

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Referrals to youth offender panels

Section 2: Referral conditions

37. *Section 2* sets out the conditions which have to be satisfied before a referral order may be imposed by the court. *Subsection (1)* describes the conditions required to trigger a compulsory referral order. In circumstances other than those described in section 1(1), every young offender who has never previously been convicted (or bound over) and who pleads guilty to the offence (and any associated offences, i.e. any other offences for which the offender is being dealt with at the same time (section 15(2))) must be referred by the court to a youth offender panel. Such offenders appear to be the group most likely to benefit from this type of sentence.
38. *Subsection (2)* sets out a further category of young offender for which the court may make a referral order. The court may use its discretion to order a referral where a young offender pleads guilty to one or more offences but not guilty to others (of which he is, however, convicted). As with those cases referred to in subsection (1), the conditions in section 1(1) apply, and for a referral order to be made it must be the first time that the young offender has been convicted.
39. The new provisions will be piloted in selected areas across England and Wales. It may be that, in the light of the experience of the pilots, or following full implementation across the country, it will appear that other categories of young offender could also benefit from this new sentence. *Subsection (3)* allows the Secretary of State to amend the categories of offenders eligible for the new sentence subject to the agreement of Parliament by *affirmative resolution procedure*. This means that Parliament must discuss and approve the Secretary of State's amendments. *Subsection (4)* gives examples of the kind of amendments that might be made.
40. *Subsection (5)* ensures that young offenders who have previously been given a conditional discharge are treated as if they have a previous conviction for the purposes of considering whether they qualify for a referral order. This is in line with the concept of limiting the arrangements, in the first instance, to those young offenders who are being dealt with by a court for the first time.