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SCHEDULES

SCHEDULE 1

Section 28.

YOUTH OFFENDER PANELS: FURTHER COURT PROCEEDINGS

PART I

REFERRAL BACK TO APPROPRIATE COURT

Introductory

1 (1) This Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 22(2), 25(2) or (3), 26(5), (8) or (10) or 27(4) of this Act.

(2) For the purposes of this Part of this Schedule and the provisions mentioned in sub-paragraph (1) above the appropriate court is—

(a) in the case of an offender aged under 18 at the time when (in pursuance of the referral back) he first appears before the court, a youth court acting for the petty sessions area in which it appears to the youth offender panel that the offender resides or will reside; and

(b) otherwise, a magistrates' court (other than a youth court) acting for that area.

Mode of referral back to court

2 The panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

Bringing the offender before the court

3 (1) Where the appropriate court receives such a report, the court shall cause the offender to appear before it.

(2) For the purpose of securing the attendance of the offender before the court, a justice acting for the petty sessions area for which the court acts may—

(a) issue a summons requiring the offender to appear at the place and time specified in it; or

(b) if the report is substantiated on oath, issue a warrant for the offender's arrest.

(3) Any summons or warrant issued under sub-paragraph (2) above shall direct the offender to appear or be brought before the appropriate court.

Detention and remand of arrested offender

4 (1) Where the offender is arrested in pursuance of a warrant under paragraph 3(2) above and cannot be brought immediately before the appropriate court—

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(a) the person in whose custody he is may make arrangements for his detention in a place of safety (within the meaning given by section 107(1) of the [M1]Children and Young Persons Act 1933) for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and

(b) that person shall within that period bring him before a court which—

(i) if he is under the age of 18 when he is brought before the court, shall be a youth court; and

(ii) if he has then attained that age, shall be a magistrates' court other than a youth court.

(2) Sub-paragraphs (3) to (5) below apply where the court before which the offender is brought under sub-paragraph (1)(b) above ("the alternative court") is not the appropriate court.

(3) The alternative court may direct that he is to be released forthwith or remand him.

(4) Section 128 of the [M2]Magistrates' Courts Act 1980 (remand in custody or on bail) shall have effect where the alternative court has power under sub-paragraph (3) above to remand the offender as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.

(5) That section shall have effect where the alternative court has power so to remand him, or the appropriate court has (by virtue of sub-paragraph (4) above) power to further remand him, as if in subsection (1) there were inserted after paragraph (c) "or

(d) if he is aged under 18, remand him to accommodation provided by or on behalf of a local authority (within the meaning of the [M3]Children Act 1989) and, if it does so, shall designate as the authority who are to receive him the local authority for the area in which it appears to the court that he resides or will reside;".

Marginal Citations

M1 1933 c. 12.
M2 1980 c. 43.
M3 1989 c. 41.

Power of court where it upholds panel's decision

5 (1) If it is proved to the satisfaction of the appropriate court as regards any decision of the panel which resulted in the offender being referred back to the court—

(a) that, so far as the decision relied on any finding of fact by the panel, the panel was entitled to make that finding in the circumstances, and

(b) that, so far as the decision involved any exercise of discretion by the panel, the panel reasonably exercised that discretion in the circumstances,

the court may exercise the power conferred by sub-paragraph (2) below.

(2) That power is a power to revoke the referral order (or each of the referral orders).

(3) The revocation under sub-paragraph (2) above of a referral order has the effect of revoking any related order under paragraph 11 or 12 below.

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(4) Where any order is revoked under sub-paragraph (2) above or by virtue of sub-paragraph (3) above, the appropriate court may deal with the offender in accordance with sub-paragraph (5) below for the offence in respect of which the revoked order was made.

(5) In so dealing with the offender for such an offence, the appropriate court—

(a) may deal with him in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order; and

(b) shall have regard to—

(i) the circumstances of his referral back to the court; and

(ii) where a contract has taken effect under section 23 of this Act between the offender and the panel, the extent of his compliance with the terms of the contract.

(6) The appropriate court may not exercise the powers conferred by sub-paragraph (2) or (4) above unless the offender is present before it; but those powers are exercisable even if, in a case where a contract has taken effect under section 23, the period for which the contract has effect has expired (whether before or after the referral of the offender back to the court).

Appeal

6 Where the court in exercise of the power conferred by paragraph 5(4) above deals with the offender for an offence, the offender may appeal to the Crown Court against the sentence.

Court not revoking referral order or orders

7 (1) This paragraph applies—

(a) where the appropriate court decides that the matters mentioned in paragraphs (a) and (b) of paragraph 5(1) above have not been proved to its satisfaction; or

(b) where, although by virtue of paragraph 5(1) above the appropriate court—

(i) is able to exercise the power conferred by paragraph 5(2) above, or

(ii) would be able to do so if the offender were present before it,

the court (for any reason) decides not to exercise that power.

(2) If either—

(a) no contract has taken effect under section 23 of this Act between the offender and the panel, or

(b) a contract has taken effect under that section but the period for which it has effect has not expired,

the offender shall continue to remain subject to the referral order (or orders) in all respects as if he had not been referred back to the court.

(3) If—

(a) a contract had taken effect under section 23 of this Act, but

(b) the period for which it has effect has expired (otherwise than by virtue of section 24(6)),

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the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

Exception where court satisfied as to completion of contract

8 If, in a case where the offender is referred back to the court under section 27(4) of this Act, the court decides (contrary to the decision of the panel) that the offender's compliance with the terms of the contract has, or will have, been such as to justify the conclusion that he has satisfactorily completed the contract, the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

Discharge of extension orders

9 The discharge under paragraph 7(3) or 8 above of a referral order has the effect of discharging any related order under paragraph 11 or 12 below.

PART II

FURTHER CONVICTIONS DURING REFERRAL

Extension of referral for further offences

10 (1) Paragraphs 11 and 12 below apply where, at a time when an offender aged under 18 is subject to referral, a youth court or other magistrates' court ("the relevant court") is dealing with him for an offence in relation to which paragraphs (a) to (c) of section 16(1) of this Act are applicable.

(2) But paragraphs 11 and 12 do not apply unless the offender's compliance period is less than twelve months. Extension where further offences committed pre-referral

11 If—

(a) the occasion on which the offender was referred to the panel is the only other occasion on which it has fallen to a court in the United Kingdom to deal with the offender for any offence or offences, and

(b) the offender committed the offence mentioned in paragraph 10 above, and any connected offence, before he was referred to the panel,

the relevant court may sentence the offender for the offence by making an order extending his compliance period.

Extension where further offence committed after referral

12 (1) If—

(a) paragraph 11(a) above applies, but

(b) the offender committed the offence mentioned in paragraph 10 above, or any connected offence, after he was referred to the panel,

the relevant court may sentence the offender for the offence by making an order extending his compliance period, but only if the requirements of sub-paragraph (2) below are complied with.

(2) Those requirements are that the court must—

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(a) be satisfied, on the basis of a report made to it by the relevant body, that there are exceptional circumstances which indicate that, even though the offender has re-offended since being referred to the panel, extending his compliance period is likely to help prevent further re-offending by him; and

(b) state in open court that it is so satisfied and why it is.

(3) In sub-paragraph (2) above "the relevant body" means the panel to which the offender has been referred or, if no contract has yet taken effect between the offender and the panel under section 23 of this Act, the specified team.

Provisions supplementary to paragraphs 11 and 12

13 (1) An order under paragraph 11 or 12 above, or two or more orders under one or other of those paragraphs made in respect of connected offences, must not so extend the offender's compliance period as to cause it to exceed twelve months.

(2) Sub-paragraphs (3) to (5) below apply where the relevant court makes an order under paragraph 11 or 12 above in respect of the offence mentioned in paragraph 10 above; but sub-paragraphs (3) to (5) do not affect the exercise of any power to deal with the offender conferred by paragraph 5 or 14 of this Schedule.

(3) The relevant court may not deal with the offender for that offence in any of the prohibited ways specified in section 19(4) of this Act.

(4) The relevant court—

(a) shall, in respect of any connected offence, either—

(i) sentence the offender by making an order under the same paragraph; or

(ii) make an order discharging him absolutely; and

(b) may not deal with the offender for any connected offence in any of those prohibited ways.

(5) The relevant court may not, in connection with the conviction of the offender for the offence or any connected offence, make any such order as is mentioned in section 19(5) of this Act.

(6) For the purposes of paragraphs 11 and 12 above any occasion on which the offender was discharged absolutely in respect of the offence, or each of the offences, for which he was being dealt with shall be disregarded.

(7) Any occasion on which, in criminal proceedings in England and Wales or Northern Ireland, the offender was bound over to keep the peace or to be of good behaviour shall be regarded for those purposes as an occasion on which it fell to a court in the United Kingdom to deal with the offender for an offence.

(8) The Secretary of State may by regulations make such amendments of paragraphs 10 to 12 above and this paragraph as he considers appropriate for altering in any way the descriptions of offenders in the case of which an order extending the compliance period may be made; and subsection (4) of section 17 of this Act shall apply in relation to regulations under this sub-paragraph as it applies in relation to regulations under subsection (3) of that section.

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Further convictions which lead to revocation of referral

14 (1) This paragraph applies where, at a time when an offender is subject to referral, a court in England and Wales deals with him for an offence (whether committed before or after he was referred to the panel) by making an order other than—

(a) an order under paragraph 11 or 12 above; or

(b) an order discharging him absolutely.

(2) In such a case the order of the court shall have the effect of revoking—

(a) the referral order (or orders); and

(b) any related order or orders under paragraph 11 or 12 above.

(3) Where any order is revoked by virtue of sub-paragraph (2) above, the court may, if appears to the court that it would be in the interests of justice to do so, deal with the offender for the offence in respect of which the revoked order was made in any way in which (assuming section 16 of this Act had not applied) he could have been dealt with for that offence by the court which made the order.

(4) When dealing with the offender under sub-paragraph (3) above the court shall, where a contract has taken effect between the offender and the panel under section 23 of this Act, have regard to the extent of his compliance with the terms of the contract.

Interpretation

15 (1) For the purposes of this Part of this Schedule an offender is for the time being subject to referral if—

(a) a referral order has been made in respect of him and that order has not, or

(b) two or more referral orders have been made in respect of him and any of those orders has not,

been discharged (whether by virtue of section 27(3) of this Act or under paragraph 7(3) or 8 above) or revoked (whether under paragraph 5(2) above or by virtue of paragraph 14(2) above).

(2) In this Part of this Schedule "compliance period", in relation to an offender who is for the time being subject to referral, means the period for which (in accordance with section 24 of this Act) any youth offender contract taking effect in his case under section 23 of this Act has (or would have) effect.

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