Powers of Criminal Courts (Sentencing) Act 2000

2000 CHAPTER 6

PART III

MANDATORY AND DISCRETIONARY REFERRAL OF YOUNG OFFENDERS

Referral orders

16 Duty and power to refer certain young offenders to youth offender panels.

(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 [M1]Mental Health Act 1983) in his case; and

(c) the court is not proposing to discharge him absolutely in respect of the offence.

(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.

(3) If—

(a) the discretionary referral conditions are satisfied in accordance with section 17 below, and

(b) referral is available to the court,

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the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel.

(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).

(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(b) the notice has not been withdrawn.

(6) An order under subsection (2) or (3) above is in this Act referred to as a "referral order".

(7) No referral order may be made in respect of any offence committed before the commencement of section 1 of the [M2]Youth Justice and Criminal Evidence Act 1999.

Marginal Citations

M1 1983 c. 20.

M2 1999 c. 23.

17 The referral conditions.

(1) For the purposes of section 16(2) above the compulsory referral conditions are satisfied in relation to an offence if **[**[F1]the offence is an offence punishable with imprisonment and**]** the offender—

(a) pleaded guilty to the offence and to any connected offence;

(b) has never been convicted by or before a court in the United Kingdom of any offence other than the offence and any connected offence; and

(c) has never been bound over in criminal proceedings in England and Wales or Northern Ireland to keep the peace or to be of good behaviour.

[[F2](1A) For the purposes of section 16(3) above, the discretionary referral conditions are satisfied in relation to an offence if the offence is not an offence punishable with imprisonment but the offender meets the conditions in paragraphs (a) to (c) of subsection (1) above.**]**

(2) For the purposes of section 16(3) above the discretionary referral conditions are **[**[F3]also**]** satisfied in relation to an offence if—

(a) the offender is being dealt with by the court for the offence and one or more connected offences **[**[F4](whether or not any of them is an offence punishable with imprisonment)**]** ;

(b) although he pleaded guilty to at least one of the offences mentioned in paragraph (a) above, he also pleaded not guilty to at least one of them;

(c) he has never been convicted by or before a court in the United Kingdom of any offence other than the offences mentioned in paragraph (a) above; and

(d) he has never been bound over in criminal proceedings in England and Wales or Northern Ireland to keep the peace or to be of good behaviour.

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(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).

(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).

(5) For the purposes of this section an offender who has been convicted of an offence in respect of which he was conditionally discharged (whether by a court in England and Wales or in Northern Ireland) shall be treated, despite—

(a) section 14(1) above (conviction of offence for which offender so discharged deemed not a conviction), or

(b) Article 6(1) of the [M3]Criminal Justice (Northern Ireland) Order 1996 (corresponding provision for Northern Ireland),

as having been convicted of that offence.

Textual Amendments

F1 Words in s. 17(1) inserted (18.8.2003) by The Referral Orders (Amendment of Referral Conditions) Regulations 2003 (S.I. 2003/1605), regs. 1(1), **2(1)**

F2 S. 17(1A) inserted (18.8.2003) by The Referral Orders (Amendment of Referral Conditions) Regulations 2003 (S.I. 2003/1605), regs. 1(1), **2(2)**

F3 Word in s. 17(2) inserted (18.8.2003) by The Referral Orders (Amendment of Referral Conditions) Regulations 2003 (S.I. 2003/1605), regs. 1(1), **2(3)(a)**

F4 Words in s. 17(2)(a) inserted (18.8.2003) by The Referral Orders (Amendment of Referral Conditions) Regulations 2003 (S.I. 2003/1605), regs. 1(1), **2(3)(b)**

Marginal Citations

M3 S.I. 1996/3160 (N.I. 24).

18 Making of referral orders: general.

(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).

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(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.

(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.

(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.

(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.

(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.

(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.

19 Making of referral orders: effect on court's other sentencing powers.

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

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

(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.

(4) For the purposes of subsections (2) and (3) above the prohibited ways are—
- (a) imposing a community sentence on the offender;
- (b) ordering him to pay a fine;
- (c) making a reparation order in respect of him; and
- (d) making an order discharging him conditionally.

(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); or

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(c) a parenting order under section 8 of the [M4]Crime and Disorder Act 1998.

(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.

(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 [M5]Magistrates' Courts Act 1980 (adjournment for inquiries); or

(c) section 35, 38, 43 or 44 of the [M6]Mental Health Act 1983 (remand for reports, interim hospital orders and committal to Crown Court for restriction order).

Marginal Citations

M4 1998 c. 37.
M5 1980 c. 43.
M6 1983 c. 20.

20 Making of referral orders: attendance of parents etc.

(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.

(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.

(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.

(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.

(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.

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(6) An offender falls within this subsection if he is (within the meaning of the [M7]Children Act 1989) a child who is looked after by a local authority.

(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.

Marginal Citations
M7 1989 c. 41.

Youth offender panels

21 Establishment of panels.

(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).

(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.

(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.

(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.

(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

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that it instead specifies the team which has the function of implementi g such orders in that area ("the new team").

(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.

(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.

22 Attendance at panel meetings.

(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.

(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.

(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).

(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.

(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.

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Youth offender contracts

23 First meeting: agreement of contract with offender.

(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.

(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.

(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.

(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.

(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.

(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.

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24 First meeting: duration of contract.

(1) This section applies where a youth offender contract has taken effect under section 23 above between an offender and a youth offender panel.

(2) The day on which the contract so takes effect shall be the first day of the period for which it has effect.

(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.

(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.

(5) Subsections (3) and (4) above have effect subject to—
- (a) any order under paragraph 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.

(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.

25 First meeting: failure to agree contract.

(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.

(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.

(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.

26 Progress meetings.

(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").

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(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.

(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.

(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.

(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.

(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.

(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.

(8) If at a progress meeting—

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(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.

(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).

(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.

27 Final meeting.

(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").

(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.

(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.

(4) Otherwise the panel shall refer the offender back to the appropriate court.

(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).

(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.

(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.

Further court proceedings

28 Offender referred back to court or convicted while subject to referral order.

Schedule 1 to this Act, which—

(a) in Part I makes provision for what is to happen when a youth offender panel refers an offender back to the appropriate court, and

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(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.

Supplementary

29 Functions of youth offending teams.

(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.

(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.

(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.

30 Regulations under Part III.

(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.

(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.

(3) No regulations shall be made under—

(a) section 17(3), or

(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.

(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.

31 Rules of court.

(1) Rules of court may make such provision as appears to the authority making them 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).

(2) In this section "rules of court" means—

(a) Magistrates' Courts Rules;

Status: *Point in time view as at 01/01/2004.*
Changes to legislation: *Powers of Criminal Courts (Sentencing) Act 2000, Part III is up to date with all changes known to be in force on or before 23 July 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)*

(b) Crown Court Rules;

(c) Criminal Appeal Rules.

32 Definitions for purposes of Part III.

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).

Status:
Point in time view as at 01/01/2004.

Changes to legislation:
Powers of Criminal Courts (Sentencing) Act 2000, Part III is up to date with all changes known to be in force on or before 23 July 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.