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SCHEDULES

[^{F1}SCHEDULE 5

Section 61.

BREACH, REVOCATION AND AMENDMENT OF ATTENDANCE CENTRE ORDERS

Textual Amendments

- F1** Schs. 5-7 repealed (30.11.2009 for specified purposes) by [Criminal Justice and Immigration Act 2008](#) (c. 4), s. 153(7), **Sch. 28 Pt. 1** (with Sch. 27 paras. 15); S.I. 2009/3074, art. 2(u)(xxvi)

Breach of order or attendance centre rules

- 1 (1) Where an attendance centre order is in force and it appears on information to a justice ^{F2}... that the offender—
- (a) has failed to attend in accordance with the order, or
 - (b) while attending has committed a breach of rules made under [^{F3}section 222(1)(d) or (e) of the Criminal Justice Act 2003] which cannot be adequately dealt with under those rules,
- the justice may issue a summons requiring the offender to appear at the place and time specified in the summons ^{F4}... or, if the information is in writing and on oath, may issue a warrant for the offender's arrest ^{F5}....
- [^{F6}(2) Any summons or warrant issued under this paragraph shall direct the offender to appear or be brought—
- (a) before a magistrates' court acting for the [^{F7}local justice area] in which the offender resides; or
 - (b) if it is not known where the offender resides, before a magistrates' court acting for the [^{F7}local justice area] in which is situated the attendance centre which the offender is required to attend by the order or by virtue of an order under paragraph 5(1)(b) below.]

Textual Amendments

- F2** Words in Sch. 5 para. 1(1) omitted (31.3.2005) by virtue of [Domestic Violence, Crime and Victims Act 2004](#) (c. 28), s. 60, **Sch. 5 para. 6(2)(a)**; S.I. 2005/579, art. 3(d)
- F3** Words in Sch. 5 para. 1(1)(b) substituted (4.4.2005) by [Criminal Justice Act 2003](#) (c. 44), s. 336(3)(4), **Sch. 32 para. 126(a)**; S.I. 2005/950, art. 2(1), Sch. 1 para. 42(34) (with Sch. 2) (as explained (29.7.2005) by S.I. 2005/2122, art. 2; and as amended: (14.7.2008) by 2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2; S.I. 2008/1586, Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by S.I. 2009/3111, art. 2; (3.12.2012) by S.I. 2012/2905, art. 4; (3.12.2012) by 2012 c. 10, Sch. 14 para. 17; S.I. 2012/2906, art. 2(l))
- F4** Words in Sch. 5 para. 1(1) omitted (31.3.2005) by virtue of [Domestic Violence, Crime and Victims Act 2004](#) (c. 28), s. 60, **Sch. 5 para. 6(2)(b)**; S.I. 2005/579, art. 3(d)
- F5** Words in Sch. 5 para. 1(1) omitted (31.3.2005) by virtue of [Domestic Violence, Crime and Victims Act 2004](#) (c. 28), s. 60, **Sch. 5 para. 6(2)(c)**; S.I. 2005/579, art. 3(d)

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- F6** Sch. 5 para. 1(2) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 5 para. 6\(3\)](#); S.I. 2005/579, art. 3(d)
- F7** Words in Sch. 5 para. 1(2) substituted (1.4.2005) by [The Courts Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/886\)](#), art. 1, [Sch. para. 83\(b\)](#)

- 2 (1) If it is proved to the satisfaction of the magistrates' court before which an offender appears or is brought under paragraph 1 above that he has failed without reasonable excuse to attend as mentioned in sub-paragraph (1)(a) of that paragraph or has committed such a breach of rules as is mentioned in sub-paragraph (1)(b) of that paragraph, that court may deal with him in any one of the following ways—
- (a) it may impose on him a fine not exceeding £1,000;
 - (b) where the attendance centre order was made by a magistrates' court, it may deal with him, 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) where the order was made by the Crown Court, it may commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- (2) Any exercise by the court of its power under sub-paragraph (1)(a) above shall be without prejudice to the continuation of the order.
- (3) A fine imposed under sub-paragraph (1)(a) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- (4) Where a magistrates' court deals with an offender under sub-paragraph (1)(b) above, it shall revoke the attendance centre order if it is still in force.
- (5) In dealing with an offender under sub-paragraph (1)(b) above, a magistrates' court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the attendance centre order; and
 - (b) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in [^{F8}section 152(2) of the Criminal Justice Act 2003].
- [^{F9}(5A) Where a magistrates' court dealing with an offender under sub-paragraph (1)(a) above would not otherwise have the power to amend the order under paragraph 5(1) (b) below (substitution of different attendance centre), that paragraph has effect as if references to an appropriate magistrates' court were references to the court dealing with the offender.]
- (6) A person sentenced under sub-paragraph (1)(b) above for an offence may appeal to the Crown Court against the sentence.
- (7) A magistrates' court which deals with an offender's case under sub-paragraph (1)(c) above shall send to the Crown Court—
- (a) a certificate signed by a justice of the peace giving particulars of the offender's failure to attend or, as the case may be, the breach of the rules which he has committed; 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 or the breach before the Crown Court.

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Textual Amendments

- F8** Words in Sch. 2(5)(b) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\), s. 336\(3\)\(4\), Sch. 32 para. 126\(b\)](#); [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 42\(34\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10, Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))
- F9** Sch. 5 para. 2(5A) inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\), s. 60, Sch. 5 para. 6\(4\)](#); [S.I. 2005/579, art. 3\(d\)](#)

- 3 (1) Where by virtue of paragraph 2(1)(c) above the offender is brought or appears before the Crown Court and it is proved to the satisfaction of the court—
- that he has failed without reasonable excuse to attend as mentioned in paragraph 1(1)(a) above, or
 - that he has committed such a breach of rules as is mentioned in paragraph 1(1)(b) above,
- 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.
- (2) Where the Crown Court deals with an offender under sub-paragraph (1) above, it shall revoke the attendance centre order if it is still in force.
- (3) In dealing with an offender under sub-paragraph (1) above, the Crown Court—
- shall take into account the extent to which the offender has complied with the requirements of the attendance centre order; and
 - in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence notwithstanding anything in ^{F10}section 152(2) of the Criminal Justice Act 2003].
- (4) In proceedings before the Crown Court under this paragraph any question whether there has been a failure to attend or a breach of the rules shall be determined by the court and not by the verdict of a jury.

Textual Amendments

- F10** Words in Sch. 5 para. 3(3)(b) substituted (4.4.2005) by [Criminal Justice Act 2003 \(c. 44\), s. 336\(3\)\(4\), Sch. 32 para. 126\(c\)](#); [S.I. 2005/950, art. 2\(1\), Sch. 1 para. 42\(34\)](#) (with [Sch. 2](#)) (as explained (29.7.2005) by [S.I. 2005/2122](#), art. 2; and as amended: (14.7.2008) by [2008 c. 4, Sch. 26 para. 78, Sch. 28 Pt. 2](#); [S.I. 2008/1586](#), Sch. 1 paras. 48(s), 50(2)(d); (30.11.2009) by [S.I. 2009/3111](#), art. 2; (3.12.2012) by [S.I. 2012/2905](#), art. 4; (3.12.2012) by [2012 c. 10, Sch. 14 para. 17](#); [S.I. 2012/2906](#), art. 2(l))

Revocation of order with or without re-sentencing

- 4 (1) Where an attendance centre order is in force in respect of an offender, an appropriate court may, on an application made by the offender or by the officer in charge of the relevant attendance centre, revoke the order.
- (2) In sub-paragraph (1) above “an appropriate court” means—

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- (a) where the court which made the order was the Crown Court and there is included in the order a direction that the power to revoke the order is reserved to that court, the Crown Court;
 - (b) in any other case, either of the following—
 - (i) a magistrates’ court [^{F11}acting in the local justice area] in which the relevant attendance centre is situated;
 - (ii) the court which made the order.
- (3) Any power conferred by this paragraph—
- (a) on a magistrates’ court to revoke an attendance centre order made by such a court, or
 - (b) on the Crown Court to revoke an attendance centre order made by the Crown Court,
- includes power to 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.
- (4) A person sentenced by a magistrates’ court under sub-paragraph (3) above for an offence may appeal to the Crown Court against the sentence.
- (5) The proper officer of a court which makes an order under this paragraph revoking an attendance centre order shall—
- (a) deliver a copy of the revoking order to the offender or send a copy by registered post or the recorded delivery service addressed to the offender’s last or usual place of abode; and
 - (b) deliver or send a copy to the officer in charge of the relevant attendance centre.
- (6) In this paragraph “the relevant attendance centre”, in relation to an attendance centre order, means the attendance centre specified in the order or substituted for the attendance centre so specified by an order made by virtue of paragraph 5(1)(b) below.
- (7) In this paragraph “proper officer” means—
- (a) in relation to a magistrates’ court, the [^{F12}designated officer] for the court; and
 - (b) in relation to the Crown Court, the appropriate officer.

Textual Amendments

- F11** Words in Sch. 5 para. 4(2)(b)(i) substituted (1.4.2005) by [The Courts Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/886\)](#), art. 1, [Sch. para. 83\(c\)](#)
- F12** Words in Sch. 5 para. 4(7)(a) substituted (1.4.2005) by [The Courts Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/886\)](#), art. 1, [Sch. para. 83\(d\)](#)

Amendment of order

- 5 (1) Where an attendance centre order is in force in respect of an offender, an appropriate magistrates’ court may, on an application made by the offender or by the officer in charge of the relevant attendance centre, by order—
- (a) vary the day or hour specified in the order for the offender’s first attendance at the relevant attendance centre; or

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- (b) substitute for the relevant attendance centre an attendance centre which the court is satisfied is reasonably accessible to the offender, having regard to his age, the means of access available to him and any other circumstances.
- (2) In sub-paragraph (1) above “an appropriate magistrates’ court” means—
- (a) a magistrates’ court [^{F13}acting in the local justice area] in which the relevant attendance centre is situated; or
- (b) (except where the attendance centre order was made by the Crown Court) the magistrates’ court which made the order.
- (3) The [^{F14}designated officer] for a court which makes an order under this paragraph shall—
- (a) deliver a copy to the offender or send a copy by registered post or the recorded delivery service addressed to the offender’s last or usual place of abode; and
- (b) deliver or send a copy—
- (i) if the order is made by virtue of sub-paragraph (1)(a) above, to the officer in charge of the relevant attendance centre; and
- (ii) if it is made by virtue of sub-paragraph (1)(b) above, to the officer in charge of the attendance centre which the order as amended will require the offender to attend.
- (4) In this paragraph “the relevant attendance centre” has the meaning given by paragraph 4(6) above.

Textual Amendments

F13 Words in Sch. 5 para. 5(2)(a) substituted (1.4.2005) by [The Courts Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/886\), art. 1, Sch. para. 83\(e\)](#)

F14 Words in Sch. 5 para. 5(3) substituted (1.4.2005) by [The Courts Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/886\), art. 1, Sch. para. 83\(f\)](#)

Orders made on appeal

- 6 (1) Where an attendance centre order has been made on appeal, for the purposes of this Schedule 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.
- (2) In relation to an attendance centre order made on appeal, paragraphs 2(1)(b) and 4(3) above shall each have effect as if the words “if the order had not been made” were omitted and paragraph 3(1) above shall have effect as if the words “if it had not made the order” were omitted.

Orders for defaulters

- 7 (1) References in this Schedule to an “offender” include a person who has been ordered to attend at an attendance centre for such a default or failure as is mentioned in section 60(1)(b) or (c) of this Act.

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- (2) Where a person has been ordered to attend at an attendance centre for such a default or failure—
- (a) paragraphs 2(1)(b), 3(1) and 4(3) above shall each have effect in relation to the order as if the words “, for the offence in respect of which the order was made,” and “for that offence” were omitted; and
 - (b) paragraphs 2(5)(b) and 3(3)(b) above (which relate to custodial sentences for offences) do not apply.]

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