

Status: Point in time view as at 09/01/2012.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, SCHEDULE 5A. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 5A

Section 46A

BREACH OF INJUNCTION: POWERS OF COURT IN RESPECT OF UNDER-18S

Textual Amendments

- F1** Sch. 5A inserted (E.W.) (9.1.2012) by [Crime and Security Act 2010 \(c. 17\)](#) , **ss. 39(3)** , [59\(1\)](#) ; [S.I. 2011/3016](#) , [art. 2\(d\)](#)

PART 1

INTRODUCTORY

Power to make supervision order or detention order

- 1 (1) Where—
- (a) an injunction under Part 4 is granted against a person under the age of 18, and
 - (b) on an application made by the injunction applicant, the court is satisfied beyond reasonable doubt that the person is in breach of any provision of the injunction,
- the court may make one of the orders specified in sub-paragraph (2) in respect of the person.
- (2) Those orders are—
- (a) a supervision order (see Part 2 of this Schedule);
 - (b) a detention order (see Part 3 of this Schedule).
- (3) The powers conferred by this paragraph are in addition to any other power of the court in relation to the breach of the injunction.
- (4) Before making an application under paragraph 1(1)(b) the injunction applicant must consult—
- (a) the youth offending team consulted under section 38(1) or 39(5) in relation to the injunction, and
 - (b) any other person previously so consulted.
- (5) In considering whether and how to exercise its powers under this paragraph, the court must consider a report made to assist the court in that respect by the youth offending team referred to in sub-paragraph (4)(a).
- (6) An order under sub-paragraph (1) may not be made in respect of a person aged 18 or over.

Status: Point in time view as at 09/01/2012.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, SCHEDULE 5A. (See end of Document for details)

- (7) The court may not make a detention order under sub-paragraph (1) unless it is satisfied, in view of the severity or extent of the breach, that no other power available to the court is appropriate.
- (8) Where the court makes a detention order under sub-paragraph (1) it must state in open court why it is satisfied as specified in sub-paragraph (7).
- (9) In this Schedule—
- “ defaulter ”, in relation to an order under this Schedule, means the person in respect of whom the order is made;
 - “ injunction applicant ”, in relation to an injunction under Part 4 or an order under this Schedule made in respect of such an injunction, means the person who applied for the injunction;
 - “ appropriate court ”, in relation to an order under this Schedule, means—
 - (a) where the order is made by the High Court, the High Court;
 - (b) where the order is made by a county court, a county court.

PART 2

SUPERVISION ORDERS

Supervision orders

- 2 (1) A supervision order is an order imposing on the defaulter one or more of the following requirements—
- (a) a supervision requirement;
 - (b) an activity requirement;
 - (c) a curfew requirement.
- (2) Before making a supervision order the court must obtain and consider information about the defaulter's family circumstances and the likely effect of such an order on those circumstances.
- (3) Before making a supervision order imposing two or more requirements, the court must consider their mutual compatibility.
- (4) The court must ensure, as far as practicable, that any requirement imposed by a supervision order is such as to avoid—
- (a) any conflict with the defaulter's religious beliefs,
 - (b) any interference with the times, if any, at which the defaulter normally works or attends school or any other educational establishment, and
 - (c) any conflict with the requirements of any other court order or injunction to which the defaulter may be subject.
- (5) A supervision order must for the purposes of this Schedule specify a maximum period for the operation of any requirement contained in the order.
- (6) The period specified under sub-paragraph (5) may not exceed six months beginning with the day after that on which the supervision order is made.
- (7) A supervision order must for the purposes of this Schedule specify a youth offending team established under section 39 of the Crime and Disorder Act 1998.

Status: Point in time view as at 09/01/2012.

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- (8) The youth offending team specified under sub-paragraph (7) is to be—
- (a) the youth offending team in whose area it appears to the court that the respondent will reside during the period specified under sub-paragraph (5), or
 - (b) where it appears to the court that the respondent will reside in the area of two or more such teams, such one of those teams as the court may determine.

Supervision requirements

- 3 (1) In this Schedule, “supervision requirement”, in relation to a supervision order, means a requirement that the defaulter attend appointments with—
- (a) the responsible officer, or
 - (b) another person determined by the responsible officer,
- at such times and places as may be instructed by the responsible officer.
- (2) The appointments must be within the period for the time being specified in the order under paragraph 2(5).

Activity requirements

- 4 (1) In this Schedule, “activity requirement”, in relation to a supervision order, means a requirement that the defaulter do any or all of the following within the period for the time being specified in the order under paragraph 2(5)—
- (a) participate, on such number of days as may be specified in the order, in activities at a place, or places, so specified;
 - (b) participate in an activity or activities specified in the order on such number of days as may be so specified;
 - (c) participate in one or more residential exercises for a continuous period or periods comprising such number or numbers of days as may be specified in the order;
 - (d) in accordance with sub-paragraphs (6) to (9), engage in activities in accordance with instructions of the responsible officer on such number of days as may be specified in the order.
- (2) The number of days specified in a supervision order in relation to an activity requirement must not, in aggregate, be less than 12 or more than 24.
- (3) A requirement referred to in sub-paragraph (1)(a) or (b) operates to require the defaulter, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement—
- (a) in the case of a requirement referred to in sub-paragraph (1)(a), to present himself or herself at a place specified in the order to a person of a description so specified, or
 - (b) in the case of a requirement referred to in sub-paragraph (1)(b), to participate in an activity specified in the order,
- and, on each such day, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).
- (4) Where the order includes a requirement referred to in sub-paragraph (1)(c) to participate in a residential exercise, it must specify, in relation to the residential exercise—

Status: Point in time view as at 09/01/2012.

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- (a) a place, or
 - (b) an activity.
- (5) A requirement under sub-paragraph (1)(c) to participate in a residential exercise operates to require the defaulter, in accordance with instructions given by the responsible officer—
- (a) if a place is specified under sub-paragraph (4)(a)—
 - (i) to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place so specified to a person of a description specified in the instructions, and
 - (ii) to reside there for that period;
 - (b) if an activity is specified under sub-paragraph (4)(b), to participate, for the period specified in the order in relation to the exercise, in the activity so specified,
- and, during that period, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).
- (6) Subject to sub-paragraph (8), instructions under sub-paragraph (1)(d) relating to any day must require the defaulter to do either of the following—
- (a) present himself or herself to a person of a description specified in the instructions at a place so specified;
 - (b) participate in an activity specified in the instructions.
- (7) Any such instructions operate to require the defaulter, on that day or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or, as the case may be, the activity.
- (8) If the supervision order so provides, instructions under sub-paragraph (1)(d) may require the defaulter to participate in a residential exercise for a period comprising not more than seven days, and, for that purpose—
- (a) to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place so specified and to reside there for that period, or
 - (b) to participate for that period in an activity specified in the instructions.
- (9) Instructions such as are mentioned in sub-paragraph (8)—
- (a) may not be given except with the consent of a parent or guardian of the defaulter, and
 - (b) operate to require the defaulter, during the period specified under that sub-paragraph, to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified under paragraph (a) or (b) of that sub-paragraph.
- (10) Instructions given by, or under the authority of, a person in charge of a place under sub-paragraph (3), (5), (7) or (9)(b) may require the defaulter to engage in activities otherwise than at that place.
- (11) Where a supervision order contains an activity requirement, the appropriate court may on the application of the injunction applicant or the defaulter amend the order by substituting for any number of days, place, activity, period or description of persons specified in the order a new number of days, place, activity, period or description (subject, in the case of a number of days, to sub-paragraph (2)).

Status: Point in time view as at 09/01/2012.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, SCHEDULE 5A. (See end of Document for details)

- (12) A court may only include an activity requirement in a supervision order or vary such a requirement under sub-paragraph (11) if—
- (a) it has consulted the youth offending team which is to be, or is, specified in the order,
 - (b) it is satisfied that it is feasible to secure compliance with the requirement or requirement as varied,
 - (c) it is satisfied that provision for the defaulter to participate in the activities proposed can be made under the arrangements for persons to participate in such activities which exist in the area of the youth offending team which is to be or is specified in the order, and
 - (d) in a case where the requirement or requirement as varied would involve the co-operation of a person other than the defaulter and the responsible officer, that person consents to its inclusion or variation.
- (13) For the purposes of sub-paragraph (9) “ guardian ” has the same meaning as in the Children and Young Persons Act 1933 (subject to sub-paragraph (14)).
- (14) If a local authority has parental responsibility for a defaulter who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference to “guardian” in sub-paragraph (9) is to be read as a reference to that authority.
- (15) In sub-paragraph (14)—
- (a) “ parental responsibility ” has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act;
 - (b) “ social services functions ” has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.

Curfew requirements

- 5 (1) In this Schedule, “ curfew requirement ”, in relation to a supervision order, means a requirement that the defaulter remain, for periods specified in the order, at a place so specified.
- (2) A supervision order imposing a curfew requirement may specify different places or different periods for different days.
- (3) The periods specified under sub-paragraph (1)—
- (a) must be within the period for the time being specified in the order under paragraph 2(5);
 - (b) may not amount to less than two or more than eight hours in any day.
- (4) Before specifying a place under sub-paragraph (1) in a supervision order, the court making the order must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the defaulter).
- (5) Where a supervision order contains a curfew requirement, the appropriate court may, on the application of the injunction applicant or the defaulter amend the order by—
- (a) substituting new periods for the periods specified in the order under this paragraph (subject to sub-paragraph (3)); or
 - (b) substituting a new place for the place specified in the order under this paragraph (subject to sub-paragraph (4)).

Status: Point in time view as at 09/01/2012.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, SCHEDULE 5A. (See end of Document for details)

Electronic monitoring requirements

- 6 (1) A supervision order containing a curfew requirement may also contain a requirement (an “electronic monitoring requirement”) for securing the electronic monitoring of compliance with the curfew requirement during a period—
- (a) specified in the order, or
 - (b) determined by the responsible officer in accordance with the order.
- (2) In a case referred to in sub-paragraph (1)(b), the responsible officer must, before the beginning of the period when the electronic monitoring requirement is to take effect, notify—
- (a) the defaulter,
 - (b) the person responsible for the monitoring, and
 - (c) any person falling within sub-paragraph (3)(b),
- of the time when that period is to begin.
- (3) Where—
- (a) it is proposed to include an electronic monitoring requirement in a supervision order, but
 - (b) there is a person (other than the defaulter) without whose co-operation it will not be practicable to secure that the monitoring takes place,
- the requirement may not be included in the order without that person's consent.
- (4) A supervision order imposing an electronic monitoring requirement must include provision for making a person responsible for the monitoring.
- (5) The person who is made responsible for the monitoring must be of a description specified in an order under paragraph 26(5) of Schedule 1 to the Criminal Justice and Immigration Act 2008.
- (6) An electronic monitoring requirement may not be included in a supervision order unless the court making the order—
- (a) has been notified by the youth offending team for the time being specified in the order that arrangements for electronic monitoring are available in the area where the place which the court proposes to specify in the order for the purposes of the curfew requirement is situated, and
 - (b) is satisfied that the necessary provision can be made under the arrangements currently available.
- (7) Where a supervision order contains an electronic monitoring requirement, the appropriate court may, on the application of the injunction applicant or the defaulter, amend the order by substituting a new period for the period specified in the order under this paragraph.
- (8) Sub-paragraph (3) applies in relation to the variation of an electronic monitoring requirement under sub-paragraph (7) as it applies in relation to the inclusion of such a requirement.

“Responsible officer”

- 7 (1) For the purposes of this Part of this Schedule, the “responsible officer”, in relation to a supervision order, means—

Status: Point in time view as at 09/01/2012.

Changes to legislation: There are currently no known outstanding effects for the Policing and Crime Act 2009, SCHEDULE 5A. (See end of Document for details)

- (a) in a case where the order imposes a curfew requirement and an electronic monitoring requirement, but does not impose an activity or supervision requirement, the person who under paragraph 6(4) is responsible for the electronic monitoring;
 - (b) in any other case, the member of the youth offending team for the time being specified in the order who, as respects the defaulter, is for the time being responsible for discharging the functions conferred by this Schedule on the responsible officer.
- (2) Where a supervision order has been made, it is the duty of the responsible officer—
 - (a) to make any arrangements that are necessary in connection with the requirements contained in the order, and
 - (b) to promote the defaulter's compliance with those requirements.
- (3) In giving instructions in pursuance of a supervision order, the responsible officer must ensure, so far as practicable, that any instruction is such as to avoid the matters referred to in paragraph 2(4).
- (4) A defaulter in respect of whom a supervision order is made must—
 - (a) keep in touch with the responsible officer in accordance with such instructions as the responsible officer may from time to time give to the defaulter, and
 - (b) notify the responsible officer of any change of address.
- (5) The obligations imposed by sub-paragraph (4) have effect as a requirement of the supervision order.

Amendment of operative period

- 8 (1) The appropriate court may, on the application of the injunction applicant or the defaulter, amend a supervision order by substituting a new period for that for the time being specified in the order under paragraph 2(5) (subject to paragraph 2(6)).
- (2) The court may, on amending a supervision order pursuant to sub-paragraph (1), make such other amendments to the order in relation to any requirement imposed by the order as the court considers appropriate.

Amendment on change of area of residence

- 9 (1) This paragraph applies where, on an application made by the injunction applicant or the defaulter in relation to a supervision order, the appropriate court is satisfied that the defaulter proposes to reside, or is residing, in the area of a youth offending team other than the team for the time being specified in the order.
- (2) If the application is made by the defaulter, the court to which it is made may amend the order by substituting for the youth offending team specified in the order the youth offending team for the area referred to in sub-paragraph (1) (or, if there is more than one such team for that area, such of those teams as the court may determine).
- (3) If the application is made by the injunction applicant, the court to which it is made must, subject as follows, so amend the order.
- (4) Where a court amends the supervision order pursuant to sub-paragraph (2) or (3) but the order contains a requirement which, in the opinion of the court, cannot reasonably

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be complied with if the defaulter resides in the area referred to in sub-paragraph (1), the court must also amend the order by—

- (a) removing that requirement, or
- (b) substituting for that requirement a new requirement which can reasonably be complied with if the defaulter resides in that area.

- (5) Sub-paragraph (3) does not require a court to amend the supervision order if in its opinion sub-paragraph (4) would produce an inappropriate result.
- (6) The injunction applicant must consult the youth offending team for the time being specified in the order before making an application under sub-paragraph (1).

Revocation of supervision order

- 10 (1) Where a supervision order is made, the injunction applicant or the defaulter may apply to the appropriate court—
 - (a) to revoke the order, or
 - (b) to amend the order by removing any requirement from it.
- (2) If it appears to the court to which an application under sub-paragraph (1)(a) or (b) is made to be in the interests of justice to do so, having regard to circumstances which have arisen since the supervision order was made, the court may grant the application and revoke or amend the order accordingly.
- (3) The circumstances referred to in sub-paragraph (2) include the conduct of the defaulter.
- (4) If an application made under sub-paragraph (1) in relation to a supervision order is dismissed, no further such application may be made in relation to the order by any person without the consent of the appropriate court.
- (5) The injunction applicant must consult the youth offending team for the time being specified in the order before making an application under sub-paragraph (1).

Compliance with supervision order

- 11 If the responsible officer considers that the defaulter has complied with all the requirements of the supervision order, the responsible officer must inform the injunction applicant.

Non-compliance with supervision order

- 12 (1) If the responsible officer considers that the defaulter has failed to comply with any requirement of the supervision order, the responsible officer must inform the injunction applicant.
- (2) On being informed as specified in sub-paragraph (1) the injunction applicant may apply to the appropriate court.
- (3) Before making an application under sub-paragraph (2) the injunction applicant must consult—
 - (a) the youth offending team for the time being specified in the order, and
 - (b) any person consulted by virtue of section 38(2)(a) or (b).

Status: Point in time view as at 09/01/2012.

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- (4) If on an application under sub-paragraph (2) the court to which it is made is satisfied beyond reasonable doubt that the defaulter has without reasonable excuse failed to comply with any requirement of the supervision order, the court may—
 - (a) revoke the supervision order and make a new one; or
 - (b) revoke the order and make a detention order (see Part 3 of this Schedule).
- (5) The powers in sub-paragraph (4) may not be exercised at any time after the defaulter reaches the age of 18.
- (6) The powers conferred by sub-paragraph (4) are in addition to any other power of the court in relation to the breach of the supervision order.
- (7) The court to which an application under sub-paragraph (2) is made must consider representations made by the youth offending team for the time being specified in the order before exercising its powers under this paragraph.

Copies of supervision order etc

- 13 (1) The court by which a supervision order is made must forthwith provide a copy of the order to—
 - (a) the defaulter, and
 - (b) the youth offending team for the time being specified in the order.
- (2) Where a supervision order is made, the injunction applicant must forthwith provide a copy of so much of the order as is relevant—
 - (a) in a case where the order includes an activity requirement specifying a place under paragraph 4(1)(a), to the person in charge of that place;
 - (b) in a case where the order includes an activity requirement specifying an activity under paragraph 4(1)(b), to the person in charge of that activity;
 - (c) in a case where the order includes an activity requirement specifying a residential exercise under paragraph 4(1)(c), to the person in charge of the place or activity specified under paragraph 4(4) in relation to that residential exercise;
 - (d) in a case where the order contains an electronic monitoring requirement, to—
 - (i) any person who by virtue of paragraph 6(4) will be responsible for the electronic monitoring, and
 - (ii) any person without whose consent that requirement could not have been included in the order.
- (3) The court by which a supervision order is revoked or amended must forthwith provide a copy of the revoking order, or of the order as amended, to—
 - (a) the defaulter, and
 - (b) the youth offending team for the time being specified in the order.
- (4) Where—
 - (a) a copy of a supervision order (or part of a supervision order) has been given to a person under sub-paragraph (2) by virtue of any requirement contained in the order, and
 - (b) the order is revoked, or amended in respect of that requirement,the injunction applicant must forthwith give a copy of the revoking order, or of so much of the order as amended as is relevant, to that person.

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PART 3

DETENTION ORDERS

Detention orders

- 14 (1) A detention order is an order that the defaulter be detained for a period specified in the order in such youth detention accommodation as the Secretary of State may determine.
- (2) The period specified under sub-paragraph (1) may not exceed the period of three months beginning with the day after that on which the order is made.
- (3) In sub-paragraph (1) “ youth detention accommodation ” means—
- (a) a secure training centre;
 - (b) a young offender institution;
 - (c) secure accommodation, as defined by section 23(12) of the Children and Young Persons Act 1969.
- (4) The function of the Secretary of State under sub-paragraph (1) is exercisable concurrently with the Youth Justice Board.
- (5) A person detained under a detention order is in legal custody.

Revocation of detention order

- 15 (1) Where a detention order is made, the injunction applicant or the defaulter may apply to the appropriate court to revoke it.
- (2) If it appears to the court to which an application under sub-paragraph (1) is made to be in the interests of justice to do so, having regard to circumstances which have arisen since the detention order was made, the court may grant the application and revoke the order accordingly.
- (3) The circumstances referred to in sub-paragraph (2) include the conduct of the defaulter.
- (4) If an application made under sub-paragraph (1) in relation to a detention order is dismissed, no further such application may be made in relation to the order by any person without the consent of the appropriate court.
- (5) Before making an application under sub-paragraph (1) the injunction applicant must consult—
- (a) in the case of a detention order made under paragraph 1(1), the youth offending team referred to in paragraph 1(4)(a); or
 - (b) in the case of a detention order made under paragraph 12(4)(b), the youth offending team referred to in paragraph 12(3)(a).]

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