



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 3

SENTENCING AND PUNISHMENT OF OFFENDERS

CHAPTER 1

SENTENCING

Requirements under community orders and suspended sentence orders

70 Programme requirement

- (1) In section 177(2) of the Criminal Justice Act 2003 (community orders: restrictions relating to particular requirements) omit paragraph (c) (which refers to section 202(4) and (5) of that Act).
- (2) In section 190(2) of that Act (suspended sentence orders: restrictions relating to particular requirements) omit paragraph (c) (which refers to section 202(4) and (5) of that Act).
- (3) Section 202 of that Act (orders imposing programme requirements) is amended as follows.
- (4) In subsection (1) (meaning of “programme requirement”)—
 - (a) after “participate” insert “in accordance with this section”, and
 - (b) for the words from “specified in the order” to the end of the subsection substitute “on the number of days specified in the order.”
- (5) Omit subsections (4) and (5) (requirements to be met before court includes a programme requirement in a relevant order).

Status: This is the original version (as it was originally enacted).

- (6) In subsection (6) (effect of programme requirement)—
 - (a) in the opening words, for “requirement to attend an accredited programme” substitute “programme requirement”, and
 - (b) in paragraph (a), for “at the place specified in the order” substitute “that is from time to time specified by the responsible officer at the place that is so specified”.
- (7) In subsection (7) (requirement for place providing programme requirement to be approved) for “in an order” substitute “by a responsible officer”.
- (8) In consequence of subsection (5), omit paragraph 86 of Schedule 4 to the Criminal Justice and Immigration Act 2008.

71 Curfew requirement

- (1) Section 204 of the Criminal Justice Act 2003 (orders imposing curfew requirements) is amended as follows.
- (2) In subsection (2) (order may not specify curfew period of more than twelve hours) for “twelve” substitute “sixteen”.
- (3) In subsection (3) (order may not specify curfew periods outside period of six months from making of order) for “six” substitute “twelve”.

72 Foreign travel prohibition requirement

- (1) In section 177 of the Criminal Justice Act 2003 (community orders), in subsection (1), after paragraph (g) insert—
 - “(ga) a foreign travel prohibition requirement (as defined by section 206A),”.
- (2) In subsection (4) of that section (power to impose electronic monitoring requirement), after “a residence requirement,” insert “a foreign travel prohibition requirement,”.
- (3) In section 190 of that Act (imposition of requirements by suspended sentence order), in subsection (1), after paragraph (g) insert—
 - “(ga) a foreign travel prohibition requirement (as defined by section 206A),”.
- (4) In subsection (4) of that section (power to impose electronic monitoring requirement), after “a residence requirement,” insert “a foreign travel prohibition requirement,”.
- (5) After section 206 of that Act insert—

“206A Foreign travel prohibition requirement

- (1) In this Part “foreign travel prohibition requirement”, in relation to a relevant order, means a requirement prohibiting the offender from travelling, on a day or days specified in the order, or for a period so specified—
 - (a) to any country or territory outside the British Islands specified or described in the order,
 - (b) to any country or territory outside the British Islands other than a country or territory specified or described in the order, or

Status: This is the original version (as it was originally enacted).

- (c) to any country or territory outside the British Islands.
- (2) A day specified under subsection (1) may not fall outside the period of 12 months beginning with the day on which the relevant order is made.
- (3) A period specified under that subsection may not exceed 12 months beginning with the day on which the relevant order is made.”
- (6) In section 305(1) of that Act (interpretation of Part 12), at the appropriate place insert—
 - ““foreign travel prohibition requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 206A;”.

73 Mental health treatment requirement

- (1) Section 207 of the Criminal Justice Act 2003 (mental health treatment requirement) is amended as follows.
- (2) In subsection (3)(a) (requirement for court to be satisfied as to offender’s mental condition on evidence of registered medical practitioner)—
 - (a) omit the words from “, on the evidence” to “1983;”, and
 - (b) in sub-paragraph (ii), for “that Act” substitute “the Mental Health Act 1983”.
- (3) Omit subsection (5) (application of section 54(2) and (3) of the Mental Health Act 1983 to proof of offender’s mental condition).

74 Drug rehabilitation requirement

- (1) In section 209 of the Criminal Justice Act 2003 (drug rehabilitation requirements) omit subsection (3) (requirement for treatment and testing period to be at least six months).
- (2) In section 211(2) of that Act (powers of court at review hearing)—
 - (a) at the end of paragraph (a) insert “and”, and
 - (b) omit paragraph (b) and the “and” at the end of that paragraph.
- (3) In section 223(3) of that Act (power to amend specified periods of time), omit paragraph (c).

75 Alcohol treatment requirement

- (1) In section 212 of the Criminal Justice Act 2003 (alcohol treatment requirement) omit subsection (4) (requirement for alcohol treatment requirement to have effect for at least six months).
- (2) In section 223(3) of that Act (power to amend specified periods of time), omit paragraph (d).

76 Alcohol abstinence and monitoring requirement

- (1) After section 212 of the Criminal Justice Act 2003 insert—

Status: This is the original version (as it was originally enacted).

“212A Alcohol abstinence and monitoring requirement

- (1) In this Part “alcohol abstinence and monitoring requirement”, in relation to a relevant order, means a requirement—
 - (a) that, subject to such exceptions (if any) as are specified—
 - (i) the offender must abstain from consuming alcohol throughout a specified period, or
 - (ii) the offender must not consume alcohol so that at any time during a specified period there is more than a specified level of alcohol in the offender’s body, and
 - (b) that the offender must, for the purpose of ascertaining whether the offender is complying with provision under paragraph (a), submit during the specified period to monitoring in accordance with specified arrangements.
- (2) A period specified under subsection (1)(a) must not exceed 120 days.
- (3) If the Secretary of State by order prescribes a minimum period for the purposes of subsection (1)(a), a period specified under that provision must be at least as long as the period prescribed.
- (4) The level of alcohol specified under subsection (1)(a)(ii) must be that prescribed by the Secretary of State by order for the purposes of that provision (and a requirement under that provision may not be imposed unless such an order is in force).
- (5) An order under subsection (4) may prescribe a level—
 - (a) by reference to the proportion of alcohol in any one or more of an offender’s breath, blood, urine or sweat, or
 - (b) by some other means.
- (6) The arrangements for monitoring specified under subsection (1)(b) must be consistent with those prescribed by the Secretary of State by order (and an alcohol abstinence and monitoring requirement may not be imposed unless such an order is in force).
- (7) An order under subsection (6) may in particular prescribe—
 - (a) arrangements for monitoring by electronic means;
 - (b) arrangements for monitoring by other means of testing.
- (8) A court may not include an alcohol abstinence and monitoring requirement in a relevant order unless the following conditions are met.
- (9) The first condition is that—
 - (a) the consumption of alcohol by the offender is an element of the offence for which the order is to be imposed or an associated offence, or
 - (b) the court is satisfied that the consumption of alcohol by the offender was a factor that contributed to the commission of that offence or an associated offence.
- (10) The second condition is that the court is satisfied that the offender is not dependent on alcohol.

Status: This is the original version (as it was originally enacted).

- (11) The third condition is that the court does not include an alcohol treatment requirement in the order.
- (12) The fourth condition is that the court has been notified by the Secretary of State that arrangements for monitoring of the kind to be specified are available in the local justice area to be specified.
- (13) In this section—
“alcohol” includes anything containing alcohol;
“specified”, in relation to a relevant order, means specified in the order.”
- (2) In section 177 of that Act (community orders), in subsection (1), after paragraph (j) insert—
“(ja) an alcohol abstinence and monitoring requirement (as defined by section 212A),”.
- (3) In subsection (2) of that section (limitations on power to impose community order)—
(a) omit the “and” at the end of paragraph (f), and
(b) at the end of paragraph (g) insert “, and
(h) section 212A(8) to (12) (alcohol abstinence and monitoring requirement).”
- (4) In section 190 of that Act (imposition of requirements by suspended sentence order), in subsection (1), after paragraph (j) insert—
“(ja) an alcohol abstinence and monitoring requirement (as defined by section 212A),”.
- (5) In subsection (2) of that section (limitations on power to impose requirements by suspended sentence order)—
(a) omit the “and” at the end of paragraph (f), and
(b) at the end of paragraph (g) insert “, and
(h) section 212A(8) to (12) (alcohol abstinence and monitoring requirement).”
- (6) In section 215 of that Act (electronic monitoring requirement), after subsection (4) insert—
“(5) An electronic monitoring requirement may not be included in a relevant order for the purposes of securing the electronic monitoring of the offender’s compliance with an alcohol abstinence and monitoring requirement.
(6) Subsection (5) does not prevent the inclusion of an electronic monitoring requirement in a relevant order which includes an alcohol abstinence and monitoring requirement where this is for the purpose of securing the electronic monitoring of an offender’s compliance with a requirement other than the alcohol abstinence and monitoring requirement.”
- (7) In section 223(3) of that Act (provisions to which powers to amend periods of time apply), after paragraph (b) insert—
“(ba) section 212A(2) (alcohol abstinence and monitoring requirement)”.
- (8) In section 305(1) of that Act (interpretation of Part 12), at the appropriate place insert—

Status: This is the original version (as it was originally enacted).

““alcohol abstinence and monitoring requirement”, in relation to a community order or suspended sentence order, has the meaning given by section 212A;”.

(9) In Schedule 9 to that Act (transfer of community orders to Scotland or Northern Ireland)—

- (a) in paragraph 1(5), after “require” insert “an alcohol abstinence and monitoring requirement or”, and
- (b) in paragraph 3, after sub-paragraph (4) insert—

“(4A) The court may not by virtue of sub-paragraph (1) or (3) require an alcohol abstinence and monitoring requirement to be complied with in Northern Ireland.”

(10) In Schedule 13 to that Act (transfer of suspended sentence orders to Scotland or Northern Ireland)—

- (a) in paragraph 1(5), after “require” insert “an alcohol abstinence and monitoring requirement or”, and
- (b) in paragraph 6, after sub-paragraph (4) insert—

“(4A) The court may not by virtue of sub-paragraph (1) or (3) require an alcohol abstinence and monitoring requirement to be complied with in Northern Ireland.”

(11) In the Armed Forces Act 2006—

- (a) in section 180 (transfer of service community order to Scotland or Northern Ireland), in subsection (2), after “3(1)” insert “and (4A)”, and
- (b) in section 204 (transfer of suspended sentence order to Scotland or Northern Ireland), in subsection (2), for “6(5)” substitute “6(4A) and (5)”.

77 **Piloting of alcohol abstinence and monitoring requirements**

- (1) The Secretary of State may by order provide for the coming into force of section 76.
- (2) The Secretary of State may not make an order under subsection (1) with the effect that section 76 is in force for the whole of England and Wales (a “general commencement order”) without having previously made a piloting order.
- (3) Subsection (2) does not prevent an order under subsection (1) from bringing section 76 into force for the purpose only of making orders under section 212A or 223 of the Criminal Justice Act 2003 or rules under section 222 of that Act (and such an order is not a general commencement order for the purposes of this section).
- (4) A “piloting order” is an order under subsection (1) with the effect that section 76 is force only—
 - (a) in relation to the area or areas specified in the order, and
 - (b) for the period specified in the order,
 but otherwise for all purposes, or for all purposes other than application by the Armed Forces Act 2006.
- (5) If, having made one or more piloting orders, the Secretary of State decides to make a general commencement order, the Secretary of State may by order—
 - (a) amend section 76 so as to enable the general commencement order to bring it into force with those amendments;

- (b) amend or repeal any provision of this Act in consequence of provision made under paragraph (a).
- (6) Amendments under subsection (5)(a)—
 - (a) may confer power on the Secretary of State to make an order or rules;
 - (b) may not enable a court to provide for an alcohol abstinence and monitoring requirement to be complied with in Scotland or Northern Ireland.
- (7) If, having made one or more piloting orders, the Secretary of State decides not to make a general commencement order, the Secretary of State may by order—
 - (a) repeal section 76;
 - (b) amend the Criminal Justice Act 2003 so as to reverse the effect of that section on that Act;
 - (c) make other consequential amendments or repeals.
- (8) An order under this section may make transitional, transitory or saving provision (including, in the case of a piloting order, provision relating to section 76 ceasing to be in force at the end of the period specified in the order).
- (9) An order under this section is to be made by statutory instrument.
- (10) A statutory instrument containing—
 - (a) a general commencement order, or
 - (b) an order under subsection (5) or (7),may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.