

SCHEDULES

SCHEDULE 3

BREACH, REVOCATION AND AMENDMENT OF CURFEW, PROBATION, COMMUNITY SERVICE, COMBINATION AND DRUG TREATMENT AND TESTING ORDERS

PART IV

AMENDMENT OF ORDER

Amendment by reason of change of residence

- 18 (1) This paragraph applies where, at any time while a relevant order (other than a drug treatment and testing order) is in force in respect of an offender, a magistrates' court acting for the petty sessions area concerned is satisfied that the offender proposes to change, or has changed, his residence from that petty sessions area to another petty sessions area.
- (2) Subject to sub-paragraphs (3) to (5) below, the court may, and on the application of the responsible officer shall, amend the relevant order by substituting the other petty sessions area for the area specified in the order or, in the case of a curfew order, a place in that other area for the place so specified.
- (3) The court shall not amend under this paragraph a probation or curfew order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender continues to reside in the petty sessions area concerned unless, in accordance with paragraph 19 below, it either—
- (a) cancels those requirements; or
 - (b) substitutes for those requirements other requirements which can be complied with if the offender ceases to reside in that area.
- (4) Sub-paragraph (3) above applies also in relation to a combination order whose probation element contains requirements such as are mentioned in that sub-paragraph.
- (5) The court shall not amend a community service order or combination order under this paragraph unless it appears to the court that provision can be made for the offender to perform work under the order under the arrangements which exist for persons who reside in the other petty sessions area to perform work under such orders.
- (6) Where—
- (a) the court amends a probation, community service or combination order under this paragraph,
 - (b) a local authority is specified in the order in accordance with section 41(5) or 46(9) of this Act, and
 - (c) the change, or proposed change, of residence also is or would be a change of residence from the area of that authority to the area of another such authority,

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the court shall further amend the order by substituting the other authority for the authority specified in the order.

- (7) In sub-paragraph (6) above “local authority” has the meaning given by section 42 of the Crime and Disorder Act 1998, and references to the area of a local authority shall be construed in accordance with that section.

Amendment of requirements of probation, combination or curfew order

- 19 (1) Without prejudice to the provisions of paragraph 18 above but subject to sub-paragraphs (2) and (3) below, a magistrates' court acting for the petty sessions area concerned may, on the application of the offender or the responsible officer, by order amend a probation or curfew order or the probation element of a combination order—
- (a) by cancelling any of the requirements of the probation or curfew order or of the probation element of the combination order; or
 - (b) by inserting in the probation or curfew order or probation element of the combination order (either in addition to or in substitution for any of its requirements) any requirement which the court could include if it were then making the order.
- (2) A magistrates' court shall not under sub-paragraph (1) above amend a probation order or the probation element of a combination order—
- (a) by reducing the probation period, or by extending that period beyond the end of three years from the date of the original order; or
 - (b) by inserting in it a requirement that the offender shall submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, unless—
 - (i) the offender has expressed his willingness to comply with such a requirement; and
 - (ii) the amending order is made within three months after the date of the original order.
- (3) A magistrates' court shall not under sub-paragraph (1) above amend a curfew order by extending the curfew periods beyond the end of six months from the date of the original order.

*Amendment of treatment requirements of probation
or combination order on report of practitioner*

- 20 (1) Where the medical practitioner or other person by whom or under whose direction an offender is, in pursuance of any requirement of a probation or combination order, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol—
- (a) is of the opinion mentioned in sub-paragraph (2) below, or
 - (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,
- he shall make a report in writing to that effect to the responsible officer and that officer shall apply under paragraph 19 above to a magistrates' court acting for the petty sessions area concerned for the variation or cancellation of the requirement.
- (2) The opinion referred to in sub-paragraph (1) above is—

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- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order;
- (b) that the offender needs different treatment;
- (c) that the offender is not susceptible to treatment; or
- (d) that the offender does not require further treatment.

Amendment of drug treatment and testing order

- 21 (1) Without prejudice to the provisions of section 55(1), (6) and (8) of this Act, the court responsible for a drug treatment and testing order may by order—
- (a) vary or cancel any of the requirements or provisions of the order on an application by the responsible officer under sub-paragraph (2) or (3)(a) or (b) below; or
 - (b) amend the order on an application by that officer under sub-paragraph (3) (c) below.
- (2) Where the treatment provider is of the opinion that the treatment or testing requirement of the order should be varied or cancelled—
- (a) he shall make a report in writing to that effect to the responsible officer; and
 - (b) that officer shall apply to the court for the variation or cancellation of the requirement.
- (3) Where the responsible officer is of the opinion—
- (a) that the treatment or testing requirement of the order should be so varied as to specify a different treatment provider,
 - (b) that any other requirement of the order, or a provision of the order, should be varied or cancelled, or
 - (c) that the order should be so amended as to provide for each subsequent periodic review (required by section 54(6)(a) of this Act) to be made without a hearing instead of at a review hearing, or vice versa,
- he shall apply to the court for the variation or cancellation of the requirement or provision or the amendment of the order.
- (4) The court—
- (a) shall not amend the treatment or testing requirement unless the offender expresses his willingness to comply with the requirement as amended; and
 - (b) shall not amend any provision of the order so as to reduce the treatment and testing period below the minimum specified in section 52(1) of this Act, or to increase it above the maximum so specified.
- (5) If the offender fails to express his willingness to comply with the treatment or testing requirement as proposed to be amended by the court, the court may—
- (a) revoke the order; and
 - (b) deal with him, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by or before the court of the offence.
- (6) In dealing with the offender under sub-paragraph (5)(b) above, the court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the order; and

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- (b) may impose a custodial sentence (where the order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 79(2) of this Act.

- (7) Paragraph 9(3) above shall apply for the purposes of this paragraph as it applies for the purposes of paragraph 4 above, but as if for the words “paragraph 4(1)(d) above” there were substituted “paragraph 21(5)(b) below”.

Extension of community service or combination order

22 Where—

- (a) a community service order or combination order is in force in respect of any offender, and
- (b) on the application of the offender or the responsible officer, it appears to a magistrates' court acting for the petty sessions area concerned that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,

the court may, in relation to the order, extend the period of twelve months specified in section 47(3) of this Act.

Supplementary

23 No order may be made under paragraph 18 above, and no application may be made under paragraph 19 or 22 above or, except with the consent of the offender, under paragraph 21 above, while an appeal against the relevant order is pending.

24 (1) Subject to sub-paragraph (2) below, where a court proposes to exercise its powers under this Part of this Schedule, otherwise than on the application of the offender, the court—

- (a) shall summon him to appear before the court; and
- (b) if he does not appear in answer to the summons, may issue a warrant for his arrest.

(2) This paragraph shall not apply to an order cancelling a requirement of a relevant order or reducing the period of any requirement, or substituting a new petty sessions area or a new place for the one specified in a relevant order.

25 (1) On the making under this Part of this Schedule of an order amending a relevant order (other than a drug treatment and testing order), the justices' chief executive for the court shall forthwith—

- (a) if the order amends the relevant order otherwise than by substituting a new petty sessions area or a new place for the one specified in the relevant order, give copies of the amending order to the responsible officer;
- (b) if the order amends the relevant order in the manner excepted by paragraph (a) above, send to the chief executive to the justices for the new petty sessions area or, as the case may be, for the petty sessions area in which the new place is situated—
 - (i) copies of the amending order; and
 - (ii) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order;

and in a case falling within paragraph (b) above the chief executive to the justices for that area shall give copies of the amending order to the responsible officer.

- (2) On the making under this Part of this Schedule of an order amending a drug treatment and testing order, the justices' chief executive for the court shall forthwith give copies of the amending order to the responsible officer.
- (3) A responsible officer to whom in accordance with sub-paragraph (1) or (2) above copies of an order are given shall give a copy to the offender and to the person in charge of any institution in which the offender is or was required by the order to reside.