

CRIMINAL JUSTICE AND COURT SERVICES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part III: Dealing with Offenders

Chapter I: Renaming certain community orders, new community orders, breach of community order, miscellaneous.

Sections 43, 44 and 45: Renaming certain community orders

99. *Sections 43, 44 and 45* rename probation orders, community service orders and combination orders as community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders respectively.

Section 46: Exclusion orders

100. *Section 46* amends the Powers of Criminal Courts (Sentencing) Act 2000 to make provision for 'exclusion orders'. An exclusion order is similar in many respects to a 'curfew order'. However, whereas a curfew order requires an offender to remain at a specified place, an exclusion order prohibits an offender from entering a specified place or area for a specified period of not more than two years (three months for a juvenile). Different areas or places can be specified for different periods. An exclusion order must take account of the offender's religious beliefs, times of employment or education, and of any other community orders to which the offender is subject.
101. When making the exclusion order, the effect and possible consequences of the order, together with the court's power to review the order, must be explained to the offender in ordinary language.
102. Breach, revocation, and amendment of the exclusion order are provided for in the same way as for curfew orders. The Secretary of State is empowered to make rules for the regulation of the monitoring regime of offenders subject to exclusion orders, and of the functions of the persons responsible for monitoring them. The Secretary of State may also make an order to add to the list of activities with which the requirements of an order must not conflict.

Section 47: Drug Abstinence Orders

103. *Section 47* defines a Drug Abstinence Order as an order requiring the offender to abstain from misusing specified Class A drugs and to undertake a drug test on instruction.
104. It gives the power to the courts to make a drug abstinence order where the offender is convicted of a trigger offence (see note on Schedule 6), or the court feels that Class A drug misuse caused or contributed to the offence. The offender must be aged 18 years or over and be dependent on, or have a propensity to misuse, specified Class A drugs.

105. The Section allows for the court to decide the length of the order, between a minimum of 6 months and a maximum of three years.
106. In addition to setting out the provisions as to the supervision of orders, the Section also sets out provisions for dealing with failures to comply with the requirements of such orders, under Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000.

Section 48: Pre-sentence drug testing

107. When the court is considering passing a community sentence, *Section 48* provides powers to require a convicted offender, aged 18 and over, to undertake a drug test for specified Class A drugs.

Section 49: Community Sentences: drug abstinence requirements

108. *Section 49* sets out drug abstinence requirements of community sentences. It amends Section 42 of the Powers of Criminal Courts (Sentencing) Act 2000 in order to require the courts to include a drugs abstinence requirement where the offender:
- is aged 18 or over;
 - is dependent on, or has a propensity to misuse specified Class A drugs; and
 - has committed a trigger offence (see note on Schedule 6).
109. If the offender has been charged with a non-trigger offence, the courts may include an abstinence requirement if the offender—
- is aged 18 or over;
 - is dependent on, or has a propensity to misuse specified Class A drugs; and
 - the misuse by the offender of any specified class A drug caused or contributed to the offence.
110. Drug abstinence requirements may not be included where a community sentence already includes an abstinence requirement, or where a community order includes a Drug Treatment and Testing Order (DTTO) or a Drug Abstinence Order (DAO).

Section 50: Community sentences: curfew requirements

111. *Sub-paragraph (1)* (of the new paragraph 7 to be inserted in Schedule 2 to the Powers of the Criminal Courts (Sentencing) Act 2000) makes provision for community rehabilitation orders to include a curfew requirement. *Sub-paragraph (2)* provides for a requirement that the offender remain at a particular place for between two and twelve hours a day, for a maximum period of six months. The order may specify different curfew addresses or different periods of curfew on different days.
112. *Sub-paragraph (3)* provides that, as with the curfew order, account must be taken of the offender's religious beliefs, times of employment or education and of any other community orders to which the offender is subject when the terms of the curfew are decided by the court.
113. *Sub-paragraph (4)* states that a community rehabilitation order that includes a curfew requirement must include provision for a responsible officer who will monitor whether or not the offender complies with the curfew requirements. The responsible officer must be a person as described in an order made by the Secretary of State.
114. *Sub-paragraph (5)* prevents a court from including a curfew requirement in a community rehabilitation order or a community punishment and rehabilitation order, unless the Secretary of State has notified the court that the arrangements necessary for monitoring the offender's whereabouts are currently available in the area where the curfew address is situated. This will enable these provisions to be piloted.

115. *Sub-paragraph (7)* requires courts to obtain and consider information about the curfew address – which must include information about the attitude of other people likely to be affected by the offender’s enforced presence there – before they impose a curfew requirement.
116. *Sub-paragraph (8)* permits the Secretary of State to make rules regulating the monitoring of an offender and the functions of the responsible officer.

Section 51: Community sentences: exclusion requirements

117. *Section 51* is similar to *Section 50*, except that it allows a court to include an exclusion requirement in a community rehabilitation order or a community punishment and rehabilitation order. It differs from *Section 50* in that:
 - under *sub-paragraphs (1) and (2)*, an exclusion requirement may last for no more than two years and may operate continuously, or for periods specified in the order, and may specify different places from which the offender is to be excluded for different periods;
 - there is no requirement for the court to obtain and consider information about the place proposed to be specified in the requirement, as the offender’s presence will not be enforced in any place in a way that might affect other persons; and,
 - it is made clear that offenders may be excluded from an area as well as a particular place.

Section 52: Community sentences: electronic monitoring of requirements

118. *Section 52* makes provision for a requirement for the electronic monitoring of any other requirement of a community order. This provision might be used to require an offender to register his attendance at a particular place, for example. Once again, these powers will not be available to a court until the Secretary of State has notified it of the availability of the powers
119. *Subsections (3) and (4)* make clear that, where the co-operation of a person other than the offender is required for electronic monitoring to take place, the requirement for electronic monitoring cannot be imposed without that person’s consent.
120. Provision is made for making a person responsible for the monitoring, with a power for the Secretary of State to make rules for regulating both the electronic monitoring and the function of responsible persons.
121. *Subsections (7) to (10)* make clear the definition of the ‘relevant area’ in the various instances in which a community sentence might be electronically monitored.

Section 53: Breach of community orders: warning and punishment

122. *Subsection (2)* specifies the community orders to which the warning scheme will apply, namely, curfew orders, exclusion orders, community rehabilitation orders, community punishment orders, community punishment and rehabilitation orders, and drug abstinence orders.
123. *Subsection (3)* places a duty on staff employed by local probation boards to issue a warning to an offender who has unacceptably failed to comply with the requirements of his order if the offender has not already been referred back to court for the failure. Where there is a second unacceptable failure to comply within 12 months, or six months in the case of a curfew order, the offender must be referred back to court for breach proceedings. The warning must be recorded. If two or more orders were imposed for the same offence, they will be considered as one order to which the warning scheme applies, i.e. only one warning in total will be given in any 12 month period.

124. *Subsection (4)* creates new arrangements for dealing with a breach of community sentences where that breach is referred back to the court. In such a case, where the warning provisions apply, the court must first determine whether it is likely that the offender will comply with the requirements of the community order if it remains in force. If the court does not consider this likely then it must impose a custodial sentence as punishment for breach of the community order, even where the original offence was not imprisonable, unless there are exceptional circumstances. Where the warning provisions do not apply or where the court thinks that the offender is likely to comply with the community sentence or that there are exceptional circumstances the court must impose a community sentence in respect of the breach or re-sentence the offender for the original offence as if he had just been convicted of it.
125. *Subsection (5)* places the same duty on the Crown Court.
126. *Subsection (6)* disapplies the warning and punishment measures to any failure to abstain from misusing specified Class A drugs.

Section 54: Breach of community orders: failure to answer summons

127. *Section 54* provides the Crown Court with new powers to issue a summons or warrant in respect of an offender who fails to appear at the Crown Court to answer a summons issued by a justice in respect of an alleged breach of a community order. The Section inserts two new sub-paragraphs into paragraph 3 of Schedule 3 to the Powers of Criminal Courts (Sentencing) Act 2000. New *sub-paragraph (3)* provides a power to issue a summons and new *sub-paragraph (4)* the power to issue a warrant.

Section 55: Regulation of community orders

128. *Section 55* provides for regulations relating to community sentences (community rehabilitation orders, community punishment orders and community punishment and rehabilitation orders). This will allow the Secretary of State to set standards for the delivery of these orders.