

OFFENDER REHABILITATION ACT 2014

EXPLANATORY NOTES

COMMENTARY

Community orders and suspended sentence orders

Section 14: Officers responsible for implementing orders

101. **Section 14** amends the 2003 Act to make changes to the meaning of “the responsible officer”, who is the officer responsible for implementing community orders and suspended sentence orders imposed by the court.
102. Subsection (1) of section 14 replaces section 197 of the 2003 Act. The new subsection (1) of section 197 defines the responsible officer as a person who is, for the time being, responsible for discharging the functions of the responsible officer in accordance with arrangements made by the Secretary of State. The new subsection (2) of section 197 provides that the responsible officer must be either an officer of a provider of probation services (which can be a public or a private sector provider) or a person responsible for monitoring an offender in accordance with an electronic monitoring requirement.
103. Subsection (2) of section 14 introduces Schedule 4 to the Act. Schedule 4 is in two parts.
104. **Part 1** provides that certain functions of responsible officers are confined to the public sector. Paragraphs 1 to 5 amend provisions which confer a function on the responsible officer to provide assistance to a court carrying out a review of a community order or suspended sentence order, or of the offender’s progress under a drug rehabilitation requirement under such an order. Such functions will in the future be carried out by officers of providers of probation services, rather than the responsible officer. Under section 4 of the Offender Management Act 2007 (the 2007 Act), the Secretary of State may not arrange for private sector providers to perform functions that involve helping courts to make decisions about people convicted of offences. These functions have to be performed by an officer of a public sector provider (i.e. the Secretary of State or a probation trust or some other public body).
105. The effect of the changes in paragraphs 1 to 5, coupled with section 4 of the 2007 Act, is that only public sector providers will in future be permitted to carry out the function of giving assistance to a court carrying out a review of a community order, a suspended sentence order or the offender’s progress under a drug rehabilitation requirement imposed under such an order. In some cases that public sector provider may be the responsible officer, but in those cases where the responsible officer is a private provider they will not be permitted to undertake these functions.
106. Paragraph 6 of Schedule 4 amends Schedule 8 to the 2003 Act – which deals with the breach, amendment or revocation of community orders – to add definitions of “enforcement officer” and “public sector provider”. Paragraphs 6(3) and 6(4) provide that if the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the requirements of his community order he must refer the matter to an enforcement officer. Paragraph 6(2) inserts a new definition

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of “enforcement officer” at paragraph 1A of Schedule 8, and makes clear that the enforcement function can only be carried out by an officer of a provider of probation services that is a public sector provider. In other words, only an officer of a public sector provider, defined as a probation trust, other public body or the Secretary of State, can be the officer responsible for enforcement action under a community order.

107. [Paragraph 6\(5\)](#) provides that the role of the enforcement officer is to consider the case, and where, appropriate cause an information to be laid. In this way, the enforcement officer, who will be a public sector provider, will be responsible for the decision whether or not to bring cases to court for a breach hearing.
108. [Paragraph 6\(6\)](#) amends the various powers in Parts 3 to 6 of Schedule 8 that allow the court to revoke or vary a community order, to provide that in the future the function of applying to the court to exercise such powers will be undertaken by an officer of a provider of probation services rather than the responsible officer. The same analysis applies as in paragraphs 1 to 5 of Schedule 4, and the effect of the changes will be that only public sector providers will be able to make applications to the court to revoke or amend the order. Paragraph 8 of Schedule 4 makes consequential amendments to section 4 of the 2007 Act to ensure that these powers are reserved to the public sector.
109. Paragraph 7 of Schedule 4 makes similar changes to Schedule 12 to the 2003 Act in relation to suspended sentence orders.
110. Part 2 of Schedule 4 makes further consequential amendments.

Section 15: Rehabilitation activity requirement

111. [Section 15](#) amends the 2003 Act to create, for community orders and suspended sentence orders, a new “rehabilitation activity requirement”. The rehabilitation activity requirement replaces the existing “activity” and “supervision” requirements, which are repealed (see section 15(4)).
112. Subsection (3) of section 15 inserts a new section 200A into the 2003 Act, which sets out the details of the new rehabilitation activity requirement.
113. Subsection (1) of new section 200A provides that an offender subject to this requirement must comply with instructions given by the responsible officer to attend appointments or participate in activities, or both. Subsection (2) requires the court imposing the requirement to specify in the order the maximum number of days for which the offender may be instructed to participate in activities. Subsection (3) makes clear that the instructions given under this requirement must be given with a view to promoting the rehabilitation of the offender, although they may also serve other purposes.
114. Subsection (4) of new section 200A allows the responsible officer to instruct the offender to attend appointments with the responsible officer or someone else. Subsection (5) makes clear that instructions may require the offender to participate in specified activities or go to a specified place and comply with instructions given by the person in charge of the activities or that place. Subsection (6) provides that the instructions given under subsection (5) can include instructions given by anyone acting under the person in charge’s authority.
115. Subsection (7) of new section 200A clarifies that activities under the requirement may include accredited programmes as set out in section 202(2) of the 2003 Act or include activities whose purpose is reparative, such as restorative justice activities. Subsection (8) defines restorative justice activities in this context, based on the definition set out in section 1ZA(2) of the Powers of Criminal Courts (Sentencing) Act 2000. Subsection (9) defines victim in this context.
116. Subsection (10) of new section 200A requires the responsible officer to obtain the agreement of any person, other than the offender, whose co-operation is necessary to comply with the requirement.

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117. Subsection (11) of new section 200A defines the “relevant period” for both community orders and suspended sentence orders so that the requirement must last for the whole of the order. This means that appointments and activities can take place at any time during the order.
118. Subsection (5) of section 15 introduces Schedule 5 to the Act, which contains consequential amendments.

Section 16: Programme requirement

119. **Section 16** amends section 202 of the 2003 Act, which makes provision for an offender to be required to participate in an accredited programme as a requirement of a community order or suspended sentence order.
120. Subsection (2) of section 16 removes the provision from the 2003 Act that an offender can only participate in accredited programmes in places approved by the local probation board or local provider of probation services. Subsections (3) and (4) of section 16 make consequential amendments to Schedules 9 and 13 to the 2003 Act, which relate to transfers of community orders and suspended sentence orders to Scotland and Northern Ireland.

Section 17: Attendance centre requirement

121. **Section 17** amends section 214 of the 2003 Act, which makes provision for an offender aged under 25 to be required to attend an attendance centre as part of a community order or suspended sentence order.
122. Subsection (5) of section 17 amends section 214 to provide that the responsible officer, rather than the court, must notify the offender which attendance centre he or she is required to attend. The remainder of section 17 makes consequential amendments to give effect to the change at section 17(5).

Section 18: Duty to obtain permission before changing residence

123. **Section 18** inserts a new section 220A into the 2003 Act to require an offender subject to a community order or suspended sentence order (which does not include a residence requirement under section 206 of the 2003 Act) to seek the permission of the responsible officer or the court before changing their place of residence.
124. New section 220A(1) provides that an offender subject to a community order or suspended sentence order must not change residence without permission of their responsible officer or a court. Subsection (2) provides that the offender may apply to the court to reconsider a decision by the responsible officer to refuse permission. Subsection (3) provides that the court may grant permission when it is considering whether an offender has breached his or her order, or whether to amend or revoke an order, under Schedule 8 (for community orders) or Schedule 12 (for suspended sentence orders) to the 2003 Act.
125. Subsection (4) of new section 220A sets out that the grounds for refusing an application to change residence are that the change is likely to prevent the offender from complying with a requirement of the order or that it would hinder the offender’s rehabilitation. Subsection (5) provides that the requirement to seek permission for a change in residence is enforceable as if it were a requirement imposed by the order. As such, an unreasonable failure to seek permission may be treated as a breach of the order. Subsection (6) disapplies the duty to seek permission for a change in residence in cases where the offender is subject to a residence requirement imposed by the court under section 206 of the 2003 Act.
126. Subsection (3) of section 18 omits the obligation in section 220(1)(b) of the 2003 Act for the offender to notify the responsible officer of any change of address, on the basis

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that this will no longer be relevant once the new duty to seek permission to change residence is in force.

127. Subsections (4) to (6) of section 18 simplify paragraph 16 of Schedule 8 to the 2003 Act, under which the court may (and in certain circumstances must) amend a community order where it is satisfied that the offender proposes to change, or has changed, his or her residence from the local justice area specified in the order to another local justice area. Where an offender has been allowed to change residence under section 220A the court must amend the order to specify the new local justice area in which the offender now resides. If the change of residence was agreed by the responsible officer rather than the court the responsible officer must apply to the court to have the order amended and the court must make that amendment.
128. Subsections (7) to (9) of section 18 make similar changes to those made to Schedule 8 to Schedule 12 to the 2003 Act, which deals with breach, revocation and amendment of suspended sentence orders.
129. Subsections (10) and (11) of section 18 disapply the new duty to seek permission to change residence from the regime governing breach of a default order (under which unpaid work, curfew or an attendance centre requirement may be imposed in lieu of a distress warrant for unpaid fines). They amend Schedule 31 to the 2003 Act to provide that the new section 220A will not apply in the context of default orders and to provide a power for the court to amend a default order where the person subject to the order moves out of the local justice area specified in the order. Subsection (12) amends Schedule A1 to the Children Act 1989 to disapply the new duty to seek permission to change residence from the regime governing enforcement orders (under which unpaid work can be imposed in respect of breach of a contact order under the Children Act 1989).