

Status: Point in time view as at 30/09/1998.

Changes to legislation: Criminal Justice Act 1991, Part II is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 2

ENFORCEMENT ETC. OF COMMUNITY ORDERS

Modifications etc. (not altering text)

- C1** Sch. 2 applied (with modifications) (1.4.1996) by 1995 c. 46, ss. 234(5)(6), 309(2) (with ss. 24(2), 307(2))
Sch. 2 applied (with modifications) (30.9.1998) by 1998 c. 37, ss. 68(3), 70(5), Sch. 5 para. 5(4)(5);
S.I. 1998/2327, arts.2(1)(o)
Sch. 2 applied (with modifications) (30.9.1998) by 1969 c. 54, s. 16B (as inserted by 1998 c. 37, s. 119,
Sch. 8 para.21; S.I. 1998/2327, arts.2(1)(y)(2)(i))

Commencement Information

- I1** Sch. 2 (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

PART II

BREACH OF REQUIREMENT OF ORDER

Commencement Information

- I2** Sch. 2 (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2

Issue of summons or warrant

- 2 (1) If at any time while a relevant order is in force in respect of an offender it appears on information to a justice of the peace acting for the petty sessions area concerned that the offender has failed to comply with any of the requirements of the order, the justice may—
- issue a summons requiring the offender to appear at the place and time specified in it; or
 - if the information 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
- ^{F1}(a) except where the relevant order is a drug treatment and testing order, before a magistrates' court acting for the petty sessions area concerned;
 - in the excepted case, before the court responsible for the order.]

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Textual Amendments

- F1** Sch. 2 para. 2(2)(a)(b) substituted for words in Sch. 2 para. 2(2) (30.9.1998) by 1998 c. 37, s. 64(5), **Sch. 4 para.3**; S.I. 1998/2327, **art.2(1)(n)**

Commencement Information

- I3** Sch. 2 (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

Powers of magistrates' court

- 3 (1) If it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under paragraph 2 above 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) below, it may make a community service order in respect of him;
 - [^{F2}(c) where—
 - (i) the relevant order is a probation order and the offender is under the age of twenty-one years, or
 - (ii) the relevant order is a curfew order and the offender is under the age of sixteen years,
 and the court has been notified as required by subsection (1) of section 17 of the 1982 Act, it may (subject to paragraph 6(6) below) make in respect of him an order under that section (attendance centre orders); or]
 - (d) where the relevant order was made by a magistrates' court, it may ^{F3} . . . 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) above, a magistrates' court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
 - [^{F4}(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 1(2) of this Act.]
- [^{F5}(2A) Where a magistrates' court deals with an offender under sub-paragraph (1)(d) above, it shall revoke the relevant order if it is still in force.]
- (3) Where a relevant order was made by the Crown Court and a magistrates' court has power to deal with the offender under sub-paragraph (1)(a), (b) or (c) above, 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 magistrates' court which deals with an offender's case under sub-paragraph (3) above shall 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 relevant order in the respect specified in the certificate; and

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(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.

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

Textual Amendments

- F2** Sch. 2 para. 3(1)(c) substituted (30.9.1998, subject to S.I. 1998/2327, **art. 6(4)(b)**) by 1998 c. 37, s. 106, **Sch. 7 para. 46(2)**; S.I. 1998/2327, **arts.2(1)(w)**, 6(4)(b)
- F3** Words in Sch. 2 para. 3(1)(d) repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), Sch. 8 para. 96(2), **Sch.10**; S.I. 1998/2327, **art.2(1)(aa)(y)(2)(ff)(3)(t)**
- F4** Sch. 2 para. 3(2)(b) substituted (1.10.1997) by 1997 c. 43, s. 55(2), **Sch. 4 para. 15(1)**; S.I. 1997/2200, **art. 2** (with art. 5)
- F5** Sch. 2 para. 3(2A) inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 96(3)**; S.I. 1998/2327, **art.2(1)(y)(2)(ff)**

Modifications etc. (not altering text)

- C2** Sch. 2 para. 3 amended (1.10.1997 so far as relating to sentences falling to be imposed under s. 2(2) or 3(2) and otherwise *prosp.*) by 1997 c. 43, s. 55(2); S.I. 1997/2200, **art. 2(1)(m)**(with art. 5)
- C3** Sch. 2 para. 3(1): power to amend conferred (1.10.1992) by Magistrates' Courts Act 1980 (c. 43), **Sch. 6A** (as substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), s. 17(3), **Sch. 4 Pt. IV**) (with s. 28); S.I. 1992/333, art. 2(2), **Sch. 2**
- C4** Sch. 2 para. 3(1)(d) modified (1.1.1998) by 1997 c. 43, s. 35(5)(d); S.I. 1997/2200, **art. 3** (with art. 5)
Sch. 2 para. 3(1)(d) modified (1.1.1998) by 1997 c. 43, s. 35(8)(a); S.I. 1997/2200, **art. 3** (with art. 5)
- C5** Sch. 2 para. 3(2)(a) excluded (1.1.1998) by 1997 c. 43, s. 35(5)(e); S.I. 1997/2200, **art. 3** (with art. 5)
Sch. 2 para. 3(2)(a) excluded (1.1.1998) by 1997 c. 43, s. 35(8)(b); S.I. 1997/2200, **art. 3** (with art. 5)

Commencement Information

- I4** Sch. 2 (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

Powers of Crown Court

- 4 (1) Where [^{F6}under paragraph 2 or] by virtue of paragraph 3(3) above an offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court that he has failed [^{F7}without reasonable excuse] 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) below, it may make a community service order in respect of him;
 - [^{F8}(c) where—
 - (i) the relevant order is a probation order and the offender is under the age of twenty-one years, or
 - (ii) the relevant order is a curfew order and the offender is under the age of sixteen years,

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and the court has been notified as required by subsection (1) of section 17 of the 1982 Act, it may (subject to paragraph 6(6) below) make in respect of him an order under that section (attendance centre orders); or]

(d) it may ^{F9} . . . 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 [^{F10}before the Crown Court] of the offence.

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

(a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and

[^{F11}(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 1(2) of this Act.]

[^{F12}(2A) Where the Crown Court deals with an offender under sub-paragraph (1)(d) above, it shall revoke the relevant order if it is still in force.]

(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.

Textual Amendments

- F6** Words in **Sch. 2 para. 4(1)** inserted (30.9.1998) by 1998 c. 37, s. 64(5), **Sch. 4 para.4**; S.I. 1998/2327, **art.2(1)(n)**
- F7** Words in **Sch. 2 para. 4(1)** inserted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(3)(a)**; S.I. 1998/2327, **art.2(1)(w)**
- F8** **Sch. 2 para. 4(1)(c)** substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(2)**; S.I. 1998/2327, **art.2(1)(w)**
- F9** Words in **Sch. 2 para. 4(1)(d)** repealed (30.9.1998) by 1998 c. 37, ss. 119, 120(2), **Sch. 8 para. 96(4)**, **Sch.10**; S.I. 1998/2327, **art.2(1)(aa)(y)(2)(ff)(3)(t)**
- F10** Words in **Sch. 2 para. 4(1)(d)** substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(3)(b)**; S.I. 1998/2327, **art.2(1)(w)**
- F11** **Sch. 2 para. 4(2)(b)** substituted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 15(11)**; S.I. 1997/2200, **art. 2** (with art. 5)
- F12** **Sch. 2 para. 4(2A)** inserted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 96(5)**; S.I. 1998/2327, **art.2(1)(y)(2)(ff)**

Modifications etc. (not altering text)

- C6** **Sch. 2 para. 4** amended (1.10.1997 so far as relating to sentences falling to be imposed under ss. 2(2) or 3(2) and otherwise *prosp.*) by 1997 c. 43, s. 55(2); S.I. 1997/2200, **art. 2(1)(m)** (with art. 5)
- C7** **Sch. 2 para. 4(1)**: power to amend conferred (1.10.1992) by Magistrates' Courts Act 1980 (c. 43), **Sch. 6A** (as substituted (1.10.1992) by Criminal Justice Act 1991 (c. 53), ss. 17(3), 102(2), **Sch. 4 Pt. IV**) (with s. 28); S.I. 1992/333, **art. 2(2)**, **Sch. 2**

Commencement Information

- I5** **Sch. 2** (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, **art. 2(2)**, **Sch. 2**.

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Exclusions

- 5 (1) Without prejudice to paragraphs 7 and 8 below, 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 above in respect of a failure to comply with any requirement of the order.
- (2) An offender who
- [^{F13}(a) is required by a probation order to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol; or
 - (b) is required by a drug treatment and testing order to submit to treatment for his dependency on or propensity to misuse drugs,]
- shall not be treated for the purposes of paragraph 3 or 4 above 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.

Textual Amendments

F13 Sch. 2 para. 5(2)(a)(b) substituted for words in Sch. 2 para. 5(2) (30.9.1998) by 1998 c. 37, s. 64(5), Sch. 4 para.5; S.I. 1998/2327, art.2(1)(n)

Commencement Information

I6 Sch. 2 (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), Sch. 2.

Supplemental

- 6 (1) Any exercise by a court of its powers under paragraph 3(1)(a), (b) or (c) or 4(1)(a) [^{F14}, (b) or (c)] above shall be without prejudice to the continuance of the relevant order.
- [^{F15}(2) A fine imposed under paragraph 3(1)(a) or 4(1)(a) above shall be deemed, for the purposes of any enactment, 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) above—
- (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 section 14(1A) of the 1973 Act.
- [^{F16}(3A) A community service order shall not be made under paragraph 3(1)(b) or 4(1)(b) above in respect of a person who is under the age of sixteen years.]
- (4) Section 14(2) of the 1973 Act and, so far as applicable—
- (a) the following provisions of that Act relating to community service orders; and
 - (b) the provisions of this Schedule so far as so relating,

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

[^{F17}(5) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (4) above in relation to a community service order under paragraph 3(1)(b) or 4(1)(b) above—

- (a) the power conferred on the court by each of paragraphs 3(1)(d) and 4(1)(d) above and paragraph 7(2)(a)(ii) below to deal with the offender for the offence in respect of which the order was made shall be construed as a power to deal with the offender, for his failure to comply with the original order, in any manner in which the court could deal with him if that failure to comply had just been proved to the satisfaction of the court;
- (b) the reference in paragraph 7(1)(b) below to the offence in respect of which the order was made shall be construed as a reference to the failure to comply in respect of which the order was made; and
- (c) the power conferred on the court by paragraph 8(2)(b) below to deal with the offender for the offence in respect of which the order was made shall be construed as a power to deal with the offender, for his failure to comply with the original order, in any manner in which the court which made the original order could deal with him if that failure had just been proved to the satisfaction of that court;

and in this sub-paragraph “the original order” means the relevant order the failure to comply with whose requirements led to the making of the community service order under paragraph 3(1)(b) or 4(1)(b).]

[^{F18}(6) The provisions of sections 17 to 19 of the 1982 Act (making, discharge, variation and breach of attendance centre order) shall apply for the purposes of paragraphs 3(1)(c) and 4(1)(c) above but as if there were omitted—

- (a) subsection (13) of section 17;
- (b) from subsection (4A) of section 18 and subsections (3) and (5) of section 19, the words “, for the offence in respect of which the order was made,” and “for that offence”.]

Textual Amendments

- F14** Words in **Sch. 2 para. 6(1)** substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(4)**; S.I. 1998/2327, **art.2(1)(w)**
- F15** **Sch. 2 para. 6(2)** substituted (20.9.1993) by 1993 c. 36, s. 65(3)(4), **Sch. 3 para. 6(7)**; S.I. 1993/1968, art. 2(2), **Sch. 2**
- F16** **Sch. 2 para. 6(3A)** inserted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(5)**; S.I. 1998/2327, **art.2(1)(w)**
- F17** **Sch. 2 para. 6(5)** substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(6)**; S.I. 1998/2327, **art.2(1)(w)**
- F18** **Sch. 2 para. 6(6)** inserted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 46(7)**; S.I. 1998/2327, **art.2(1)(w)**

Commencement Information

- I7** **Sch. 2** (paras. 1 - 18) wholly in force at 1.10.1992 see s. 102(2)(3) and S.I. 1992/333, art. 2(2), **Sch. 2**.

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- [^{F19}6A (1) Where a relevant order was 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 paragraph 3(1)(d) above by that or any other court in respect of the offender after he has attained the age of 18 years 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.
- (2) In sub-paragraph (1)(b) above any reference to an offence punishable with imprisonment shall be construed without regard to any prohibition or restriction imposed by or under any enactment on the imprisonment of young offenders.]

Textual Amendments

F19 Sch. 2 para. 6A inserted (30.9.1998, subject to S.I. 1998/2327, **art. 6(4)(b)**) by 1998 c. 37, s. 106, **Sch. 7 para. 46(8)**; S.I. 1998/2327, **arts2(1)(w)**, 6(4)(b)

Status:

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