

SCHEDULES

SCHEDULE 8

Sections 72 and 75.

BREACH, REVOCATION AND AMENDMENT OF ACTION PLAN ORDERS AND REPARATION ORDERS

Meaning of “the appropriate court”

- 1 In this Schedule, “the appropriate court”, in relation to an action plan order or reparation order, means a youth court acting for the petty sessions area for the time being named in the order in pursuance of section 69(8) or, as the case may be, 74(4) of this Act.

Breach of requirement of action plan order or reparation order

- 2 (1) This paragraph applies if while an action plan order or reparation order is in force in respect of an offender it is proved to the satisfaction of the appropriate court, on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order.
- (2) Where this paragraph applies, the court—
- (a) whether or not it also makes an order under paragraph 5(1) below (revocation or amendment of order)—
 - (i) may order the offender to pay a fine of an amount not exceeding £1,000; or
 - (ii) subject to paragraph 3 below, may make a curfew order in respect of him; or
 - (iii) subject to paragraph 4 below, may make an attendance centre order in respect of him; or
 - (b) if the action plan order or reparation order was made by a magistrates' court, may revoke the order and deal with the offender, for the offence in respect of which the order was made, in any way in which he could have been dealt with for that offence by the court which made the order if the order had not been made; or
 - (c) if the action plan order or reparation order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court.
- (3) Where a court deals with an offender under sub-paragraph (2)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving—
- (a) particulars of the offender's failure to comply with the requirement in question; and
 - (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.

- (4) Where—
- (a) by virtue of sub-paragraph (2)(c) above the offender is brought or appears before the Crown Court, and
 - (b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question,
- that court may deal with him, for the offence in respect of which the order was made, in any way in which it could have dealt with him for that offence if it had not made the order.
- (5) Where the Crown Court deals with an offender under sub-paragraph (4) above, it shall revoke the action plan order or reparation order if it is still in force.
- (6) A fine imposed under this paragraph shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- (7) In dealing with an offender under this paragraph, a court shall take into account the extent to which he has complied with the requirements of the action plan order or reparation order.
- (8) Where a reparation order or action plan order has been made on appeal, for the purposes of this paragraph it shall be deemed—
- (a) if it was made on an appeal brought from a magistrates' court, to have been made by that magistrates' court;
 - (b) if it was made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, to have been made by the Crown Court;
- and, in relation to a reparation order or action plan order made on appeal, sub-paragraph (2)(b) above shall have effect as if the words “if the order had not been made” were omitted and sub-paragraph (4) above shall have effect as if the words “if it had not made the order” were omitted.
- (9) This paragraph has effect subject to paragraph 6 below.

Curfew orders imposed for breach of action plan order or reparation order

- 3 (1) Section 37(1) of this Act (curfew orders) shall apply for the purposes of paragraph 2(2)(a)(ii) above as if for the words from the beginning to “make” there were substituted “Where a court considers it appropriate to make an order in respect of any person in pursuance of paragraph 2(2)(a)(ii) of Schedule 8 to this Act, it may make”.
- (2) The following provisions of this Act, namely—
- (a) section 37(3) to (12), and
 - (b) so far as applicable, sections 38 and 40 and Schedule 3 so far as relating to curfew orders,
- have effect in relation to a curfew order made by virtue of paragraph 2(2)(a)(ii) above as they have effect in relation to any other curfew order, subject to sub-paragraphs (4) and (5) below.
- (3) Sections 35 and 36 of this Act (restrictions and procedural requirements for community sentences) do not apply in relation to a curfew order made by virtue of paragraph 2(2)(a)(ii) above.

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- (4) Subsections (4) and (9) of section 37 of this Act shall each have effect in relation to such a curfew order as if for the words “on conviction” there were substituted “on the date when his failure to comply with the action plan order or reparation order is proved to the court”.
- (5) Schedule 3 to this Act (breach, revocation and amendment of orders) shall have effect in relation to such a curfew order as if—
- (a) the power conferred on the court by each of paragraphs 4(1)(d) and 10(3)(b) to deal with the offender for the offence in respect of which the order was made were a power to deal with the offender, for his failure to comply with the action plan order or reparation order, in any way in which the appropriate court could deal with him for that failure if it had just been proved to the satisfaction of that court;
 - (b) the reference in paragraph 10(1)(b) to the offence in respect of which the order was made were a reference to the failure to comply in respect of which the curfew order was made; and
 - (c) the power conferred on the Crown Court by paragraph 11(2)(b) to deal with the offender for the offence in respect of which the order was made were a power to deal with the offender, for his failure to comply with the action plan order or reparation order, in any way in which the appropriate court (if the action plan order or reparation order was made by a magistrates' court) or the Crown Court (if that order was made by the Crown Court) could deal with him for that failure if it had just been proved to its satisfaction
- (6) For the purposes of the provisions mentioned in paragraphs (a) and (c) of sub-paragraph (5) above, as applied by that sub-paragraph, if the action plan order or reparation order is no longer in force the appropriate court's powers shall be determined on the assumption that it is still in force.

Attendance centre orders imposed for breach of action plan or reparation order

- 4 (1) Section 60(1) of this Act (attendance centre orders) shall apply for the purposes of paragraph 2(2)(a)(iii) above as if for the words from the beginning to “the court may,” there were substituted “Where a court considers it appropriate to make an order in respect of any person in pursuance of paragraph 2(2)(a)(iii) of Schedule 8 to this Act, the court may,”.
- (2) The following provisions of this Act, namely—
- (a) subsections (3) to (11) of section 60, and
 - (b) so far as applicable, Schedule 5,
- have effect in relation to an attendance centre order made by virtue of paragraph 2(2)(a)(iii) above as they have effect in relation to any other attendance centre order, subject to sub-paragraph (4) below.
- (3) Sections 35 and 36 of this Act (restrictions and procedural requirements for community sentences) do not apply in relation to an attendance centre order made by virtue of paragraph 2(2)(a)(iii) above.
- (4) Schedule 5 to this Act (breach, revocation and amendment of attendance centre orders) shall have effect in relation to such an attendance centre order as if there were omitted—
- (a) from each of paragraphs 2(1)(b) and 4(3) the words “, for the offence in respect of which the order was made,” and “for that offence”; and

- (b) from paragraphs 2(6) and 4(4) the words “for an offence”.

Revocation and amendment of action plan order or reparation order

- 5 (1) If while an action plan order or reparation order is in force in respect of an offender it appears to the appropriate court, on the application of the responsible officer or the offender, that it is appropriate to make an order under this sub-paragraph, the court may—
- (a) make an order revoking the action plan order or reparation order; or
- (b) make an order amending it—
- (i) by cancelling any provision included in it; or
- (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision which could have been included in the order if the court had then had power to make it and were exercising the power.
- (2) Sub-paragraph (1) above has effect subject to paragraph 6 below.
- (3) Where an application under sub-paragraph (1) above for the revocation of an action plan order or reparation order is dismissed, no further application for its revocation shall be made under that sub-paragraph by any person except with the consent of the appropriate court.

Presence of offender in court, remands etc.

- 6 (1) Where the responsible officer makes an application under paragraph 2(1) or 5(1) above to the appropriate court he may bring the offender before the court; and, subject to sub-paragraph (9) below, a court shall not make an order under paragraph 2 or 5(1) above unless the offender is present before the court.
- (2) Without prejudice to any power to issue a summons or warrant apart from this sub-paragraph, the court to which an application under paragraph 2(1) or 5(1) above is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it.
- (3) Subsections (3) and (4) of section 55 of the Magistrates' Courts Act 1980 (which among other things restrict the circumstances in which a warrant may be issued) shall apply with the necessary modifications to a warrant under sub-paragraph (2) above as they apply to a warrant under that section, but as if in subsection (3) after the word “summons” there were inserted the words “cannot be served or”.
- (4) Where the offender is arrested in pursuance of a warrant issued by virtue of sub-paragraph (2) above and cannot be brought immediately before the appropriate court, the person in whose custody he is—
- (a) may make arrangements for his detention in a place of safety 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) shall within that period bring him before a youth court;
- and in paragraph (a) above “place of safety” has the same meaning as in the Children and Young Persons Act 1933.
- (5) Where an offender is under sub-paragraph (4)(b) above brought before a youth court other than the appropriate court, the youth court may—

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- (a) direct that he be released forthwith; or
 - (b) subject to sub-paragraph (7) below, remand him to local authority accommodation.
- (6) Subject to sub-paragraph (7) below, where an application is made to a court under paragraph 5(1) above, the court may remand (or further remand) the offender to local authority accommodation if—
- (a) a warrant has been issued under sub-paragraph (2) above for the purpose of securing the attendance of the offender before the court; or
 - (b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under paragraph 5(1) above.
- (7) Where the offender is aged 18 or over at the time when he is brought before a youth court other than the appropriate court under sub-paragraph (4)(b) above, or is aged 18 or over at a time when (apart from this sub-paragraph) the appropriate court could exercise its powers under sub-paragraph (6) above in respect of him, he shall not be remanded to local authority accommodation but may instead be remanded—
- (a) to a remand centre, if the court has been notified that such a centre is available for the reception of persons under this sub-paragraph; or
 - (b) to a prison, if it has not been so notified.
- (8) A court remanding an offender to local authority accommodation under this paragraph shall designate, as the authority who are to receive him, the local authority for the area in which the offender resides or, where it appears to the court that he does not reside in the area of a local authority, the local authority—
- (a) specified by the court; and
 - (b) in whose area the offence or an offence associated with it was committed.
- (9) A court may make an order under paragraph 5(1) above in the absence of the offender if the effect of the order is confined to one or more of the following, that is to say—
- (a) revoking the action plan order or reparation order;
 - (b) cancelling a requirement included in the action plan order or reparation order;
 - (c) altering in the action plan order or reparation order the name of any area;
 - (d) changing the responsible officer.

Appeals

- 7 The offender may appeal to the Crown Court against—
- (a) any order made under paragraph 2(2) or 5(1) above except an order made or which could have been made in his absence (by virtue of paragraph 6(9) above);
 - (b) the dismissal of an application under paragraph 5(1) above to revoke an action plan order or reparation order.