

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 3: Sentencing and punishment of offenders

Chapter 1: Sentencing

Youth sentences

Section 79: Referral orders for young offenders

433. **Section 79** amends sections 16 and 17 of the Powers of Criminal Courts (Sentencing) Act 2000 (PCC(S)A 2000), which set out the circumstances in which the court has the power to give a referral order to an offender under the age of 18.
434. A referral order refers the offender to a youth offender panel and requires the offender to attend meetings of the panel and enter into a contract with the panel to undertake rehabilitative activities for a period of between 3 and 12 months.
435. Sections 16(2) and 17(1) of the PCC(S)A 2000 impose a duty on a youth court or magistrates' court either to make a referral order or to discharge offenders absolutely where they have pleaded guilty to their first offence (or where they are before the court for more than one offence, at least one of these offences) unless certain exceptions apply. Those exceptions are: if the offence (or at least one of the offences) that the offender is being sentenced for is fixed by law (section 16(1)(a)) or the court proposes to impose a custodial sentence or a hospital order in respect of the offence (or where the offender is before the court for more than one offence, at least one of these offences). Where the exceptions apply the duty does not apply.
436. Typically, these exceptions apply only in a very few cases so the powers of the court when sentencing a first time offender who has pleaded guilty are very limited. The court can never impose a community sentence on an offender where section 16 of the PCC(S)A 2000 applies.
437. Sections 16(3) and 17(2) to (2C) of the PCC(S)A 2000 provide a discretionary power for a youth or magistrates' court either to make a referral order or absolutely discharge offenders where they have pleaded guilty to the offence (or where they are before the court for more than one offence, at least one of these offences), even if it is not their first offence. But the court may only do so in circumstances where the offender has not previously received a referral order (section 17(2B)) or has received a referral order on one occasion but is recommended as suitable for another by an 'appropriate officer' (usually an officer of the local youth offending team) (section 17(2C)).
438. *Subsection (1)* amends section 16(1)(c) of the PCC(S)A 2000 to widen the powers of a youth or magistrates' court to deal with offenders where they have pleaded guilty to their first offence (or where they are before the court for more than one offence, at least

one of these offences). As a result of this amendment, where the exceptions in 16(1) (a) and (b) do not apply, the court will no longer have to choose between making a referral order or absolutely discharging the offender: it will now be able to choose to conditionally discharge the offender instead.

439. *Subsection (2)* amends section 17 PCC(S)A 2000. It removes the existing conditions set out in section 17(2A) to (2C) and amends section 17(2) in order to widen the powers of a youth or magistrates' court to deal with an offender who has pleaded guilty to an offence (or, where the offender is before the court for more than one offence, to at least one of those offences), even if it is not the offender's first offence. As a result of the amendment, the court is no longer prevented from offering referral orders to offenders who have previously received referral orders in the past. There is no limit to the number of referral orders that a repeat offender can receive. The offender does not need to be recommended as suitable for a second or subsequent referral order by an appropriate officer.

Section 80: Breach of detention and training order

440. A detention and training order (DTO) is a custodial sentence for young offenders aged between 12 and 17 created by sections 100 to 107 PCC(S)A 2000. In broad terms, the offender spends the first half of the specified period in custody (detention and training) and the second half in the community subject to various requirements and under the supervision of the **youth offending team**.
441. *Subsections (2) to (7)* amend section 104 of the PCC(S)A 2000 to extend the powers of the court to punish an offender who has breached their DTO by failing to comply with the supervision requirements imposed on them
442. *Subsection (2)* retains the power of the court to impose a period of detention in punishment for the breach. It also creates a new power for the court to impose an additional period of supervision.
443. *Subsection (3)* inserts new subsections (3A) to (3D), which make further provision about the periods of supervision or detention, into section 104:
- new subsection (3A) sets the maximum period for which the court may impose supervision or detention as a punishment for breach. This is to be the shorter of 3 months or the period beginning with the date of the failure to comply with the requirement and the last day of the term of the DTO.
 - new subsection (3B) stipulates how that period is to be determined if the failure to comply with a requirement took place over two or more days.
 - new subsection (3C) is especially important as it provides that the court may impose a period of supervision or detention for breach even after the term of the DTO has finished. This means that those subject to a DTO will not be able to avoid being given a further period of detention or supervision by delaying their breach hearings until after the term of their DTO expires as has happened following the case of *H v Doncaster Youth Court, Doncaster Youth Offending Service*¹ where the court had held that a further period of detention could only be imposed from the date on which the court made a finding that the offender had failed to comply with supervision requirements, rather than from the actual failure to comply, and only up to the end of the original DTO period.
 - new subsection (3D) provides that where the court imposes a period of detention or supervision for breach, it takes immediate effect and can overlap with a period of supervision under the DTO.

¹ [2008] EWHC 3463

These notes refer to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) which received Royal Assent on 1 May 2012

444. *Subsection (4)* inserts new section 104(4A) into the PCC(S)A 2000. This provides that where an offender is over 18 when a court orders a further period of detention in respect of a breach of a DTO, the offender will be sent to prison. This subsection needs to be read with section 74(8) of the Act which provides that an offender aged between 18 and 21 will not be sent to prison under section 104(4A) until such time as section 61 of the Criminal Justice and Court Services Act 2000 is commenced (and the sentence of detention in a young offenders institution is abolished). Until that time 18 to 21 year olds will be sent to youth detention accommodation, which includes young offender institutions (see section 107 of the PCC(S)A 2000).
445. *Subsection (6)* extends the right of appeal to the Crown Court that currently exists where an offender is given a further period of detention for breach of a DTO to the new power to impose an additional period of supervision.
446. *Subsection (7)* inserts new sections 104A and 104B into the PCC(S)A 2000. New section 104A applies certain provision in the PCC(S)A 2000 relating to DTOs to orders under section 104(3)(aa) that an offender serve a further period of supervision, with the necessary modifications:
- section 104A(1) and (2) applies section 103 (which provides for how a period of supervision under a DTO operates);
 - section 104A(3) to (5) applies section 104 (which deals with breach of DTO supervision requirements) and section 105 (which makes provision for when an offender commits an offence when subject to supervision).
447. In broad terms, the further period of supervision works in a similar way to the period of supervision under a DTO. In particular, requirements can be imposed on the offender under section 103 of the PCC(S)A 2000, as applied, and enforced under section 104 of that Act, again as applied. And, if the offender commits an imprisonable offence while subject to a further period of supervision, then the offender can be detained in youth detention accommodation under section 105, as applied.
448. The fact that a court can deal with an offender who breaches requirements imposed in respect of a further period of supervision in the same way that it can deal with someone who has breached the supervision requirements of a DTO, means that there could be a series of orders under section 104(3)(aa). If an offender breaches a DTO and is given a further of supervision which the offender then also breaches, the court can once again respond by imposing further supervision (or detention or a fine). And if requirements attached to that further period of supervision are also then breached, another period of supervision could be ordered in respect of that breach and so on. This continues to be the case until the offender completes the order of the court without breaching it.
449. New section 104B provides for the interaction between the new power to impose periods of detention beyond the end of the original DTO and other sentences. Subsections (1) to (4) provide for the interaction between a period of further detention and a DTO. New subsection 104B(5) provides a power for the Secretary of State to make regulations to provide for the interaction between a period of detention imposed for breach and custodial sentences other than a DTO.
450. A further period of detention can be imposed for breach after the term of the DTO has ended. It can also be imposed in respect of the breach of a requirement attached to a period of further supervision under section 104(3)(aa), which may itself have been imposed after the end of the DTO. It is therefore possible for a period of detention to be imposed under section 104(3)(a) after the offender has turned 18 or even 21. For this reason it is necessary to set out for the courts how the breach period will interact with adult sentences.
451. *Subsections (10) and (11)* apply the provision made by the section to any breach of a DTO that occurs after commencement.

Section 81: Youth rehabilitation order: curfew requirement

452. A youth rehabilitation order is a community sentence provided for by the 2008 Act. As part of the sentence a court may impose one or more of 18 different requirements that the offender must comply with for a period of up to three years. The requirements can include curfew, supervision and mental health treatment requirements. These requirements are similar to requirements that can be attached to community orders for adults.
453. **Section 81** mirrors the amendments to the curfew requirement for community orders in section 71 of the Act by increasing the maximum number of hours in a day for which a curfew can be imposed from twelve to sixteen hours a day and the length of time for which a curfew requirement may be imposed from six to twelve months.

Section 82: Youth rehabilitation order: mental health treatment requirement

454. **Section 82** amends paragraph 20 of Schedule 1 to the 2008 Act to make provision for mental health treatment requirements in youth rehabilitation orders. It mirrors the amendments to mental health treatment requirements in section 73 for adults by removing the requirement for evidence from a medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983. It remains the case that the court cannot include a mental treatment requirement unless the youth has expressed a willingness to comply with it.

Section 83: Youth rehabilitation order: duration

455. This section amends the current provisions in Schedules 1 and 2 to the the 2008 Act which set out the duration of youth rehabilitation orders. Under the current provisions where an order has multiple requirements which may themselves be time limited it can be unclear when the order is completed. In some cases this can result in the requirements being completed before the end date of the order requiring the case to be returned to court to revoke the order.
456. **Subsection (1)** amends Schedule 1 to the 2008 Act to enable the court to specify different completion dates for different requirements attached to an order and for the end date of the order to be the same as the last completion date for a requirement.
457. **Subsection (2)** inserts new sub-paragraphs (6A) to (6D) in paragraph 6 of Schedule 2 to allow a magistrates' court to extend the end date of an order by up to 6 months where a further requirement is imposed but only on one occasion. If the order is extended under these provisions then it may extend beyond the three year maximum length set out in Schedule 1.
458. **Subsection (3)** inserts new sub-paragraphs (6A) to (6D) in paragraph 8 of Schedule 2 which makes the same amendments to the powers in the Crown Court as subsection (2) does to the powers of the magistrates' court.
459. **Subsection (5)** inserts a new paragraph 16A in Schedule 2 relating to the exercise of powers of the magistrates' court or Crown court when dealing with breach of a youth rehabilitation order to cancel or replace requirements in the order. Sub-paragraph (1) of new paragraph 16A allows a court to amend the end date of an order where either the offender or responsible officer requests this. Further provisions limit the extension of the end date to a maximum period of 6 months beyond the end date of the original order and allow the overall length of the order to extend beyond the maximum of three years where the order is so extended. This power to extend is limited to one occasion only. Sub-paragraph (6) provides that the court amending the length of the order must be a youth court where the offender is aged under 18 at the time the application to extend is made or an adult magistrates' court where the offender has reached the age of 18.

Section 84: Youth rehabilitation order: fine for breach

460. **Section 84** provides for the fine available to a court to deal with breach of a youth rehabilitation order under Schedule 2 to the 2008 Act to be increased to a maximum amount of £2,500. Currently the maximum fine in both the magistrates' courts and the Crown Court is £250 if the offender is aged under 14, or £1,000 in any other case.