

## SCHEDULES

### SCHEDULE 2

#### BREACH, REVOCATION OR AMENDMENT OF YOUTH REHABILITATION ORDERS

##### PART 2

##### BREACH OF REQUIREMENT OF ORDER

###### *Duty to give warning*

- 3 (1) If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, the responsible officer must give the offender a warning under this paragraph unless under paragraph 4(1) or (3) the responsible officer causes an information to be laid before a justice of the peace in respect of the failure.
- (2) A warning under this paragraph must—
- (a) describe the circumstances of the failure,
  - (b) state that the failure is unacceptable, and
  - (c) state that the offender will be liable to be brought before a court—
    - (i) in a case where the warning is given during the warned period relating to a previous warning under this paragraph, if during that period the offender again fails to comply with the order, or
    - (ii) in any other case, if during the warned period relating to the warning, the offender fails on more than one occasion to comply with the order.
- (3) The responsible officer must, as soon as practicable after the warning has been given, record that fact.
- (4) In this paragraph, “warned period”, in relation to a warning under this paragraph, means the period of 12 months beginning with the date on which the warning was given.

###### *Breach of order*

- 4 (1) If the responsible officer—
- (a) has given a warning (“the first warning”) under paragraph 3 to the offender in respect of a youth rehabilitation order,
  - (b) during the warned period relating to the first warning, has given another warning under that paragraph to the offender in respect of a failure to comply with the order, and

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- (c) is of the opinion that, during the warned period relating to the first warning, the offender has again failed without reasonable excuse to comply with the order,  
the responsible officer must cause an information to be laid before a justice of the peace in respect of the failure mentioned in paragraph (c).
- (2) But sub-paragraph (1) does not apply if the responsible officer is of the opinion that there are exceptional circumstances which justify not causing an information to be so laid.
- (3) If—
  - (a) the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with a youth rehabilitation order, and
  - (b) sub-paragraph (1) does not apply (in a case not within sub-paragraph (2)),
the responsible officer may cause an information to be laid before a justice of the peace in respect of that failure.
- (4) In this paragraph, “warned period” has the same meaning as in paragraph 3.

*Issue of summons or warrant by justice of the peace*

- 5 (1) If at any time while a youth rehabilitation order is in force it appears on information to a justice of the peace that an offender has failed to comply with a youth rehabilitation order, the justice may—
  - (a) issue a summons requiring the offender to appear at the place and time specified in it, or
  - (b) if the information is in writing and on oath, issue a warrant for the offender’s arrest.
- (2) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought—
  - (a) if the youth rehabilitation order was made by the Crown Court and does not include a direction under paragraph 36 of Schedule 1, before the Crown Court, and
  - (b) in any other case, before the appropriate court.
- (3) In sub-paragraph (2), “appropriate court” means—
  - (a) if the offender is aged under 18, a youth court acting in the relevant local justice area, and
  - (b) if the offender is aged 18 or over, a magistrates’ court (other than a youth court) acting in that local justice area.
- (4) In sub-paragraph (3), “relevant local justice area” means—
  - (a) the local justice area in which the offender resides, or
  - (b) if it is not known where the offender resides, the local justice area specified in the youth rehabilitation order.
- (5) Sub-paragraphs (6) and (7) apply where the offender does not appear in answer to a summons issued under this paragraph.
- (6) If the summons required the offender to appear before the Crown Court, the Crown Court may—

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- (a) unless the summons was issued under this sub-paragraph, issue a further summons requiring the offender to appear at the place and time specified in it, or
  - (b) in any case, issue a warrant for the arrest of the offender.
- (7) If the summons required the offender to appear before a magistrates' court, the magistrates' court may issue a warrant for the arrest of the offender.

#### *Powers of magistrates' court*

- 6 (1) This paragraph applies where—
- (a) an offender appears or is brought before a youth court or other magistrates' court under paragraph 5, and
  - (b) it is proved to the satisfaction of the court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.
- (2) The court may deal with the offender in respect of that failure in any one of the following ways—
- (a) by ordering the offender to pay a fine of an amount not exceeding—
    - (i) £250, if the offender is aged under 14, or
    - (ii) £1,000, in any other case;
  - (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—
    - (i) in addition to, or
    - (ii) in substitution for,any requirement or requirements already imposed by the order;
  - (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the court could have dealt with the offender for that offence (had the offender been before that court to be dealt with for it).
- (3) Sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).
- (4) In dealing with the offender under sub-paragraph (2), the court must take into account the extent to which the offender has complied with the youth rehabilitation order.
- (5) A fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.
- (6) Any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.
- (7) Where—
- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
  - (b) the youth rehabilitation order does not contain an unpaid work requirement, paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.
- (8) The court may not under sub-paragraph (2)(b) impose—
- (a) an extended activity requirement, or
  - (b) a fostering requirement,
- if the order does not already impose such a requirement.

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- (9) Where—
- (a) the order imposes a fostering requirement (the “original requirement”), and
  - (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,
- paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.
- (10) Where—
- (a) the court deals with the offender under sub-paragraph (2)(b), and
  - (b) it would not otherwise have the power to amend the youth rehabilitation order under paragraph 13 (amendment by reason of change of residence),
- that paragraph has effect as if references in it to the appropriate court were references to the court which is dealing with the offender.
- (11) Where the court deals with the offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.
- (12) Sub-paragraphs (13) to (15) apply where—
- (a) the court is dealing with the offender under sub-paragraph (2)(c), and
  - (b) the offender has wilfully and persistently failed to comply with a youth rehabilitation order.
- (13) The court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).
- (14) If—
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
  - (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,
- the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).
- (15) If—
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of sub-paragraph (13) or paragraph 8(12), and
  - (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,
- for the purposes of dealing with the offender under sub-paragraph (2)(c), the court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.
- (16) An offender may appeal to the Crown Court against a sentence imposed under sub-paragraph (2)(c).

*Power of magistrates' court to refer offender to Crown Court*

- 7 (1) Sub-paragraph (2) applies if—

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- (a) the youth rehabilitation order was made by the Crown Court and contains a direction under paragraph 36 of Schedule 1, and
  - (b) a youth court or other magistrates' court would (apart from that sub-paragraph) be required, or has the power, to deal with the offender in one of the ways mentioned in paragraph 6(2).
- (2) The court may instead—
- (a) commit the offender in custody, or
  - (b) release the offender on bail,
- until the offender can be brought or appear before the Crown Court.
- (3) Where a court deals with the offender's case under sub-paragraph (2) it must send to the Crown Court—
- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the youth rehabilitation order in the respect specified in the certificate, and
  - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.

#### *Powers of Crown Court*

- 8 (1) This paragraph applies where—
- (a) an offender appears or is brought before the Crown Court under paragraph 5 or by virtue of paragraph 7(2), and
  - (b) it is proved to the satisfaction of that court that the offender has failed without reasonable excuse to comply with the youth rehabilitation order.
- (2) The Crown Court may deal with the offender in respect of that failure in any one of the following ways—
- (a) by ordering the offender to pay a fine of an amount not exceeding—
    - (i) £250, if the offender is aged under 14, or
    - (ii) £1,000, in any other case;
  - (b) by amending the terms of the youth rehabilitation order so as to impose any requirement which could have been included in the order when it was made—
    - (i) in addition to, or
    - (ii) in substitution for,any requirement or requirements already imposed by the order;
  - (c) by dealing with the offender, for the offence in respect of which the order was made, in any way in which the Crown Court could have dealt with the offender for that offence.
- (3) Sub-paragraph (2)(b) is subject to sub-paragraphs (6) to (9).
- (4) In dealing with the offender under sub-paragraph (2), the Crown Court must take into account the extent to which the offender has complied with the youth rehabilitation order.
- (5) A fine imposed under sub-paragraph (2)(a) is to be treated, for the purposes of any enactment, as being a sum adjudged to be paid by a conviction.

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- (6) Any requirement imposed under sub-paragraph (2)(b) must be capable of being complied with before the date specified under paragraph 32(1) of Schedule 1.
- (7) Where—
- (a) the court is dealing with the offender under sub-paragraph (2)(b), and
  - (b) the youth rehabilitation order does not contain an unpaid work requirement, paragraph 10(2) of Schedule 1 applies in relation to the inclusion of such a requirement as if for “40” there were substituted “20”.
- (8) The court may not under sub-paragraph (2)(b) impose—
- (a) an extended activity requirement, or
  - (b) a fostering requirement,
- if the order does not already impose such a requirement.
- (9) Where—
- (a) the order imposes a fostering requirement (the “original requirement”), and
  - (b) under sub-paragraph (2)(b) the court proposes to substitute a new fostering requirement (“the substitute requirement”) for the original requirement,
- paragraph 18(2) of Schedule 1 applies in relation to the substitute requirement as if the reference to the period of 12 months beginning with the date on which the original requirement first had effect were a reference to the period of 18 months beginning with that date.
- (10) Where the Crown Court deals with an offender under sub-paragraph (2)(c), it must revoke the youth rehabilitation order if it is still in force.
- (11) Sub-paragraphs (12) to (14) apply where—
- (a) an offender has wilfully and persistently failed to comply with a youth rehabilitation order; and
  - (b) the Crown Court is dealing with the offender under sub-paragraph (2)(c).
- (12) The court may impose a youth rehabilitation order with intensive supervision and surveillance notwithstanding anything in section 1(4)(a) or (b).
- (13) If—
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance, and
  - (b) the offence mentioned in sub-paragraph (2)(c) was punishable with imprisonment,
- the court may impose a custodial sentence notwithstanding anything in section 152(2) of the Criminal Justice Act 2003 (c. 44) (general restrictions on imposing discretionary custodial sentences).
- (14) If—
- (a) the order is a youth rehabilitation order with intensive supervision and surveillance which was imposed by virtue of paragraph 6(13) or sub-paragraph (12), and
  - (b) the offence mentioned in sub-paragraph (2)(c) was not punishable with imprisonment,
- for the purposes of dealing with the offender under sub-paragraph (2)(c), the Crown Court is to be taken to have had power to deal with the offender for that offence by making a detention and training order for a term not exceeding 4 months.

- (15) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the youth rehabilitation order is to be determined by the court and not by the verdict of a jury.

*Restriction of powers in paragraphs 6 and 8 where treatment required*

- 9 (1) Sub-paragraph (2) applies where a youth rehabilitation order imposes any of the following requirements in respect of an offender—
- (a) a mental health treatment requirement;
  - (b) a drug treatment requirement;
  - (c) an intoxicating substance treatment requirement.
- (2) The offender is not to be treated for the purposes of paragraph 6 or 8 as having failed to comply with the order on the ground only that the offender had refused to undergo any surgical, electrical or other treatment required by that requirement if, in the opinion of the court, the refusal was reasonable having regard to all the circumstances.

*Power to amend amounts of fines*

- 10 (1) The Secretary of State may by order amend any sum for the time being specified in paragraph 6(2)(a)(i) or (ii) or 8(2)(a)(i) or (ii).
- (2) The power conferred by sub-paragraph (1) may be exercised only if it appears to the Secretary of State that there has been a change in the value of money since the relevant date which justifies the change.
- (3) In sub-paragraph (2), “the relevant date” means—
- (a) if the sum specified in paragraph 6(2)(a)(i) or (ii) or 8(2)(a)(i) or (ii) (as the case may be) has been substituted by an order under sub-paragraph (1), the date on which the sum was last so substituted;
  - (b) otherwise, the date on which this Act was passed.
- (4) An order under sub-paragraph (1) (a “fine amendment order”) must not have effect in relation to any youth rehabilitation order made in respect of an offence committed before the fine amendment order comes into force.