraph 3 to the offender in respect of a youth rehabilitation order,
- (b) during the warned period relating to the first warning, has given another warning under that paragraph to the offender in respect of a failure to comply with the order, and
- (c) is of the opinion that, during the warned period relating to the first warning, the offender has again failed without reasonable excuse to comply with the order,

⁸³⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸³⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸³⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

the responsible officer must cause an information to be laid before a justice of the peace in respect of the failure mentioned in paragraph (c).

para.4(2) - but sub-paragraph (1) does not apply if the responsible officer is of the opinion that there are exceptional circumstances which justify not causing an information to be so laid.

para.4(3) - if—

- (a) the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, and
- (b) sub-paragraph (1) does not apply (in a case not within subparagraph (2)), the responsible officer may cause an information to be laid before a justice of the peace in respect of that failure.

para.4(4) - in this paragraph, “*warned period*” has the same meaning as in paragraph 3.

CJIA 2008 Sch.2 para.5⁸³⁸: Issue of summons or warrant by JP

para.5(1) - if at any time while a youth rehabilitation order is in force it appears on information to a justice of the peace that an offender has failed to comply with a youth rehabilitation order, the justice may—

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

para.5(2) - any summons or warrant issued under this paragraph must direct the offender to appear or be brought—

- (a) if the youth rehabilitation order was made by the Crown Court and does not include a direction under paragraph 36 of Schedule 1, before the Crown Court, and
- (b) in any other case, before the appropriate court.

para.5(3) - in sub-paragraph (2), “*appropriate court*” means—

- (a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and
- (b) if the offender is aged 18 or over, a magistrates' court (other than a youth court) acting in that local justice area.

para.5(4) - in sub-paragraph (3), “*relevant local justice area*” means—

- (a) the local justice area in which the offender resides, or
- (b) if it is not known where the offender resides, the local justice area specified in the youth rehabilitation order.

para.5(5) - sub-paragraphs (6) and (7) apply where the offender does not appear in answer to a summons issued under this paragraph.

⁸³⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.5(6) - if the summons required the offender to appear before the Crown Court, the Crown Court may—

- (a) unless the summons was issued under this sub-paragraph, issue a further summons requiring the offender to appear at the place and time specified in it, or
- (b) in any case, issue a warrant for the arrest of the offender.

para.5(7) - if the summons required the offender to appear before a magistrates' court, the magistrates' court may issue a warrant for the arrest of the offender.

CJIA 2008 Sch.2 para.6⁸³⁹: Powers of magistrates' court

para.6(1) - this paragraph applies where—

- (a) an offender appears or is brought before a youth court or other magistrates' court under paragraph 5, and
- (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.

para.6(2) - the court may deal with the offender in respect of that failure in any one of the following ways—

- (a) by ordering the offender to pay a fine of an amount not exceeding £2,500.
- (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—
 - (i) in addition to, or
 - (ii) in substitution for,any requirement or requirements already imposed by the order;
- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).

para.6(3) - sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).

para.6(4) - in dealing with the offender under sub-paragraph (2), the court must take into account the extent to which the offender has complied with the youth rehabilitation order.

para.6(5) - a fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.6(6) - subject to sub-paragraph (6A), any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.

para.6(6A) - when imposing a requirement under sub-paragraph (2)(b), the court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.

para.6(6B) - a date substituted under sub-paragraph (6A)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;

⁸³⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- (b) subject to that, may fall more than three years after the date on which the order took effect.

para.6(6C) - the power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 8(6A) has previously been exercised in relation to that order.

para.6(6D) - a date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.

para.6(7) - where—

- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
- (b) the youth rehabilitation order does not contain an unpaid work requirement,

paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.6(8) - the court may not under sub-paragraph (2)(b) impose—

- (a) an extended activity requirement, or
- (b) a fostering requirement,

if the order does not already impose such a requirement.

para.6(9) - where—

- (a) the order imposes a fostering requirement (the “original requirement”), and
- (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,

paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.

para.6(10) - where—

- (a) the court deals with the offender under sub-paragraph (2)(b), and
- (b) it would not otherwise have the power to amend the youth rehabilitation order under paragraph 13 (amendment by reason of change of residence),

that paragraph has effect as if references in it to the appropriate court were references to the court which is dealing with the offender.

para.6(11) - where the court deals with the offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.

para.6(12) - sub-paragraphs (13) to (15) apply where—

- (a) the court is dealing with the offender under sub-paragraph (2)(c), and
- (b) the offender has wilfully and persistently failed to comply with a youth rehabilitation order.

para.6(13) - the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).

para.6(14) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and

- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,

the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).

para.6(15) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of sub-paragraph (13) or paragraph 8(12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,

for the purposes of dealing with the offender under sub-paragraph (2)(c), the court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

para.6(16) - an offender may appeal to the Crown Court against a sentence imposed under sub-paragraph (2)(c).

CJIA 2008 Sch.2 para.7⁸⁴⁰: Power of magistrates' court to refer offender to Crown Court

para.7(1) - sub-paragraph (2) applies if—

- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (b) a youth court or other magistrates' court would (apart from that subparagraph) be required, or has the power, to deal with the offender in one of the ways mentioned in paragraph 6(2).

para.7(2) - the court may instead—

- (a) commit the offender in custody, or
- (b) release the offender on bail,

until the offender can be brought or appear before the Crown Court.

para.7(3) - where a court deals with the offender's case under sub-paragraph (2) it must send to the Crown Court—

- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation 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 is admissible as evidence of the failure before the Crown Court.

⁸⁴⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

CJIA 2008 Sch.2 para.8⁸⁴¹ : Powers of Crown Court

para.8(1) - this paragraph applies where—

- (a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 7(2), and
- (b) it is proved to the satisfaction of that court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.

para.8(2) - the Crown Court may deal with the offender in respect of that failure in any one of the following ways—

- (a) by ordering the offender to pay a fine of an amount not exceeding £2,500,
- (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—
 - (i) in addition to, or
 - (ii) in substitution for,any requirement or requirements already imposed by the order;
- (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.

para.8(3) - sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).

para.8(4) - in dealing with the offender under sub-paragraph (2), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order.

para.8(5) - a fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.8(6) - subject to sub-paragraph (6A), any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.

para.8(6A) - when imposing a requirement under sub-paragraph (2)(b), the Crown Court may amend the order to substitute a later date for that specified under paragraph 32(1) of Schedule 1.

para.8(6B) - a date substituted under sub-paragraph (6A)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
- (b) subject to that, may fall more than three years after the date on which the order took effect.

para.8(6C) - the power under sub-paragraph (6A) may not be exercised in relation to an order if that power or the power in paragraph 6(6A) has previously been exercised in relation to that order.

⁸⁴¹ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.8(6D) - a date substituted under sub-paragraph (6A) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.

para.8(7) - where—

- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
- (b) the youth rehabilitation order does not contain an unpaid work requirement,

paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.

para.8(8) - the court may not under sub-paragraph (2)(b) impose—

- (a) an extended activity requirement, or
 - (b) a fostering requirement,
- if the order does not already impose such a requirement.

para.8(9) - where—

- (a) the order imposes a fostering requirement (the “original requirement”), and
- (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,

paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.

para.8(10) - where the Crown Court deals with an offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.

para.8(11) - sub-paragraphs (12) to (14) apply where—

- (a) an offender has wilfully and persistently failed to comply with a youth rehabilitation order; and
- (b) the Crown Court is dealing with the offender under sub-paragraph (2)(c).

para.8(12) - the court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).

para.8(13) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
- (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,

the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).

para.8(14) - if—

- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of paragraph 6(13) or sub-paragraph (12), and
- (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,

for the purposes of dealing with the offender under sub-paragraph (2)(c), the Crown Court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

para.8(15) - in proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the youth rehabilitation order is to be determined by the court and not by the verdict of a jury.

CJIA 2008 Sch.2 para.9⁸⁴²: Restriction of court's powers where treatment is required

para.9(1) - sub-paragraph (2) applies where a youth rehabilitation order imposes any of the following requirements in respect of an offender—

- (a) a mental health treatment requirement;
- (b) a drug treatment requirement;
- (c) an intoxicating substance treatment requirement.

para.9(2) - the offender is not to be treated for the purposes of paragraph 6 or 8 as having failed to comply with the order on the ground only that the offender had refused to undergo any surgical, electrical or other treatment required by that requirement if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

Revocation

CJIA 2008 Sch.2 para.11⁸⁴³: Revocation: powers of appropriate court

para.11(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of any offender,
- (b) the order—
 - (i) was made by a youth court or other magistrates' court, or
 - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (c) the offender or the responsible officer makes an application to the appropriate court under this sub-paragraph.

para.11(2) - if it appears to the appropriate court to be in the interests of justice to do so, having regard to circumstances which have arisen since the order was made, the appropriate court may—

- (a) revoke the order, or
- (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the appropriate court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).

⁸⁴² Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁴³ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- para.11(3) - the circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (2) include the offender's making good progress or responding satisfactorily to supervision or treatment (as the case requires).
- para.11(4) - in dealing with an offender under sub-paragraph (2)(b), the appropriate court must take into account the extent to which the offender has complied with the requirements of the youth rehabilitation order.
- para.11(5) - a person sentenced under sub-paragraph (2)(b) for an offence may appeal to the Crown Court against the sentence.
- para.11(6) - no application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.
- para.11(7) - if an application under sub-paragraph (1) relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the appropriate court.
- para.11(8) - in this paragraph, "*the appropriate court*" means—
- (a) if the offender is aged under 18 when the application under subparagraph (1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
 - (b) if the offender is aged 18 or over at that time, a magistrates' court (other than a youth court) acting in that local justice area.

CJIA 2008 Sch.2 para.12⁸⁴⁴: Revocation: powers of Crown Court

- para.12(1) - this paragraph applies where—
- (a) a youth rehabilitation order is in force in respect of an offender,
 - (b) the order—
 - (i) was made by the Crown Court, and
 - (ii) does not contain a direction under paragraph 36 of Schedule 1, and
 - (c) the offender or the responsible officer makes an application to the Crown Court under this sub-paragraph.
- para.12(2) - if it appears to the Crown Court to be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made, the Crown Court may—
- (a) revoke the order, or
 - (b) both—
 - (i) revoke the order, and
 - (ii) deal with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.

⁸⁴⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.12(3) - the circumstances in which a youth rehabilitation order may be revoked under sub-paragraph (2) include the offender's making good progress or responding satisfactorily to supervision or treatment (as the case requires).

para.12(4) - in dealing with an offender under sub-paragraph (2)(b), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order.

para.12(5) - no application may be made by the offender under sub-paragraph (1) while an appeal against the youth rehabilitation order is pending.

para.12(6) - if an application under sub-paragraph (1) relating to a youth rehabilitation order is dismissed, then during the period of three months beginning with the date on which it was dismissed no further such application may be made in relation to the order by any person except with the consent of the Crown Court.

Amendment

CJIA 2008 Sch.2 para.13⁸⁴⁵: Amendment by appropriate court

para.13(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender,
- (b) the order—
 - (i) was made by a youth court or other magistrates' court, or
 - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (c) an application for the amendment of the order is made to the appropriate court by the offender or the responsible officer.

para.13(2) - if the appropriate court is satisfied that the offender proposes to reside, or is residing, in a local justice area ("the new local justice area") other than the local justice area for the time being specified in the order, the court—

- (a) must, if the application under sub-paragraph (1)(c) was made by the responsible officer, or
- (b) may, in any other case,

amend the youth rehabilitation order by substituting the new local justice area for the area specified in the order.

para.13(3) - sub-paragraph (2) is subject to paragraph 15.

para.13(4) - the appropriate court may by order amend the youth rehabilitation order—

- (a) by cancelling any of the requirements of the order, or
- (b) by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.

para.13(5) - sub-paragraph (4) is subject to paragraph 16.

⁸⁴⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.13(6) - in this paragraph, “*the appropriate court*” means—

- (a) if the offender is aged under 18 when the application under sub-paragraph (1) was made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
- (b) if the offender is aged 18 or over at that time, a magistrates’ court (other than a youth court) acting in that local justice area.

CJIA 2008 Sch.2 para.14⁸⁴⁶: Amendment by Crown Court

para.14(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender,
- (b) the order—
 - (i) was made by the Crown Court, and
 - (ii) does not contain a direction under paragraph 36 of Schedule 1, and
- (c) an application for the amendment of the order is made to the Crown Court by the offender or the responsible officer.

para.14(2) - if the Crown Court is satisfied that the offender proposes to reside, or is residing, in a local justice area (“the new local justice area”) other than the local justice area for the time being specified in the order, the court—

- (a) must, if the application under sub-paragraph (1)(c) was made by the responsible officer, or
- (b) may, in any other case,
amend the youth rehabilitation order by substituting the new local justice area for the area specified in the order.

para.14(3) - sub-paragraph (2) is subject to paragraph 15.

para.14(4) - the Crown Court may by order amend the youth rehabilitation order—

- (a) by cancelling any of the requirements of the order, or
- (b) by replacing any of those requirements with a requirement of the same kind which could have been included in the order when it was made.

para.14(5) - sub-paragraph (4) is subject to paragraph 16.

CJIA 2008 Sch.2 para.15⁸⁴⁷: Exercise of powers under paragraph 13(2) or 14(2): further provisions

para.15(1) - in sub-paragraphs (2) and (3), “*specific area requirement*”, in relation to a youth rehabilitation order, means a requirement contained in the order which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the local justice area specified in the youth rehabilitation order.

para.15(2) - a court may not under paragraph 13(2) or 14(2) amend a youth rehabilitation order which contains specific area requirements unless, in accordance with paragraph 13(4) or, as the case may be, 14(4), it either—

⁸⁴⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁴⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- (a) cancels those requirements, or
- (b) substitutes for those requirements other requirements which can be complied with if the offender resides in the new local justice area mentioned in paragraph 13(2) or (as the case may be) 14(2).

para.15(3) - if—

- (a) the application under paragraph 13(1)(c) or 14(1)(c) was made by the responsible officer, and
 - (b) the youth rehabilitation order contains specific area requirements,
- the court must, unless it considers it inappropriate to do so, so exercise its powers under paragraph 13(4) or, as the case may be, 14(4) that it is not prevented by subparagraph (2) from amending the order under paragraph 13(2) or, as the case may be, 14(2).

para.15(4) - the court may not under paragraph 13(2) or, as the case may be, 14(2) amend a youth rehabilitation order imposing a programme requirement unless the court is satisfied that a programme which—

- (a) corresponds as nearly as practicable to the programme specified in the order for the purposes of that requirement, and
 - (b) is suitable for the offender,
- is available in the new local justice area.

CJIA 2008 Sch.2 para.16⁸⁴⁸: Exercise of powers under paragraph 13(4) or 14(4): further provisions

para.16(1) - subject to paragraph 16A, any requirement imposed under paragraph 13(4)(b) or 14(4)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.

para.16(2) - where—

- (a) a youth rehabilitation order imposes a fostering requirement (the “original requirement”), and
- (b) under paragraph 13(4)(b) or 14(4)(b) a court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,

paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.

para.16(3) - the court may not under paragraph 13(4) or 14(4) impose—

- (a) a mental health treatment requirement,
 - (b) a drug treatment requirement, or
 - (c) a drug testing requirement,
- unless the offender has expressed willingness to comply with the requirement.

⁸⁴⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.16(4) - if an offender fails to express willingness to comply with a mental health treatment requirement, a drug treatment requirement or a drug testing requirement which the court proposes to impose under paragraph 13(4) or 14(4), the court may—

- (a) revoke the youth rehabilitation order, and
- (b) deal with the offender, for the offence in respect of which the order was made, in any way in which that court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).

para.16(5) - in dealing with the offender under sub-paragraph (4)(b), the court must take into account the extent to which the offender has complied with the order.

CJIA 2008 Sch.2 para.16A⁸⁴⁹: Extension of order

para.16A(1) - the appropriate court may, on the application of the offender or the responsible officer, amend a youth rehabilitation order by substituting a later date for that specified under paragraph 32(1) of Schedule 1.

para.16A(2) - a date substituted under sub-paragraph (1)—

- (a) may not fall outside the period of six months beginning with the date previously specified under paragraph 32(1) of Schedule 1;
- (b) subject to that, may fall more than three years after the date on which the order took effect.

para.16A(3) - the power under sub-paragraph (1) may not be exercised in relation to an order if it has previously been exercised in relation to that order.

para.16A(4) - a date substituted under sub-paragraph (1) is to be treated as having been specified in relation to the order under paragraph 32(1) of Schedule 1.

para.16A(5) - in this paragraph “*the appropriate court*” means—

- (a) if the order was made by a youth court or other magistrates’ court, or was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, the court determined under sub-paragraph (6), and
- (b) if the order was made by the Crown Court and does not contain a direction under paragraph 36 of Schedule 1, the Crown Court.

para.16A(6) - the court referred to in sub-paragraph (5)(a) is—

- (a) if the offender is aged under 18 when the application is made, a youth court acting in the local justice area specified in the youth rehabilitation order, and
- (b) if the offender is aged 18 or over at that time, a magistrates’ court (other than a youth court) acting in that local justice area.

⁸⁴⁹ Commencement: 3 December 2012, inserted by LASPOA 2012 s.83(5), SI 2012/2906 art.2(a), the insertion is of no effect in relation to a YRO imposed before the commencement date, SI 2012/2906 art.5(2).

CJIA 2008 Sch.2 para.17⁸⁵⁰: Extension of unpaid work requirement

para.17 - where—

- (a) a youth rehabilitation order imposing an unpaid work requirement is in force in respect of an offender, and
- (b) on the application of the offender or the responsible officer, it appears to the appropriate 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 12 months specified in paragraph 10(6) of Schedule 1.

Breach: Subsequent conviction

CJIA 2008 Sch.2 para.18⁸⁵¹: Powers of magistrates' court following subsequent conviction

para.18(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender, and
- (b) the offender is convicted of an offence (the “further offence”) by a youth court or other magistrates' court (“the convicting court”).

para.18(2) - sub-paragraphs (3) and (4) apply where—

- (a) the youth rehabilitation order—
 - (i) was made by a youth court or other magistrates' court, or
 - (ii) was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
- (b) the convicting court is dealing with the offender for the further offence.

para.18(3) - the convicting court may revoke the order.

para.18(4) - where the convicting court revokes the order under sub-paragraph (3), it may deal with the offender, for the offence in respect of which the order was made, in any way in which it could have dealt with the offender for that offence (had the offender been before that court to be dealt with for the offence).

para.18(5) - the convicting court may not exercise its powers under sub-paragraph (3) or (4) unless it considers that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made.

para.18(6) - in dealing with an offender under sub-paragraph (4), the sentencing court must take into account the extent to which the offender has complied with the order.

para.18(7) - a person sentenced under sub-paragraph (4) for an offence may appeal to the Crown Court against the sentence.

para.18(8) - sub-paragraph (9) applies where—

- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and

⁸⁵⁰ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵¹ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

- (b) the convicting court would, but for that sub-paragraph, deal with the offender for the further offence.

para.18(9) - the convicting court may, instead of proceeding under sub-paragraph (3)—

- (a) commit the offender in custody, or
 - (b) release the offender on bail,
- until the offender can be brought before the Crown Court.

para.18(10) - sub-paragraph (11) applies if the youth rehabilitation order was made by the Crown court and does not contain a direction under paragraph 36 of Schedule 1.

para.18(11) - the convicting court may—

- (a) commit the offender in custody, or
 - (b) release the offender on bail,
- until the offender can be brought or appear before the Crown Court.

para.18(12) - where the convicting court deals with an offender's case under sub-paragraph (9) or (11), it must send to the Crown Court such particulars of the case as may be desirable.

CJIA 2008 Sch.2 para.19⁸⁵²: Powers of Crown Court following subsequent conviction

para.19(1) - this paragraph applies where—

- (a) a youth rehabilitation order is in force in respect of an offender, and
- (b) the offender—
 - (i) is convicted by the Crown Court of an offence, or
 - (ii) is brought or appears before the Crown Court by virtue of paragraph 18(9) or (11) or having been committed by the magistrates' court to the Crown Court for sentence.

para.19(2) - the Crown Court may revoke the order.

para.19(3) - where the Crown Court revokes the order under sub-paragraph (2), the Crown Court may deal with the offender, for the offence in respect of which the order was made, in any way in which the court which made the order could have dealt with the offender for that offence.

para.19(4) - the Crown Court must not exercise its powers under sub-paragraph (2) or (3) unless it considers that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the youth rehabilitation order was made.

para.19(5) - in dealing with an offender under sub-paragraph (3), the Crown Court must take into account the extent to which the offender has complied with the order.

para.19(6) - if the offender is brought or appears before the Crown Court by virtue of paragraph 18(9) or (11), the Crown Court may deal with the offender for the further offence in any way which the convicting court could have dealt with the offender for that offence.

⁸⁵² Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.19(7) - in sub-paragraph (6), “*further offence*” and “*the convicting court*” have the same meanings as in paragraph 18.

Provisions dealing with procedure etc.

CJIA 2008 Sch.2 para.20⁸⁵³: Appearance of offender before the court

para.20(1) - subject to sub-paragraph (2), where, otherwise than on the application of the offender, a court proposes to exercise its powers under Part 3, 4 or 5 of this Schedule, the court—

- (a) must 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.

para.20(2) - sub-paragraph (1) does not apply where a court proposes to make an order—

- (a) revoking a youth rehabilitation order,
- (b) cancelling, or reducing the duration of, a requirement of a youth rehabilitation order, or
- (c) substituting a new local justice area or place for one specified in a youth rehabilitation order.

CJIA 2008 Sch.2 para.21⁸⁵⁴: Warrants

para.21(1) - sub-paragraph (2) applies where an offender is arrested in pursuance of a warrant issued by virtue of this Schedule and cannot be brought immediately before the court before which the warrant directs the offender to be brought (“the relevant court”).

para.21(2) - the person in whose custody the offender is—

- (a) may make arrangements for the offender’s detention in a place of safety for a period of not more than 72 hours from the time of the arrest, and
- (b) must within that period bring the offender before a magistrates’ court.

para.21(3) - in the case of a warrant issued by the Crown Court, section 81(5) of the Supreme Court Act 1981 (c. 54) (duty to bring person before magistrates’ court) does not apply.

para.21(4) - a person who is detained under arrangements made under sub-paragraph (2)(a) is deemed to be in legal custody.

para.21(5) - in sub-paragraph (2)(a) “*place of safety*” has the same meaning as in the Children and Young Persons Act 1933.

para.21(6) - sub-paragraphs (7) to (10) apply where, under sub-paragraph (2), the offender is brought before a court (“the alternative court”) which is not the relevant court.

para.21(7) - if the relevant court is a magistrates’ court—

- (a) the alternative court may—
 - (i) direct that the offender be released forthwith, or

⁸⁵³ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵⁴ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

(ii) remand the offender, and

(b) for the purposes of paragraph (a), section 128 of the Magistrates' Courts Act 1980 (c. 43) (remand in custody or on bail) has effect as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the relevant court.

para.21(8) - if the relevant court is the Crown Court, section 43A of that Act (functions of magistrates' court where a person in custody is brought before it with a view to appearance before the Crown Court) applies as if, in subsection (1)—

(a) the words "issued by the Crown Court" were omitted, and

(b) the reference to section 81(5) of the Supreme Court Act 1981 were a reference to sub-paragraph (2)(b).

para.21(9) - any power to remand the offender in custody which is conferred by section 43A or 128 of the Magistrates' Courts Act 1980 is to be taken to be a power—

(a) if the offender is aged under 18, to remand the offender to accommodation provided by or on behalf of a local authority, and

(b) in any other case, to remand the offender to a prison.

para.21(10) - where the court remands the offender to accommodation provided by or on behalf of a local authority, the court must designate, as the authority which is to receive the offender, the local authority for the area in which it appears to the court that the offender resides.

CJIA 2008 Sch.2 para.22⁸⁵⁵: Adjournment of proceedings

para.22(1) - this paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in any proceedings under this Schedule.

para.22(2) - the court may adjourn the hearing, and, where it does so, may—

(a) direct that the offender be released forthwith, or

(b) remand the offender.

para.22(3) - where the court remands the offender under sub-paragraph (2)—

(a) it must fix the time and place at which the hearing is to be resumed, and

(b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.22(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

(a) it may fix the time and place at which the hearing is to be resumed, but

(b) if it does not do so, must not resume the hearing unless it is satisfied that the offender, the responsible officer and, if the offender is aged under 14, a parent or guardian of the offender have had adequate notice of the time and place of the resumed hearing.

⁸⁵⁵ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

para.22(5) - the powers of a magistrates' court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980 (c. 43).

para.22(6) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

CJIA 2008 Sch.2 para.24⁸⁵⁶: Provision of copies of the order

para.24(1) - where a court makes an order under this Schedule revoking or amending a youth rehabilitation order, the proper officer of the court must forthwith—

- (a) provide copies of the revoking or amending order to the offender and, if the offender is aged under 14, to the offender's parent or guardian,
- (b) provide a copy of the revoking or amending order to the responsible officer,
- (c) in the case of an amending order which substitutes a new local justice area, provide copies of the amending order to—
 - (i) the local probation board acting for that area or (as the case may be) a provider of probation services operating in that area, and
 - (ii) the magistrates' court acting in that area,
- (d) in the case of an amending order which imposes or cancels a requirement specified in the first column of the Table in paragraph 34(4) of Schedule 1, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Table,
- (e) in the case of an order which revokes a requirement specified in the first column of that Table, provide a copy of the revoking order to the person specified in relation to that requirement in the second column of that Table, and
- (f) if the court is a magistrates' court acting in a local justice area other than the area specified in the youth rehabilitation order, provide a copy of the revoking or amending order to a magistrates' court acting in the local justice area specified in the order.

para.24(2) - where under sub-paragraph (1)(c) the proper officer of the court provides a copy of an amending order to a magistrates' court acting in a different area, the officer must also provide to that court such documents and information relating to the case as appear likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.

para.24(3) - in this paragraph "*proper officer*" means—

- (a) in relation to a magistrates' court, the designated officer for the court, and
- (b) in relation to the Crown Court, the appropriate officer.

⁸⁵⁶ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

Powers of the Secretary of State

CJA 2008 Sch.2 para.10⁸⁵⁷: SoS power to amend amounts of fines

para.10(1) - the Secretary of State may by order amend any sum for the time being specified in paragraph 6(2)(a) or 8(2)(a).

para.10(2) - the power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.

para.10(3) - in sub-paragraph (2), “*the relevant date*” means—

- (a) if the sum specified in paragraph 6(2)(a) or 8(2)(a) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
- (b) otherwise, the date on which section 84 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force.

para.10(4) - an order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any youth rehabilitation order made in respect of an offence committed before the fine amendment order comes into force.

CJIA 2008 Sch.2 para.25⁸⁵⁸: Power to amend maximum period of fostering requirement

para.25 - the Secretary of State may by order amend paragraph 6(9), 8(9) or 16(2) by substituting, for—

- (a) the period of 18 months specified in the provision, or
- (b) any other period which may be so specified by virtue of a previous order under this paragraph,

such other period as may be specified in the order.

3.3.3.1.11 Transfer of orders to NI

CJIA 2008 s.3⁸⁵⁹: Transfer of youth rehabilitation orders to Northern Ireland

s.3 - Schedule 3 makes provision about the transfer of youth rehabilitation orders to Northern Ireland.

CJIA 2008 Sch.3

Note: This schedule deals with the situation where a court is considering making a youth rehabilitation order but is satisfied that the offender resides or will reside in Northern Ireland. The schedule makes modifications to the provisions of the CJIA 2008 in relation to youth rehabilitation orders.

⁸⁵⁷ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵⁸ Commencement: 30 November 2009, SI 2009/3074 art.2(n)

⁸⁵⁹ Commencement: 30 November 2009, SI 2009/3074 art.2(c)

3.3.3.1.12 Consequential amendments

CJIA 2008 Sch.4

Note: This schedule sets out consequential amendments to other Acts contingent upon the enactment of the provisions of the CJIA 2008.

3.3.3.2. Referral Order

3.3.3.2.1 Availability and power/duty to order

PCC(S)A 2000 s.16⁸⁶⁰: Duty and power to refer certain young offenders to youth offender panels

- s.16(1) - this section applies where a youth court or other magistrates' court is dealing with a person aged under 18 for an offence and—
- (a) neither the offence nor any connected offence is one for which the sentence is fixed by law;
 - (b) the court is not, in respect of the offence or any connected offence, proposing to impose a custodial sentence on the offender or make a hospital order (within the meaning of the Mental Health Act 1983) in his case; and
 - (c) the court is not proposing to discharge him, whether absolutely or conditionally, in respect of the offence.
- s.16(2) - if—
- (a) the compulsory referral conditions are satisfied in accordance with section 17 below, and
 - (b) referral is available to the court,
- the court shall sentence the offender for the offence by ordering him to be referred to a youth offender panel.
- s.16(3) - if—
- (a) the discretionary referral conditions are satisfied in accordance with section 17 below, and
 - (b) referral is available to the court,
- the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel.
- s.16(4) - for the purposes of this Part an offence is connected with another if the offender falls to be dealt with for it at the same time as he is dealt with for the other offence (whether or not he is convicted of the offences at the same time or by or before the same court).
- s.16(5) - for the purposes of this section referral is available to a court if—
- (a) the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside; and
 - (b) the notice has not been withdrawn.
- s.16(6) - an order under subsection (2) or (3) above is in this Act referred to as a “referral order”.
- s.16(7) - no referral order may be made in respect of any offence committed before the commencement of section 1 of the Youth Justice and Criminal Evidence Act 1999.

⁸⁶⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.2.2 The referral conditions

PCC(S)A 2000 s.17⁸⁶¹: Referral conditions

- s.17(1) - for the purposes of section 16(2) above [and subsection (2) below] ¹ the compulsory referral conditions are satisfied in relation to an offence if [the offence is an offence punishable with imprisonment and] ² the offender—
- (a) pleaded guilty to the offence and to any connected offence; and
 - (b) has never been—
 - (i) convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence, or
 - (ii) convicted by or before a court in another member State of any offence.
- s.17(2) - for the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if—
- (a) the compulsory referral conditions are not satisfied in relation to the offence; and
 - (b) the offender pleaded guilty—
 - (i) to the offence; or
 - (ii) if the offender is being dealt with by the court for the offence and any connected offence, to at least one of those offences.
- s.17(3) - the Secretary of State may by regulations make such amendments of this section as he considers appropriate for altering in any way the descriptions of offenders in the case of which the compulsory referral conditions or the discretionary referral conditions fall to be satisfied for the purposes of section 16(2) or (3) above (as the case may be).
- s.17(4) - any description of offender having effect for those purposes by virtue of such regulations may be framed by reference to such matters as the Secretary of State considers appropriate, including (in particular) one or more of the following—
- (a) the offender's age;
 - (b) how the offender has pleaded;
 - (c) the offence (or offences) of which the offender has been convicted;
 - (d) the offender's previous convictions (if any);
 - (e) how (if at all) the offender has been previously punished or otherwise dealt with by any court; and
 - (f) any characteristics or behaviour of, or circumstances relating to, any person who has at any time been charged in the same proceedings as the offender (whether or not in respect of the same offence).

⁸⁶¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.2.3 Making the order/Contents of the order

PCC(S)A 2000 s.18⁸⁶²: Making of referral orders: general

- s.18(1) - a referral order shall—
- (a) specify the youth offending team responsible for implementing the order;
 - (b) require the offender to attend each of the meetings of a youth offender panel to be established by the team for the offender; and
 - (c) specify the period for which any youth offender contract taking effect between the offender and the panel under section 23 below is to have effect (which must not be less than three nor more than twelve months).
- s.18(2) - the youth offending team specified under subsection (1)(a) above shall be the team having the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.
- s.18(3) - on making a referral order the court shall explain to the offender in ordinary language—
- (a) the effect of the order; and
 - (b) the consequences which may follow—
 - (i) if no youth offender contract takes effect between the offender and the panel under section 23 below; or
 - (ii) if the offender breaches any of the terms of any such contract.
- s.18(3A) - where a court makes a referral order in respect of an offender who is subject to an earlier referral order, the court may direct that any youth offender contract under the later order is not to take effect under section 23 until the earlier order is revoked or discharged.

3.3.3.2.4 Orders made in respect of two or more offences

PCC(S)A 2000 s.18⁸⁶³: Making of referral orders: general

- s.18(4) - subsections (5) to (7) below apply where, in dealing with an offender for two or more connected offences, a court makes a referral order in respect of each, or each of two or more, of the offences.
- s.18(5) - the orders shall have the effect of referring the offender to a single youth offender panel; and the provision made by them under subsection (1) above shall accordingly be the same in each case, except that the periods specified under subsection (1)(c) may be different.
- s.18(6) - the court may direct that the period so specified in either or any of the orders is to run concurrently with or be additional to that specified in the other or any of the others; but in exercising its power under this subsection the court must ensure that the total period for which such a contract as is mentioned in subsection (1)(c) above is to have effect does not exceed twelve months.

⁸⁶² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁶³ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

s.18(7) - each of the orders mentioned in subsection (4) above shall, for the purposes of this Part, be treated as associated with the other or each of the others.

3.3.3.2.5 Parental orders (to attend meetings)

PCC(S)A 2000 s.20⁸⁶⁴: Making of referral orders: attendance of parents etc.

- s.20(1) - a court making a referral order may make an order requiring—
- (a) the appropriate person, or
 - (b) in a case where there are two or more appropriate persons, any one or more of them,
- to attend the meetings of the youth offender panel.
- s.20(2) - where an offender is aged under 16 when a court makes a referral order in his case—
- (a) the court shall exercise its power under subsection (1) above so as to require at least one appropriate person to attend meetings of the youth offender panel; and
 - (b) if the offender falls within subsection (6) below, the person or persons so required to attend those meetings shall be or include a representative of the local authority mentioned in that subsection.
- s.20(3) - the court shall not under this section make an order requiring a person to attend meetings of the youth offender panel—
- (a) if the court is satisfied that it would be unreasonable to do so; or
 - (b) to an extent which the court is satisfied would be unreasonable.
- s.20(4) - except where the offender falls within subsection (6) below, each person who is a parent or guardian of the offender is an “appropriate person” for the purposes of this section.
- s.20(5) - where the offender falls within subsection (6) below, each of the following is an “appropriate person” for the purposes of this section—
- (a) a representative of the local authority mentioned in that subsection; and
 - (b) each person who is a parent or guardian of the offender with whom the offender is allowed to live.
- s.20(6) - an offender falls within this subsection if he is (within the meaning of the Children Act 1989) a child who is looked after by a local authority.
- s.20(7) - if, at the time when a court makes an order under this section—
- (a) a person who is required by the order to attend meetings of a youth offender panel is not present in court, or
 - (b) a local authority whose representative is so required to attend such meetings is not represented in court,
- the court must send him or (as the case may be) the authority a copy of the order forthwith.

⁸⁶⁴ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.2.6 Youth Offender Panels, the Youth Offending Team and the Youth Offender Contract

PCC(S)A 2000 s.29⁸⁶⁵: Functions of YOTs

- s.29(1) - the functions of a youth offending team responsible for implementing a referral order include, in particular, arranging for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel established in pursuance of the order.
- s.29(2) - during the period for which a youth offender contract between a youth offender panel and an offender has effect—
- (a) the specified team shall make arrangements for supervising the offender's compliance with the terms of the contract; and
 - (b) the person who is the member of the panel referred to in section 21(3)(a) above shall ensure that records are kept of the offender's compliance (or non-compliance) with those terms.
- s.29(3) - in implementing referral orders a youth offending team shall have regard to any guidance given from time to time by the Secretary of State.

PCC(S)A 2000 s.21⁸⁶⁶: Establishment of panels

- s.21(1) - where a referral order has been made in respect of an offender (or two or more associated referral orders have been so made), it is the duty of the youth offending team specified in the order (or orders)—
- (a) to establish a youth offender panel for the offender;
 - (b) to arrange for the first meeting of the panel to be held for the purposes of section 23 below; and
 - (c) subsequently to arrange for the holding of any further meetings of the panel required by virtue of section 25 below (in addition to those required by virtue of any other provision of this Part).
- s.21(2) - a youth offender panel shall—
- (a) be constituted,
 - (b) conduct its proceedings, and
 - (c) discharge its functions under this Part (and in particular those arising under section 23 below),
- in accordance with guidance given from time to time by the Secretary of State.
- s.21(3) - at each of its meetings a panel shall, however, consist of at least—
- (a) one member appointed by the youth offending team from among its members; and
 - (b) two members so appointed who are not members of the team.

⁸⁶⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁶⁶ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.21(4) - the Secretary of State may by regulations make provision requiring persons appointed as members of a youth offender panel to have such qualifications, or satisfy such other criteria, as are specified in the regulations.
- s.21(5) - where it appears to the court which made a referral order that, by reason of either a change or a prospective change in the offender's place or intended place of residence, the youth offending team for the time being specified in the order ("the current team") either does not or will not have the function of implementing referral orders in the area in which the offender resides or will reside, the court may amend the order so that it instead specifies the team which has the function of implementing such orders in that area ("the new team").
- s.21(6) - where a court so amends a referral order—
- (a) subsection (1)(a) above shall apply to the new team in any event;
 - (b) subsection (1)(b) above shall apply to the new team if no youth offender contract has (or has under paragraph (c) below been treated as having) taken effect under section 23 below between the offender and a youth offender panel established by the current team;
 - (c) if such a contract has (or has previously under this paragraph been treated as having) so taken effect, it shall (after the amendment) be treated as if it were a contract which had taken effect under section 23 below between the offender and the panel being established for the offender by the new team.
- s.21(7) - references in this Part to the meetings of a youth offender panel (or any such meeting) are to the following meetings of the panel (or any of them)—
- (a) the first meeting held in pursuance of subsection (1)(b) above;
 - (b) any further meetings held in pursuance of section 25 below;
 - (c) any progress meeting held under section 26 below; and
 - (d) the final meeting held under section 27 below.

PCC(S)A 2000 s.22⁸⁶⁷: Attendance at panel meetings

- s.22(1) - the specified team shall, in the case of each meeting of the panel established for the offender, notify—
- (a) the offender, and
 - (b) any person to whom an order under section 20 above applies, of the time and place at which he is required to attend that meeting.
- s.22(2) - if the offender fails to attend any part of such a meeting the panel may—
- (a) adjourn the meeting to such time and place as it may specify; or
 - (b) end the meeting and refer the offender back to the appropriate court; and subsection (1) above shall apply in relation to any such adjourned meeting.
- s.22(2A) - if—
- (a) a parent or guardian of the offender fails to comply with an order under section 20 above (requirement to attend the meetings of the panel), and

⁸⁶⁷ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- (b) the offender is aged under 18 at the time of the failure,
the panel may refer that parent or guardian to a youth court [acting in the local justice area in which it appears to the panel that the offender resides or will reside.
- s.22(3) - one person aged 18 or over chosen by the offender, with the agreement of the panel, shall be entitled to accompany the offender to any meeting of the panel (and it need not be the same person who accompanies him to every meeting).
- s.22(4) - the panel may allow to attend any such meeting—
- (a) any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, in respect of which the offender was referred to the panel;
- (b) any person who appears to the panel to be someone capable of having a good influence on the offender.
- s.22(5) - where the panel allows any such person as is mentioned in subsection (4)(a) above (“the victim”) to attend a meeting of the panel, the panel may allow the victim to be accompanied to the meeting by one person chosen by the victim with the agreement of the panel.

PCC(S)A 2000 s.23⁸⁶⁸: First meeting: Agreement of youth offender contract

- s.23(1) - at the first meeting of the youth offender panel established for an offender the panel shall seek to reach agreement with the offender on a programme of behaviour the aim (or principal aim) of which is the prevention of re-offending by the offender.
- s.23(2) - the terms of the programme may, in particular, include provision for any of the following—
- (a) the offender to make financial or other reparation to any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, for which the offender was referred to the panel;
- (b) the offender to attend mediation sessions with any such victim or other person;
- (c) the offender to carry out unpaid work or service in or for the community;
- (d) the offender to be at home at times specified in or determined under the programme;
- (e) attendance by the offender at a school or other educational establishment or at a place of work;
- (f) the offender to participate in specified activities (such as those designed to address offending behaviour, those offering education or training or those assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);
- (g) the offender to present himself to specified persons at times and places specified in or determined under the programme;
- (h) the offender to stay away from specified places or persons (or both);
- (i) enabling the offender’s compliance with the programme to be supervised and recorded.

⁸⁶⁸ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.23(3) - the programme may not, however, provide—
- (a) for the electronic monitoring of the offender's whereabouts; or
 - (b) for the offender to have imposed on him any physical restriction on his movements.
- s.23(4) - no term which provides for anything to be done to or with any such victim or other affected person as is mentioned in subsection (2)(a) above may be included in the programme without the consent of that person.
- s.23(5) - where a programme is agreed between the offender and the panel, the panel shall cause a written record of the programme to be produced forthwith—
- (a) in language capable of being readily understood by, or explained to, the offender; and
 - (b) for signature by him.
- s.23(6) - once the record has been signed—
- (a) by the offender, and
 - (b) by a member of the panel on behalf of the panel,
- the terms of the programme, as set out in the record, take effect as the terms of a "youth offender contract" between the offender and the panel; and the panel shall cause a copy of the record to be given or sent to the offender.

PCC(S)A 2000 s.24⁸⁶⁹: First meeting: Duration of contract

- s.24(1) - this section applies where a youth offender contract has taken effect under section 23 above between an offender and a youth offender panel.
- s.24(2) - the day on which the contract so takes effect shall be the first day of the period for which it has effect.
- s.24(3) - where the panel was established in pursuance of a single referral order, the length of the period for which the contract has effect shall be that of the period specified under section 18(1)(c) above in the referral order.
- s.24(4) - where the panel was established in pursuance of two or more associated referral orders, the length of the period for which the contract has effect shall be that resulting from the court's directions under section 18(6) above.
- s.24(5) - subsections (3) and (4) above have effect subject to—
- (a) any order under paragraph 9ZD, 11 or 12 of Schedule 1 to this Act extending the length of the period for which the contract has effect; and
 - (b) subsection (6) below.
- s.24(6) - if the referral order, or each of the associated referral orders, is revoked (whether under paragraph 5(2) of Schedule 1 to this Act or by virtue of paragraph 14(2) of that Schedule), the period for which the contract has effect expires at the time when the order or orders is or are revoked unless it has already expired.

⁸⁶⁹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

PCC(S)A 2000 s.25⁸⁷⁰: First meeting: Failure to agree contract

- s.25(1) - where it appears to a youth offender panel to be appropriate to do so, the panel may—
- (a) end the first meeting (or any further meeting held in pursuance of paragraph (b) below) without having reached agreement with the offender on a programme of behaviour of the kind mentioned in section 23(1) above; and
 - (b) resume consideration of the offender's case at a further meeting of the panel.
- s.25(2) - if, however, it appears to the panel at the first meeting or any such further meeting that there is no prospect of agreement being reached with the offender within a reasonable period after the making of the referral order (or orders)—
- (a) subsection (1)(b) above shall not apply; and
 - (b) instead the panel shall refer the offender back to the appropriate court.
- s.25(3) - if at a meeting of the panel—
- (a) agreement is reached with the offender but he does not sign the record produced in pursuance of section 23(5) above, and
 - (b) his failure to do so appears to the panel to be unreasonable,
- the panel shall end the meeting and refer the offender back to the appropriate court.

PCC(S)A 2000 s.26⁸⁷¹: Progress meetings

- s.26(1) - at any time—
- (a) after a youth offender contract has taken effect under section 23 above, but
 - (b) before the end of the period for which the contract has effect,
- the specified team shall, if so requested by the panel, arrange for the holding of a meeting of the panel under this section (“a progress meeting”).
- s.26(2) - the panel may make a request under subsection (1) above if it appears to the panel to be expedient to review—
- (a) the offender's progress in implementing the programme of behaviour contained in the contract; or
 - (b) any other matter arising in connection with the contract.
- s.26(3) - the panel shall make such a request if—
- (a) the offender has notified the panel that—
 - (i) he wishes to seek the panel's agreement to a variation in the terms of the contract; or
 - (ii) he wishes the panel to refer him back to the appropriate court with a view to the referral order (or orders) being revoked on account of a significant change in his circumstances (such as his being taken to live abroad) making compliance with any youth offender contract impractical; or
 - (b) it appears to the panel that the offender is in breach of any of the terms of the contract.

⁸⁷⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁷¹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.26(4) - at a progress meeting the panel shall do such one or more of the following things as it considers appropriate in the circumstances, namely—
- (a) review the offender's progress or any such other matter as is mentioned in subsection (2) above;
 - (b) discuss with the offender any breach of the terms of the contract which it appears to the panel that he has committed;
 - (c) consider any variation in the terms of the contract sought by the offender or which it appears to the panel to be expedient to make in the light of any such review or discussion;
 - (d) consider whether to accede to any request by the offender that he be referred back to the appropriate court.
- s.26(5) - where the panel has discussed with the offender such a breach as is mentioned in subsection (4)(b) above—
- (a) the panel and the offender may agree that the offender is to continue to be required to comply with the contract (either in its original form or with any agreed variation in its terms) without being referred back to the appropriate court; or
 - (b) the panel may decide to end the meeting and refer the offender back to that court.
- s.26(6) - where a variation in the terms of the contract is agreed between the offender and the panel, the panel shall cause a written record of the variation to be produced forthwith—
- (a) in language capable of being readily understood by, or explained to, the offender; and
 - (b) for signature by him.
- s.26(7) - any such variation shall take effect once the record has been signed—
- (a) by the offender; and
 - (b) by a member of the panel on behalf of the panel;
- and the panel shall cause a copy of the record to be given or sent to the offender.
- s.26(8) - if at a progress meeting—
- (a) any such variation is agreed but the offender does not sign the record produced in pursuance of subsection (6) above, and
 - (b) his failure to do so appears to the panel to be unreasonable,
- the panel may end the meeting and refer the offender back to the appropriate court.
- s.26(9) - Section 23(2) to (4) above shall apply in connection with what may be provided for by the terms of the contract as varied under this section as they apply in connection with what may be provided for by the terms of a programme of behaviour of the kind mentioned in section 23(1).
- s.26(10) - where the panel has discussed with the offender such a request as is mentioned in subsection (4)(d) above, the panel may, if it is satisfied that there is (or is soon to be) such a change in circumstances as is mentioned in subsection (3)(a)(ii) above, decide to end the meeting and refer the offender back to the appropriate court.

PCC(S)A 2000 s.27⁸⁷²: Final meeting

- s.27(1) - where the compliance period in the case of a youth offender contract is due to expire, the specified team shall arrange for the holding, before the end of that period, of a meeting of the panel under this section (“the final meeting”).
- s.27(2) - at the final meeting the panel shall—
- (a) review the extent of the offender’s compliance to date with the terms of the contract; and
 - (b) decide, in the light of that review, whether his compliance with those terms has been such as to justify the conclusion that, by the time the compliance period expires, he will have satisfactorily completed the contract;
- and the panel shall give the offender written confirmation of its decision.
- s.27(3) - where the panel decides that the offender’s compliance with the terms of the contract has been such as to justify that conclusion, the panel’s decision shall have the effect of discharging the referral order (or orders) as from the end of the compliance period.
- s.27(4) - otherwise the panel shall refer the offender back to the appropriate court.
- s.27(5) - nothing in section 22(2) above prevents the panel from making the decision mentioned in subsection (3) above in the offender’s absence if it appears to the panel to be appropriate to do that instead of exercising either of its powers under section 22(2).
- s.27(6) - Section 22(2)(a) above does not permit the final meeting to be adjourned (or re-adjourned) to a time falling after the end of the compliance period.
- s.27(7) - in this section “*the compliance period*”, in relation to a youth offender contract, means the period for which the contract has effect in accordance with section 24 above.

3.3.3.2.7 Revocation/Amendment/Extension

Revocation for good progress

PCC(S)A 2000 s.27A⁸⁷³: Revocation of referral order where offender making good progress etc.

- s.27A(1) - this section applies where, having regard to circumstances which have arisen since a youth offender contract took effect under section 23 above, it appears to the youth offender panel to be in the interests of justice for the referral order (or each of the referral orders) to be revoked.
- s.27A(2) - the panel may refer the offender back to the appropriate court requesting it—
- (a) to exercise only the power conferred by sub-paragraph (2) of paragraph 5 of Schedule 1 to this Act to revoke the order (or each of the orders); or
 - (b) to exercise both—
 - (i) the power conferred by that sub-paragraph to revoke the order (or each of the orders); and

⁸⁷² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁷³ Commencement: 27 April 2009, as inserted by CJIA 2008 s.36(2), SI 2009/860 art.2(2)(b).

- (ii) the power conferred by sub-paragraph (4) of that paragraph to deal with the offender for the offence in respect of which the revoked order was made.

s.27A(3) - the circumstances in which the panel may make a referral under subsection (2) above include the offender's making good progress under the contract.

s.27A(4) - where—

- (a) the panel makes a referral under subsection (2) above in relation to any offender and any youth offender contract, and
- (b) the appropriate court decides not to exercise the power conferred by paragraph 5(2) of Schedule 1 to this Act in consequence of that referral,

the panel may not make a further referral under that subsection in relation to that offender and contract during the relevant period except with the consent of the appropriate court.

s.27A(5) - in subsection (4) above "*the relevant period*" means the period of 3 months beginning with the date on which the appropriate court made the decision mentioned in paragraph (b) of that subsection.

Extension of contract

PCC(S)A 2000 s.27B⁸⁷⁴: Extension of period for which young offender contract has effect

s.27B(1) - this section applies where at any time—

- (a) a youth offender contract has taken effect under section 23 above for a period which is less than twelve months;
- (b) that period has not ended; and
- (c) having regard to circumstances which have arisen since the contract took effect, it appears to the youth offender panel to be in the interests of justice for the length of that period to be extended.

s.27B(2) - the panel may refer the offender back to the appropriate court requesting it to extend the length of that period.

s.27B(3) - the requested period of extension must not exceed three months

PCC(S)A 2000 Sch.1 para.9ZB⁸⁷⁵: Introductory

para.9ZB(1) - this Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 27B of this Act with a view to the court extending the period for which the offender's youth offender contract has effect.

para.9ZB(2) - for the purposes of this Part of this Schedule and that section the appropriate court is—

- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) the offender first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and

⁸⁷⁴ Commencement: 27 April 2009, as inserted by CJIA 2008 s.37(2), SI 2009/860 art.2(2)(c).

⁸⁷⁵ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

- (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

PCC(S)A 2000 Sch.1 para.9ZC⁸⁷⁶: Mode of referral back to court

para.9ZC - the panel shall make the referral by sending a report to the appropriate court explaining why the defendant is being referred

PCC(S)A 2000 Sch.1 para.9ZD⁸⁷⁷: Power of court

para.9ZD(1) - if it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the contract took effect, the court may make an order extending the length of the period for which the contract has effect.

para.9ZD(2) - an order under sub-paragraph (1) above—

- (a) must not extend that period by more than three months; and
- (b) must not so extend that period as to cause it to exceed twelve months.

para.9ZD(3) - in deciding whether to make an order under sub-paragraph (1) above, the court shall have regard to the extent of the offender's compliance with the terms of the contract.

para.9ZD(4) - the court may not make an order under sub-paragraph (1) above unless—

- (a) the offender is present before it; and
- (b) the contract has effect at the time of the order.

PCC(S)A 2000 Sch.1 para.9ZE⁸⁷⁸: Supplementary

para.9ZE - the following paragraphs of Part 1 of this Schedule apply for the purposes of this Part of this Schedule as they apply for the purposes of that Part—

- (a) paragraph 3 (bringing the offender before the court);
- (b) paragraph 4 (detention and remand of arrested offender); and
- (c) paragraph 9ZA (power to adjourn hearing and remand offender).

Amending order

PCC(S)A 2000 s.21⁸⁷⁹: Amending order because of change of residence

s.21(5) - where it appears to the court which made a referral order that, by reason of either a change or a prospective change in the offender's place or intended place of residence, the youth offending team for the time being specified in the order ("the current team") either does not or will not have the function of implementing referral orders in the area in which the offender resides or will reside, the court may amend the order so that it instead specifies the team which has the function of implementing such orders in that area ("the new team").

⁸⁷⁶ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

⁸⁷⁷ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

⁸⁷⁸ Commencement: 27 April 2009, inserted by CJIA 2008 s.37(3), SI 2009/860 art.2(2)(c)

⁸⁷⁹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- s.21(6) - where a court so amends a referral order—
- (a) subsection (1)(a) above shall apply to the new team in any event;
 - (b) subsection (1)(b) above shall apply to the new team if no youth offender contract has (or has under paragraph (c) below been treated as having) taken effect under section 23 below between the offender and a youth offender panel established by the current team;
 - (c) if such a contract has (or has previously under this paragraph been treated as having) so taken effect, it shall (after the amendment) be treated as if it were a contract which had taken effect under section 23 below between the offender and the panel being established for the offender by the new team.

3.3.3.2.8 Referral back to court for failure to comply or subsequent conviction

PCC(S)A 2000 s.28⁸⁸⁰: Offender or parent referred to court: Offender convicted while subject to referral order

- s.28 - Schedule 1 to this Act, which—
- (a) in Parts 1 and 1ZA makes provision for what is to happen when a youth offender panel refers an offender back to the appropriate court; and
 - (aa) in Part 1A makes provision for what is to happen when a youth offender panel refers a parent or guardian to the court under section 22(2A) above, and
 - (b) in Part II makes provision for what is to happen when an offender is convicted of further offences while for the time being subject to a referral order,
- shall have effect.

Referral back to court due to failure to comply etc.

PCC(S)A 2000 Sch.1 para.1⁸⁸¹: Introductory

para.1(1) - this Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under [section 22(2), 25(2) or (3), 26(5), (8) or (10), 27(4) or 27A(2)] of this Act.

para.1(2) - for the purposes of this Part of this Schedule and the provisions mentioned in subparagraph (1) above the appropriate court is—

- (a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) he first appears before the court, a youth court acting in the local justice area in which it appears to the youth offender panel that the offender resides or will reside; and
- (b) otherwise, a magistrates' court (other than a youth court) acting in that area.

PCC(S)A 2000 Sch.1 para.2⁸⁸²: Mode of referral back to court

para.2 - the panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

⁸⁸⁰ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁸⁸¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁸² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

PCC(S)A 2000 Sch.1 para.3⁸⁸³: Bringing the offender before the court

para.3(1) - where the appropriate court receives such a report, the court shall cause the offender to appear before it.

para.3(2) - for the purpose of securing the attendance of the offender before the court, a justice acting in the local justice area in which the court acts may—

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

para.3(3) - any summons or warrant issued under sub-paragraph (2) above shall direct the offender to appear or be brought before the appropriate court.

PCC(S)A 2000 Sch.1 para.4⁸⁸⁴: Detention and remand of offender

para.4(1) - where the offender is arrested in pursuance of a warrant under paragraph 3(2) above and cannot be brought immediately before the appropriate court—

- (a) the person in whose custody he is may make arrangements for his detention in a place of safety (within the meaning given by section 107(1) of the Children and Young Persons Act 1933) for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and
- (b) that person shall within that period bring him before a court which—
 - (i) if he is under the age of 18 when he is brought before the court, shall be a youth court; and
 - (ii) if he has then attained that age, shall be a magistrates' court other than a youth court.

para.4(2) - sub-paragraphs (3) to (5) below apply where the court before which the offender is brought under sub-paragraph (1)(b) above ("the alternative court") is not the appropriate court.

para.4(3) - the alternative court may direct that he is to be released forthwith or remand him.

para.4(4) - Section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) shall have effect where the alternative court has power under sub-paragraph (3) above to remand the offender as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.

para.4(5) - that section shall have effect where the alternative court has power so to remand him, or the appropriate court has (by virtue of sub-paragraph (4) above) power to further remand him, as if in subsection (1) there were inserted after paragraph (c)

"or

(d) if he is aged under 18, remand him to accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989) and, if it does so, shall

⁸⁸³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁸⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

designate as the authority who are to receive him the local authority for the area in which it appears to the court that he resides or will reside;”.

PCC(S)A 2000 Sch.1 para.5⁸⁸⁵: Power of court where it upholds the panel’s decision

para.5(1) - if it is proved to the satisfaction of the appropriate court as regards any decision of the panel which resulted in the offender being referred back to the court—

- (a) that, so far as the decision relied on any finding of fact by the panel, the panel was entitled to make that finding in the circumstances, and
- (b) that, so far as the decision involved any exercise of discretion by the panel, the panel reasonably exercised that discretion in the circumstances,

the court may exercise the power conferred by sub-paragraph (2) below.

para.5(2) - that power is a power to revoke the referral order (or each of the referral orders).

para.5(3) - the revocation under sub-paragraph (2) above of a referral order has the effect of revoking any related order under paragraphs 9ZD or 10 below.

para.5(4) - where any order is revoked under sub-paragraph (2) above or by virtue of sub-paragraph (3) above, the appropriate court may deal with the offender in accordance with sub-paragraph (5) below for the offence in respect of which the revoked order was made.

para.5(5) - in so dealing with the offender for such an offence, the appropriate court—

- (a) may deal with him in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order; and
- (b) shall have regard to—
 - (i) the circumstances of his referral back to the court; and
 - (ii) where a contract has taken effect under section 23 of this Act between the offender and the panel, the extent of his compliance with the terms of the contract.

para.5(6) - the appropriate court may not exercise the powers conferred by sub-paragraph (2) or (4) above unless the offender is present before it; but those powers are exercisable even if, in a case where a contract has taken effect under section 23, the period for which the contract has effect has expired (whether before or after the referral of the offender back to the court).

PCC(S)A 2000 Sch.1 para.6⁸⁸⁶: Appeal

para.6 - where the court in exercise of the power conferred by paragraph 5(4) above deals with the offender for an offence, the offender may appeal to the Crown Court against the sentence.

⁸⁸⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁸⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

PCC(S)A 2000 Sch.1 para.6A⁸⁸⁷: Power of court to impose fine or extend period for which contract has effect

para.6A(1) - this paragraph applies where—

- (a) an offender has been referred back to the appropriate court under section 22(2), 26(5) or 27(4), and
- (b) it is proved to the satisfaction of the court that the offender has failed, without reasonable excuse, to comply with the terms of a contract under section 23.

para.6A(2) - if the court does not revoke the order under paragraph 5 it may—

- (a) order the offender to pay a fine of an amount not exceeding £2,500, or
- (b) make an order extending the length of the period for which the contract under section 23 has effect.

para.6A(3) - the court may not extend the length of the period for which the contract has effect so that it becomes longer than 12 months.

para.6A(4) - if the period for which the contract has effect has expired (whether before or after the referral of the offender back to court) the court—

- (a) may make an order under sub-paragraph (2)(a), but
- (b) may not make an order under sub-paragraph (2)(b).

para.6A(5) - the court may not exercise a power under sub-paragraph (2) unless the offender is present before it.

para.6A(6) - a fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

para.6A(7) - the Secretary of State may by order amend any sum for the time being specified in sub-paragraph (2)(a).

PCC(S)A 2000 Sch.1 para.7⁸⁸⁸: Court not revoking referral order(s)

para.7(1) - this paragraph applies—

- (a) where the appropriate court decides that the matters mentioned in paragraphs (a) and (b) of paragraph 5(1) above have not been proved to its satisfaction; or
- (b) where, although by virtue of paragraph 5(1) above the appropriate court—
 - (i) is able to exercise the power conferred by paragraph 5(2) above, or
 - (ii) would be able to do so if the offender were present before it,the court (for any reason) decides not to exercise that power.

para.7(2) - if either—

- (a) no contract has taken effect under section 23 of this Act between the offender and the panel, or

⁸⁸⁷ Commencement: 13 April 2015, as inserted by CJA 2015 s.43, SI 2015/778 art.3 and Sch.1 para.34.

⁸⁸⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) a contract has taken effect under that section but the period for which it has effect has not expired,

the offender shall continue to remain subject to the referral order (or orders) in all respects as if he had not been referred back to the court (subject to any order under paragraph 6A(2)(b)).

para.7(3) - if—

- (a) a contract had taken effect under section 23 of this Act, but
- (b) the period for which it has effect has expired (otherwise than by virtue of section 24(6)),

the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

PCC(S)A 2000 Sch.1 para.8⁸⁸⁹: Exception where court is satisfied as to completion of contract

para.8 - if, in a case where the offender is referred back to the court under section 27(4) of this Act, the court decides (contrary to the decision of the panel) that the offender's compliance with the terms of the contract has, or will have, been such as to justify the conclusion that he has satisfactorily completed the contract, the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

PCC(S)A 2000 Sch.1 para.9⁸⁹⁰: Discharge of extension orders

para.9 - the discharge under paragraph 7(3) or 8 above of a referral order has the effect of discharging any related order under paragraphs 9ZD or 10 below.

PCC(S)A 2000 Sch.1 para.9ZA⁸⁹¹: Power to adjourn hearing and remand offender

para.9ZA(1) - this paragraph applies to any hearing relating to an offender held by a youth court or other magistrates' court in proceedings under this Part of this Schedule.

para.9ZA(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.9ZA(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.9ZA(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but

⁸⁸⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁹⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁸⁹¹ Commencement: 30 November 2009, inserted by CJA 2008 Sch.4 para.107, SI 2009/3074 art.2(p)(xv)

- (b) if it does not do so, it must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph (5) have had adequate notice of the time and place for the resumed hearing.

para.9ZA(5) - the persons referred to in sub-paragraph (4)(b) are—

- (a) the offender,
- (b) if the offender is aged under 14, a parent or guardian of the offender, and
- (c) a member of the youth offending team specified under section 18(1)(a) as responsible for implementing the order.

para.9ZA(6) - if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority.

para.9ZA(7) - in sub-paragraph (6)—

“local authority” has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,

“parental responsibility” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and

“social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.

para.9ZA(8) - the powers of a magistrates’ court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates’ Courts Act 1980.

para.9ZA(9) - this paragraph—

- (a) applies to any hearing in proceedings under this Part of this Schedule in place of section 10 of the Magistrates’ Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

Referral of parent or guardian for breach of section 20 order: Sch.1 Part 1A

PCC(S)A 2000 Sch.1 para.9A⁸⁹²: Introductory

para.9A(1) - this Part of this Schedule applies where, under section 22(2A) of this Act, a youth offender panel refers an offender’s parent or guardian to a youth court.

para.9A(2) - in this Part of this Schedule—

- (a) *“the offender”* means the offender whose parent or guardian is referred under section 22(2A);
- (b) *“the parent”* means the parent or guardian so referred; and
- (c) *“the youth court”* means a youth court as mentioned in section 22(2A).

⁸⁹² Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

PCC(S)A 2000 Sch.1 para.9B⁸⁹³: Mode of referral to court

para.9B - the panel shall make the referral by sending a report to the youth court explaining why the parent is being referred to it.

PCC(S)A 2000 Sch.1 para.9C⁸⁹⁴: Bringing the parent before the court

para.9C(1) - where the youth court receives such a report it shall cause the parent to appear before it.

para.9C(2) - for the purpose of securing the attendance of the parent before the court, a justice acting in the local justice area in which the court acts may—

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

para.9C(3) - any summons or warrant issued under sub-paragraph (2) above shall direct the parent to appear or be brought before the youth court.

PCC(S)A 2000 Sch.1 para.9D⁸⁹⁵: Power of the court to make a parenting order: Application of supplemental provisions

para.9D(1) - where the parent appears or is brought before the youth court under paragraph 9C above, the court may make a parenting order in respect of the parent if—

- (a) it is proved to the satisfaction of the court that the parent has failed without reasonable excuse to comply with the order under section 20 of this Act; and
- (b) the court is satisfied that the parenting order would be desirable in the interests of preventing the commission of any further offence by the offender.

para.9D(2) - a parenting order is an order which requires the parent—

- (a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and
- (b) subject to sub-paragraph (4) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

para.9D(3) - the requirements that may be specified under sub-paragraph (2)(a) above are those which the court considers desirable in the interests of preventing the commission of any further offence by the offender.

para.9D(4) - a parenting order under this paragraph may, but need not, include a requirement mentioned in subsection (2)(b) above in any case where a parenting order under this paragraph or any other enactment has been made in respect of the parent on a previous occasion.

⁸⁹³ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁴ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁵ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

para.9D(5) - a counselling or guidance programme which a parent is required to attend by virtue of subsection (2)(b) above may be or include a residential course but only if the court is satisfied—

- (a) that the attendance of the parent at a residential course is likely to be more effective than his attendance at a nonresidential course in preventing the commission of any further offence by the offender, and
- (b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

para.9D(6) - before making a parenting order under this paragraph where the offender is aged under 16, the court shall obtain and consider information about his family circumstances and the likely effect of the order on those circumstances.

para.9D(7) - Sections 8(3) and (8), 9(3) to (7) and 18(3) and (4) of the Crime and Disorder Act 1998 apply in relation to a parenting order made under this paragraph as they apply in relation to any other parenting order.

PCC(S)A 2000 Sch.1 para.9E⁸⁹⁶: Appeals

para.9E(1) - an appeal shall lie to the Crown Court against the making of a parenting order under paragraph 9D above.

para.9E(2) - Subsections (2) and (3) of section 10 of the Crime and Disorder Act 1998 (appeals against parenting orders) apply in relation to an appeal under this paragraph as they apply in relation to an appeal under subsection (1)(b) of that section.

PCC(S)A 2000 Sch.1 para.9F⁸⁹⁷: Effect on section 20 order

para.9F(1) - the making of a parenting order under paragraph 9D above is without prejudice to the continuance of the order under section 20 of this Act.

para.9F(2) - Section 63(1) to (4) of the Magistrates' Courts Act 1980 (power of magistrates' court to deal with person for breach of order, etc) apply (as well as section 22(2A) of this Act and this Part of this Schedule) in relation to an order under section 20 of this Act.

Referral back to court due to further convictions whilst subject to a referral

PCC(S)A 2000 Sch.1 para.10⁸⁹⁸: Extension of referral for further offences

para.10(1) - this paragraph applies where—

- (a) an offender aged under 18 is subject to referral, and
- (b) a relevant court is dealing with the offender for an offence in relation to which paragraphs (a) to (c) of section 16(1) apply.

para.10(2) - the relevant court may sentence the offender for the offence by making an order extending any compliance period.

⁸⁹⁶ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁷ Commencement: 27 February 2004, inserted by CJA 2003 Sch.34 para.6, SI 2004/81 art.5(2)(d).

⁸⁹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

para.10(3) - the relevant court may not extend the length of a compliance period so that it becomes longer than 12 months.

para.10(4) - in this paragraph and paragraph 13 “*relevant court*” means a youth court or other magistrates’ court.

PCC(S)A 2000 Sch.1 para.13⁸⁹⁹: Paras 11 and 12: Supplementary

para.13(2) - sub-paragraphs (3) to (5) below apply where the relevant court makes an order under paragraph 10 in respect of an offence; but sub-paragraphs (3) to (5) do not affect the exercise of any power to deal with the offender conferred by paragraph 5 or 14 of this Schedule.

para.13(3) - the relevant court may not deal with the offender for that offence in any of the prohibited ways specified in section 19(4) of this Act.

para.13(4) - the relevant court—

- (a) shall, in respect of any connected offence, either—
 - (i) sentence the offender by making an order under the same paragraph; or
 - (ii) make an order discharging him absolutely; and
- (b) may not deal with the offender for any connected offence in any of those prohibited ways.

para.13(5) - the relevant court may not, in connection with the conviction of the offender for the offence or any connected offence, make any such order as is mentioned in section 19(5) of this Act.

para.13(8) - the Secretary of State may by regulations make such amendments of paragraph 10 above and this paragraph as he considers appropriate for altering in any way the descriptions of offenders in the case of which an order extending the compliance period may be made; and subsection (4) of section 17 of this Act shall apply in relation to regulations under this sub-paragraph as it applies in relation to regulations under subsection (3) of that section.

PCC(S)A 2000 Sch.1 para.14⁹⁰⁰: Further convictions which lead to revocation of referral

para.14(1) - this paragraph applies where, at a time when an offender is subject to referral, a court in England and Wales deals with him for an offence (whether committed before or after he was referred to the panel) by making an order other than—

- (a) an order under paragraph 10 above; or
- (b) an order discharging him, whether absolutely or conditionally.

para.14(2) - the court may revoke the referral order (or any one or more of the referral orders) if it appears to the court to be in the interests of justice to do so.

para.14(2A) - the revocation of a referral order under sub-paragraph (2) has the effect of revoking any related order under paragraph 9ZD or 10.

⁸⁹⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

para.14(3) - where any order is revoked by virtue of sub-paragraph (2) above, the court may, if appears to the court that it would be in the interests of justice to do so, deal with the offender for the offence in respect of which the revoked order was made in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order.

para.14(4) - when dealing with the offender under sub-paragraph (3) above the court shall, where a contract has taken effect between the offender and the panel under section 23 of this Act, have regard to the extent of his compliance with the terms of the contract.

PCC(S)A 2000 Sch.1 para.15⁹⁰¹ : Interpretation

para.15(1) - for the purposes of this Part of this Schedule an offender is for the time being subject to referral if—

- (a) a referral order has been made in respect of him and that order has not, or
- (b) two or more referral orders have been made in respect of him and any of those orders has not,

been discharged (whether by virtue of section 27(3) of this Act or under paragraph 7(3) or 8 above) or revoked (whether under paragraph 5(2) above or by virtue of paragraph 14(2) above).

para.15(2) - in this Part of this Schedule “*compliance period*”, in relation to an offender who is for the time being subject to referral, means the period for which (in accordance with section 24 of this Act) any youth offender contract taking effect in his case under section 23 of this Act has (or would have) effect.

3.3.3.2.9 Interaction with other sentencing orders

PCC(S)A 2000 s.19⁹⁰² : Making of referral orders: effect on court’s other sentencing powers

s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.

s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.

s.19(3) - the court—

- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
- (b) may not deal with the offender for any such offence in any of the prohibited ways.

s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—

- (a) imposing a sentence which consists of or includes a youth rehabilitation order on the offender;
- (b) ordering him to pay a fine;
- (ba) making an order under section 1(2A) of the Street Offences Act 1959 in respect of the offender;
- (c) making a reparation order in respect of him; and

⁹⁰¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰² Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

- (d) making an order discharging him conditionally.
- s.19(5) - the court may not make, in connection with the conviction of the offender for the offence or any connected offence—
 - (a) an order binding him over to keep the peace or to be of good behaviour;
 - (b) an order under section 150 below (binding over of parent or guardian).
- s.19(6) - subsections (2), (3) and (5) above do not affect the exercise of any power to deal with the offender conferred by paragraph 5 (offender referred back to court by panel) or paragraph 14 (powers of a court where offender convicted while subject to referral) of Schedule 1 to this Act.
- s.19(7) - where section 16(2) above requires a court to make a referral order, the court may not under section 1 above defer passing sentence on him, but section 16(2) and subsection (3)(a) above do not affect any power or duty of a magistrates' court under—
 - (a) section 8 above (remission to youth court, or another such court, for sentence);
 - (b) section 10(3) of the Magistrates' Courts Act 1980 (adjournment for inquiries); or
 - (c) section 35, 38, 43 or 44 of the Mental Health Act 1983 (remand for reports, *interim* hospital orders and committal to Crown Court for restriction order).

MHA 1983 s.37⁹⁰³: Hospital and guardianship orders

- s.37(8) - when imposing a hospital order the court shall not impose a referral order

CDA 1998 s.9: Parenting orders: Supplemental

- s.9(1) - where a person under the age of 16 is convicted of an offence, the court by or before which he is so convicted—
 - (a) if it is satisfied that the relevant condition is fulfilled, shall make a parenting order; and
 - (b) if it is not so satisfied, shall state in open court that it is not and why it is not.
- s.9(1A) - the requirements of subsection (1) do not apply where the court makes a referral order in respect of the offence.

3.3.3.2.10 Procedural, interpretation and supplementary provisions

PCC(S)A 2000 s.30⁹⁰⁴: Regulations under Part 3

- s.30(1) - any power of the Secretary of State to make regulations under section 17(3) or 21(4) above or paragraph 13(8) of Schedule 1 to this Act shall be exercisable by statutory instrument.
- s.30(2) - a statutory instrument containing any regulations under section 21(4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- s.30(3) - no regulations shall be made under—
 - (a) section 17(3), or

⁹⁰³ Commencement: 30 September 1983, MHA 1983 s.149(2)

⁹⁰⁴ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

(b) paragraph 13(8) of Schedule 1,

unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament.

s.30(4) - any regulations made by the Secretary of State under section 17(3) or 21(4) or paragraph 13(8) of Schedule 1 may make different provision for different cases, circumstances or areas and may contain such incidental, supplemental, saving or transitional provisions as the Secretary of State thinks fit.

PCC(S)A 2000 s.31⁹⁰⁵: Rules of court

s.31 - Criminal Procedure Rules may make such provision as appears to the Criminal Procedure Rule Committee to be necessary or expedient for the purposes of this Part (and nothing in this section shall be taken to affect the generality of any enactment conferring power to make such rules).

PCC(S)A 2000 s.32⁹⁰⁶: Definitions

s.32 - in this Part—

“*the appropriate court*” shall be construed in accordance with paragraph 1(2) of Schedule 1 to this Act;

“*associated*”, in relation to referral orders, shall be construed in accordance with section 18(7) above;

“*connected*”, in relation to offences, shall be construed in accordance with section 16(4) above;

“*meeting*”, in relation to a youth offender panel, shall be construed in accordance with section 21(7) above;

“*the specified team*”, in relation to an offender to whom a referral order applies (or two or more associated referral orders apply), means the youth offending team for the time being specified in the order (or orders).

⁹⁰⁵ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁹⁰⁶ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

3.3.3.3. Reparation Order

3.3.3.3.1 General

Definitions etc.

PCC(S)A 2000 s.73⁹⁰⁷: Reparation orders

- s.73(2) - an order under subsection (1) above is in this Act referred to as a “*reparation order*”.
- s.73(3) - in this section and section 74 below “*make reparation*”, in relation to an offender, means make reparation for the offence otherwise than by the payment of compensation; and the requirements that may be specified in a reparation order are subject to section 74(1) to (3).

PCC(S)A 2000 s.74⁹⁰⁸: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(5) - in this Act “*responsible officer*”, in relation to an offender subject to a reparation order, means one of the following who is specified in the order, namely—
- (a) an officer of a local probation board or an officer of a provider of probation services (as the case may be);
 - (b) a social worker of a local authority;
 - (c) a member of a youth offending team.
- s.74(6) - where a reparation order specifies an officer of a local probation board under subsection (5) above, the officer specified must be an officer appointed for or assigned to the local justice area named in the order.
- s.74(6A) - where a reparation order specifies an officer of a provider of probation services under subsection (5) above, the officer specified must be an officer acting in the local justice area named in the order.
- s.74(7) - where a reparation order specifies under that subsection—
- (a) a social worker of a local authority, or
 - (b) a member of a youth offending team,
- the social worker or member specified must be a social worker of, or a member of a youth offending team established by, the local authority within whose area it appears to the court that the offender resides or will reside.

Reparation to be supervised

PCC(S)A 2000 s.74⁹⁰⁹: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(8) - any reparation required by a reparation order—
- (a) shall be made under the supervision of the responsible officer; and

⁹⁰⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹⁰⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) shall be made within a period of three months from the date of the making of the order.

3.3.3.3.2 Power and availability

Discretionary power upon conviction

PCC(S)A 2000 s.73⁹¹⁰: Reparation orders

s.73(1) - where a child or young person (that is to say, any person aged under 18) is convicted of an offence other than one for which the sentence is fixed by law, the court by or before which he is convicted may make an order requiring him to make reparation specified in the order—

- (a) to a person or persons so specified; or
- (b) to the community at large;

and any person so specified must be a person identified by the court as a victim of the offence or a person otherwise affected by it.

Need for consent of victim etc.

PCC(S)A 2000 s.74⁹¹¹: Requirements and provisions of reparation order, and obligations of person subject to it

s.74(1) - a reparation order shall not require the offender—

- (a) to work for more than 24 hours in aggregate; or
- (b) to make reparation to any person without the consent of that person.

3.3.3.3.3 Making the order

Length of the order

PCC(S)A 2000 s.74⁹¹²: Requirements and provisions of reparation order, and obligations of person subject to it

s.74(1) - a reparation order shall not require the offender—

- (a) to work for more than 24 hours in aggregate; or
- (b) to make reparation to any person without the consent of that person.

s.74(8) - any reparation required by a reparation order—

- (a) shall be made under the supervision of the responsible officer; and
- (b) shall be made within a period of three months from the date of the making of the order.

⁹¹⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹² Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Requirements specified under the order

PCC(S)A 2000 s.74⁹¹³: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(2) - subject to subsection (1) above, requirements specified in a reparation order 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 one or more offences associated with it.
- s.74(3) - requirements so specified 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 youth community order to which he may be subject; and
 - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

Duty to consider written report by YOT etc.

PCC(S)A 2000 s.73⁹¹⁴: Reparation orders

- s.73(5) - before making a reparation order, a court shall obtain and consider a written report by [an officer of a local probation board, an officer of a provider of probation services, a social worker of a local authority or a member of a youth offending team indicating—
- (a) the type of work that is suitable for the offender; and
 - (b) the attitude of the victim or victims to the requirements proposed to be included in the order.

Arrangements must be in place

PCC(S)A 2000 s.73⁹¹⁵: Reparation orders

- s.73(6) - the court shall not make a reparation order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be named in the order under section 74(4) below and the notice has not been withdrawn.

Duty to give reasons where not making an order

PCC(S)A 2000 s.73⁹¹⁶: Reparation orders

- s.73(8) - the court shall give reasons if it does not make a reparation order in a case where it has power to do so.

⁹¹³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Order must specify local justice area

PCC(S)A 2000 s.74⁹¹⁷: Requirements and provisions of reparation order, and obligations of person subject to it

- s.74(4) - a reparation order shall name the local justice area in which it appears to the court making the order (or to the court amending under Schedule 8 to this Act any provision included in the order in pursuance of this subsection) that the offender resides or will reside.

3.3.3.3.4 Interaction with other sentencing orders

Custodial sentences

PCC(S)A 2000 s.73⁹¹⁸: Reparation orders

- s.73(4) - the court shall not make a reparation order in respect of the offender if it proposes—
- (a) to pass on him a custodial sentence; or
 - (b) to make in respect of him a youth rehabilitation order or a referral order.

Referral orders

PCC(S)A 2000 s.19⁹¹⁹: Referral orders

- s.19(1) - subsections (2) to (5) below apply where a court makes a referral order in respect of an offence.
- s.19(2) - the court may not deal with the offender for the offence in any of the prohibited ways.
- s.19(3) - the court—
- (a) shall, in respect of any connected offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
 - (b) may not deal with the offender for any such offence in any of the prohibited ways.
- s.19(4) - for the purposes of subsections (2) and (3) above the prohibited ways are—
- [...]
- (c) making a reparation order in respect of him [...]

PCC(S)A 2000 s.73⁹²⁰: Reparation orders

- s.73(4) - the court shall not make a reparation order in respect of the offender if it proposes—
- (a) to pass on him a custodial sentence; or
 - (b) to make in respect of him a youth rehabilitation order or a referral order.

⁹¹⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁸ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹¹⁹ Commencement: 25 August 2000, PCC(S)A 2000 Sch.11 para.11(1)

⁹²⁰ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

Youth Rehabilitation Orders

PCC(S)A 2000 s.73⁹²¹: Reparation orders

- s.73(4) - the court shall not make a reparation order in respect of the offender if it proposes—
- (a) to pass on him a custodial sentence; or
 - (b) to make in respect of him a youth rehabilitation order or a referral order.

CJIA 2008 Sch.1 para.30⁹²²: Date of taking effect and other existing orders

- para.30(4) - a court must not make a youth rehabilitation order in respect of an offender at a time when—
- (a) another youth rehabilitation order, or
 - (b) a reparation order made under section 73(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6),
- is in force in respect of the offender, unless when it makes the order it revokes the earlier order.

Youth Rehabilitation Orders (in force)

PCC(S)A 2000 s.73⁹²³: Reparation orders

- s.73(4A) - the court shall not make a reparation order in respect of the offender at a time when a youth rehabilitation order is in force in respect of him unless when it makes the reparation order it revokes the youth rehabilitation order.
- s.73(4B) - where a youth rehabilitation order is revoked under subsection (4A), paragraph 24 of Schedule 2 to the Criminal Justice and Immigration Act 2008 (breach, revocation or amendment of youth rehabilitation order) applies to the revocation.

3.3.3.5 Breach, revocation or amendment

PCC(S)A 2000 s.75⁹²⁴: Breach, revocation and amendment of reparation orders

- s.75 - Schedule 8 to this Act (which makes provision for dealing with failures to comply with reparation orders and for revoking and amending such orders) shall have effect

General provisions concerning orders under Sch.8

PCC(S)A 2000 Sch.8 para.6⁹²⁵: Presence of offender in court, remands etc.

- para.6(1) - where the responsible officer makes an application under paragraph 2(1) or 5(1) above to a court he may bring the offender before the court; and, subject to sub-paragraph (9) below, a court shall not make an order under paragraph 2 or 5(1) above unless the offender is present before the court.

⁹²¹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹²² Commencement: 30 November 2009, SI 2009/3074 art.2(m)

⁹²³ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹²⁴ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

⁹²⁵ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- para.6(2) - without prejudice to any power to issue a summons or warrant apart from this sub-paragraph, the court to which an application under paragraph 2(1) or 5(1) above is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it.
- para.6(3) - Subsections (3) and (4) of section 55 of the Magistrates' Courts Act 1980 (which among other things restrict the circumstances in which a warrant may be issued) shall apply with the necessary modifications to a warrant under sub-paragraph (2) above as they apply to a warrant under that section, but as if in subsection (3) after the word "summons" there were inserted the words "cannot be served or".
- para.6(4) - where the offender is arrested in pursuance of a warrant issued by virtue of sub-paragraph (2) above and cannot be brought immediately before [the court before which the warrant directs the offender to be brought ("the relevant court"), the person in whose custody he is—
- (a) may make arrangements for his detention in a place of safety for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and
 - (b) shall within that period bring him before a youth court;
- and in paragraph (a) above "*place of safety*" has the same meaning as in the Children and Young Persons Act 1933.
- para.6(5) - where an offender is under sub-paragraph (4)(b) above brought before a youth court other than the relevant court, the youth court may—
- (a) direct that he be released forthwith; or
 - (b) subject to sub-paragraph (7) below, remand him to local authority accommodation.
- para.6(6) - subject to sub-paragraph (7) below, where an application is made to a court under paragraph 5(1) above, the court may remand (or further remand) the offender to local authority accommodation if—
- (a) a warrant has been issued under sub-paragraph (2) above for the purpose of securing the attendance of the offender before the court; or
 - (b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under paragraph 5(1) above.
- para.6(7) - where the offender is aged 18 or over at the time when he is brought before a youth court other than the relevant court under sub-paragraph (4)(b) above, or is aged 18 or over at a time when (apart from this sub-paragraph) the relevant court could exercise its powers under sub-paragraph (6) above in respect of him, he shall not be remanded to local authority accommodation but may instead be remanded—
- (a) to a remand centre, if the court has been notified that such a centre is available for the reception of persons under this sub-paragraph; or
 - (b) to a prison, if it has not been so notified.
- para.6(8) - a court remanding an offender to local authority accommodation under this paragraph shall designate, as the authority who are to receive him, the local authority for the area in which the offender resides or, where it appears to the court that he does not reside in the area of a local authority, the local authority—
- (a) specified by the court; and
 - (b) in whose area the offence or an offence associated with it was committed.

para.6(9) - a court may make an order under paragraph 5(1) above in the absence of the offender if the effect of the order is confined to one or more of the following, that is to say—

- (a) revoking the reparation order;
- (b) cancelling a requirement included in the reparation order;
- (c) altering in the reparation order the name of any area;
- (d) changing the responsible officer.

Breach of requirement

PCC(S)A 2000 Sch.8 para.2⁹²⁶: Breach of requirement of reparation order

para.2(1) - this paragraph applies if while a reparation order is in force in respect of an offender it is proved to the satisfaction of

- (a) a youth court acting in the local justice area in which the offender resides, or
- (b) if it is not known where the offender resides, a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act,

on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order.

para.2(2) - where this paragraph applies, the court—

- (a) whether or not it also makes an order under paragraph 5(1) below (revocation or amendment of order)—
 - (i) may order the offender to pay a fine of an amount not exceeding £1,000; or
- (b) if the reparation order was made by a magistrates' court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or
- (c) if the reparation order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court.

para.2(3) - where a court deals with an offender under sub-paragraph (2)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving—

- (a) particulars of the offender's failure to comply with the requirement in question; 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 Crown Court.

para.2(4) - where—

- (a) by virtue of sub-paragraph (2)(c) above the offender is brought or appears before the Crown Court, and
- (b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question,

⁹²⁶ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.

para.2(5) - where the Crown Court deals with an offender under sub-paragraph (4) above, it shall revoke the reparation order if it is still in force.

para.2(6) - a fine imposed under this paragraph shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

para.2(7) - in dealing with an offender under this paragraph, a court shall take into account the extent to which he has complied with the requirements of the reparation order.

para.2(8) - where a reparation order has been made on appeal, for the purposes of this paragraph it shall be deemed—

- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
- (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court;

and, in relation to a reparation order made on appeal, sub-paragraph (2)(b) above shall have effect as if the words "if the order had not been made" were omitted and sub-paragraph (4) above shall have effect as if the words "if it had not made the order" were omitted.

para.2(9) - this paragraph has effect subject to paragraph 6 below

Revocation or amendment

PCC(S)A 2000 Sch.8 para.5⁹²⁷: Revocation or amendment of reparation order

para.5(1) - if while a reparation order is in force in respect of an offender it appears to the [relevant court, on the application of the responsible officer or the offender, that it is appropriate to make an order under this sub-paragraph, the court may—

- (a) make an order revoking the reparation order; or
- (b) make an order amending it—
 - (i) by cancelling any provision included in it; or
 - (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.

para.5(2) - sub-paragraph (1) above has effect subject to paragraph 6 below.

para.5(3) - where an application under sub-paragraph (1) above for the revocation of a reparation order is dismissed, no further application for its revocation shall be made under that sub-paragraph by any person except with the consent of the relevant court.

para.5(4) - in this paragraph, "*the relevant court*" means—

- (a) a youth court acting in the local justice area for the time being named in the order in pursuance of section 74(4) of this Act, or

⁹²⁷ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)

- (b) in the case of an application made both under this paragraph and under paragraph 2(1), the court mentioned in paragraph 2(1).

Power to adjourn hearings

PCC(S)A 2000 Sch.8 para.6A⁹²⁸: Power to adjourn hearing and remand offender

para.6A(1) - this paragraph applies to any hearing relating to an offender held by a youth court in any proceedings under this Schedule.

para.6A(2) - the court may adjourn the hearing, and, where it does so, may—

- (a) direct that the offender be released forthwith, or
- (b) remand the offender.

para.6A(3) - where the court remands the offender under sub-paragraph (2)—

- (a) it must fix the time and place at which the hearing is to be resumed, and
- (b) that time and place must be the time and place at which the offender is required to appear or be brought before the court by virtue of the remand.

para.6A(4) - where the court adjourns the hearing under sub-paragraph (2) but does not remand the offender—

- (a) it may fix the time and place at which the hearing is to be resumed, but
- (b) if it does not do so, it must not resume the hearing unless it is satisfied that the persons mentioned in sub-paragraph (5) have had adequate notice of the time and place for the resumed hearing.

para.6A(5) - the persons referred to in sub-paragraph (4)(b) are—

- (a) the offender,
- (b) if the offender is aged under 14, a parent or guardian of the offender, and
- (c) the responsible officer.

para.6A(6) - if a local authority has parental responsibility for an offender who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference in sub-paragraph (5)(b) to a parent or guardian of the offender is to be read as a reference to that authority.

para.6A(7) - in sub-paragraph (6)—

“local authority” has the same meaning as it has in Part 1 of the Criminal Justice and Immigration Act 2008 by virtue of section 7 of that Act,

“parental responsibility” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act, and

“social services functions” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.

para.6A(8) - the powers of a youth court under this paragraph may be exercised by a single justice of the peace, notwithstanding anything in the Magistrates' Courts Act 1980.

⁹²⁸ Commencement: 30 November 2009, as inserted by CJIA 2008 Sch.4 para.108(6), SI 2009/3074 art.2(p)(xv)

para.6A(9) - this paragraph—

- (a) applies to any hearing in any proceedings under this Schedule in place of section 10 of the Magistrates' Courts Act 1980 (adjournment of trial) where that section would otherwise apply, but
- (b) is not to be taken to affect the application of that section to hearings of any other description.

Appeals

PCC(S)A 2000 Sch.8 para.7⁹²⁹: Appeals

para.7 - the offender may appeal to the Crown Court against—

- (a) any order made under paragraph 2(2) or 5(1) above except an order made or which could have been made in his absence (by virtue of paragraph 6(9) above);
- (b) the dismissal of an application under paragraph 5(1) above to revoke a reparation order.

⁹²⁹ Commencement: 25 August 2000, PCC(S)A 2000 s.168(1)