

SCHEDULES

SCHEDULE 2

Article 16.

ENFORCEMENT ETC. OF COMMUNITY ORDERS

PART I

PRELIMINARY

1. In this Schedule—

“relevant order” means a probation order or a community service order; and

“the petty sessions district concerned” means the petty sessions district for the time being specified in the relevant order.

PART II

BREACH OF REQUIREMENT OF ORDER

Issue of summons or warrant

2.—(1) If at any time while a relevant order is in force in respect of an offender it appears on complaint 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 complaint is in writing and on oath, issue a warrant for his arrest.

(2) Any summons or warrant issued under this paragraph shall direct the offender to appear or be brought before a court of summary jurisdiction acting for the petty sessions district concerned.

Powers of court of summary jurisdiction

3.—(1) If it is proved to the satisfaction of the court of summary jurisdiction before which an offender appears or is brought under paragraph 2 that he has failed without reasonable excuse to comply with any of the requirements of the relevant order, the court may deal with him in respect of the failure in any one of the following ways, namely—

- (a) it may impose on him a fine not exceeding £1,000;
- (b) subject to paragraph 6(3) to (5), it may make a community service order in respect of him;
- (c) where the relevant order is a probation order and the case is one to which section 135 of the Children and Young Persons Act (Northern Ireland) 1968 applies, it may make an order under that section requiring him to attend at an attendance centre; or

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- (d) where the relevant order was made by a magistrates' court, it may revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d), a court of summary jurisdiction—
 - (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and,
 - (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.
- (3) Where a relevant order was made by the Crown Court and a court of summary jurisdiction has power to deal with the offender under sub-paragraph (1)(a), (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.
- (4) A court of summary jurisdiction which deals with an offender's case under sub-paragraph (3) shall send to the Crown Court—
 - (a) a certificate signed by a resident magistrate certifying that the offender has failed to comply with the requirements of the relevant order in the respect specified in the certificate; and
 - (b) such other particulars of the case as may be desirable;and a certificate purporting to be so signed shall be admissible as evidence of the failure before the Crown Court.

Powers of Crown Court

- 4.—(1) Where by virtue of paragraph 3(3) an offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court that he has failed to comply with any of the requirements of the relevant order, that court may deal with him in respect of the failure in any one of the following ways, namely—
- (a) it may impose on him a fine not exceeding £1,000;
 - (b) subject to paragraph 6(3) to (5), it may make a community service order in respect of him;
 - (c) where the relevant order is a probation order and the case is one to which section 135 of the Children and Young Persons Act (Northern Ireland) 1968 applies, it may make an order under that section requiring him to attend at an attendance centre; or
 - (d) it may revoke the order and deal with him, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by or before the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d), the Crown court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
 - (b) may assume, in the case of an offender who has wilfully and persistently failed to comply with those requirements, that he has refused to give his consent to a community sentence which has been proposed by the court and requires that consent.
- (3) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the requirements of the relevant order shall be determined by the court and not by the verdict of a jury.

Exclusions

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

(2) An offender who is required by a probation order to submit to treatment for his mental condition, or his dependency on drugs or alcohol, shall not be treated for the purposes of paragraph 3 or 4 as having failed to comply with that requirement on the ground only that he has 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.

Supplemental

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

(2) A fine imposed under paragraph 3(1)(a) or 4(1)(a) shall be deemed for the purposes of any statutory provision to be a sum adjudged to be paid by a conviction.

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

- (a) shall be specified in the order and shall not exceed 60 in the aggregate; and
- (b) where the relevant order is a community service order, shall not be such that the total number of hours under both orders exceeds the maximum specified in Article 13(2).

(4) Article 13(4) and, so far as applicable—

- (a) the provisions of this Order relating to community service orders; and
- (b) the provisions of this Schedule so far as so relating,

shall have effect in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) as they have effect in relation to a community service order in respect of an offender.

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

(6) In its application to combination orders, sub-paragraph (3) shall have effect as if the reference to Article 13(2) were a reference to Article 15(1).

PART III

REVOCATION OF ORDER

Revocation of order with or without re-sentencing

7.—(1) This paragraph applies where a relevant order is in force in respect of any offender and, on the application of the offender or the responsible officer, it appears to a court of summary jurisdiction acting for the petty sessions district concerned that, having regard to circumstances which have arisen since the order was made, it would be in the interests of justice—

- (a) that the order should be revoked; or

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- (b) that the offender should be dealt with in some other manner for the offence in respect of which the order was made.
- (2) The court may—
 - (a) if the order was made by a magistrates' court—
 - (i) revoke the order; or
 - (ii) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence; or
 - (b) if the order was made by the Crown Court, commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- (3) The circumstances in which a probation order may be revoked under sub-paragraph (2)(a)(i) shall include the offender's making good progress or his responding satisfactorily to supervision.
- (4) In dealing with an offender under sub-paragraph (2)(a)(ii), a court of summary jurisdiction shall take into account the extent to which the offender has complied with the requirements of the relevant order.
- (5) Where the court deals with an offender's case under sub-paragraph (2)(b), it shall send to the Crown Court such particulars of the case as may be desirable.
- (6) Where a court of summary jurisdiction proposes to exercise its powers under this paragraph otherwise than on the application of the offender it shall 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.
- (7) No application may be made by the offender under sub-paragraph (1) while an appeal against the relevant order is pending.

- 8.—**(1) This paragraph applies where an offender in respect of whom a relevant order is in force—
- (a) is convicted of an offence before the Crown Court; or
 - (b) by virtue of paragraph 7(2)(b) is brought or appears before the Crown Court.
- (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) revoke the order and deal with the offender, for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by or before the court of the offence.
- (3) The circumstances in which a probation order may be revoked under sub-paragraph (2)(a) shall include the offender's making good progress or his responding satisfactorily to supervision.
- (4) In dealing with an offender under sub-paragraph (2)(b), the Crown Court shall take into account the extent to which the offender has complied with the requirements of the relevant order.

Revocation of order following custodial sentence

- 9.—**(1) This paragraph applies where—
- (a) an offender in respect of whom a relevant order is in force is convicted of an offence before a court of summary jurisdiction other than a court of summary jurisdiction acting for the petty sessions district concerned; and
 - (b) the court imposes a custodial sentence on the offender.

(2) If it appears to the court, on the application of the offender or the responsible officer, 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—

- (a) if the order was made by a magistrates' court revoke it; and
- (b) if the order was made by the Crown Court, commit the offender to custody or release him on bail until he can be brought or appear before the Crown Court.

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

10. Where by virtue of paragraph 9(2)(b) an offender is brought or appears before the Crown Court and 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 relevant order was made, the Crown Court may revoke the order.

Supplemental

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

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

(3) Where a probation order is in force in respect of an offender under the age of 21 years who is subsequently committed to a training school under the Children and Young Persons Act (Northern Ireland) 1968 or to a young offenders centre, the probation officer who supervises the case shall send such documents and information relating to the case as he considers likely to be of assistance to the managers of the school or, as the case may be, the governor of the young offenders centre.

PART IV

AMENDMENT OF ORDER

Amendment by reason of change of residence

12.—(1) This paragraph applies where, at any time while a relevant order is in force in respect of an offender, a court of summary jurisdiction acting for the petty sessions district concerned is satisfied that the offender proposes to change, or has changed, his residence from that petty sessions district to another petty sessions district.

(2) Subject to sub-paragraphs (3) and (4), the court may, and on the application of the responsible officer shall, amend the relevant order by substituting the other petty sessions district for the district specified in the order.

(3) The court shall not amend under this paragraph a probation order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the petty sessions district concerned unless, in accordance with paragraph 13, 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 district.

(4) The court shall not amend a community service order under this paragraph unless it appears to the court that provision can be made for the offender to perform work under the order under the

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arrangements which exist for persons who reside in the other petty sessions district to perform work under such orders.

Amendment of requirements of probation order

13.—(1) Without prejudice to the provisions of paragraph 12, but subject to sub-paragraph (2), a court of summary jurisdiction for the petty sessions district concerned may, on the application of the offender or the + responsible officer, by order amend a probation order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were then making the order.

(2) A court of summary jurisdiction shall not amend a probation order under sub-paragraph (1)—

- (a) by reducing the probation period, or by extending that period beyond the end of 3 years from the date of the original order; or
- (b) by inserting in it a requirement that the offender shall submit to treatment for his mental condition, or his dependency on drugs or alcohol, unless the amending order is made within 3 months after the date of the original order.

(3) In this paragraph and paragraph 14, references to the offender’s dependency on drugs or alcohol include references to his propensity towards the misuse of drugs or alcohol.

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

- (a) is of the opinion mentioned in sub-paragraph (2); or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,

he shall make a report in writing to that effect to the responsible officer and that officer shall apply under paragraph 13 to a court of summary jurisdiction for the petty sessions district concerned for the variation or cancellation of the requirement.

(2) The opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order;
- (b) that the offender needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of a probation order;
- (c) that the offender is not susceptible to treatment; or
- (d) that the offender does not require further treatment.

Extension of community service order

15. Where—

- (a) a community service order is in force in respect of any offender; and
- (b) on the application of the offender or the responsible officer, it appears to a court of summary jurisdiction acting for the petty sessions district concerned 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 Article 14(2).

Supplemental

16. No order may be made under paragraph 12, and no application may be made under paragraph 13 or 15, while an appeal against the relevant order is pending.

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

- (a) shall 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;

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

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

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

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

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

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

(3) Where a probation order is in force in respect of an offender under the age of 21 years who is subsequently committed to a training school under the Children and Young Persons Act (Northern Ireland) 1968 or to a young offenders centre, the probation officer who supervises the case shall send such documents and information relating to the case as he considers likely to be of assistance to the managers of the school or, as the case may be, the governor of the young offenders centre.