



# 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—
- neither the offence nor any connected offence is one for which the sentence is fixed by law;
  - 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
  - the court is not proposing to discharge him absolutely in respect of the offence.
- (2) If—
- the compulsory referral conditions are satisfied in accordance with section 17 below, and
  - 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—
- the discretionary referral conditions are satisfied in accordance with section 17 below, and
  - 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  - (b) the notice has not been withdrawn.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 Youth Justice and Criminal Evidence Act 1999.

## **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 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.
- (2) For the purposes of section 16(3) above the discretionary referral conditions are 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;
  - (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.
- (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 Criminal Justice (Northern Ireland) Order 1996 (corresponding provision for Northern Ireland),
- as having been convicted of that offence.

## **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).
- (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.

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- (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
  - (c) a parenting order under section 8 of the 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 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).

## **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—

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- (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.
- (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.
- (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.