



# Crime (Sentences) Act 1997

## 1997 CHAPTER 43

### PART III

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Community sentences*

### 35 Fine defaulters: general.

- (1) Subsection (2) below applies in any case where a magistrates' court—
- has power under Part III of [<sup>F1</sup>the Magistrates' Courts Act 1980 ("the 1980 Act")] to issue a warrant of commitment for default in paying a sum adjudged to be paid by a conviction of a magistrates' court (other than a sum ordered to be paid under section 71 of the <sup>M1</sup>Criminal Justice Act 1988 or section 2 of the <sup>M2</sup>Drug Trafficking Act 1994 [<sup>F2</sup>or section 6 of the Proceeds of Crime Act 2002]); or
  - would, but for [<sup>F3</sup>section 227 of the Sentencing Code] (restrictions on custodial sentences for persons under 21), have power to issue such a warrant for such default.
- (2) The magistrates' court may—
- subject to subsections (4) to (6) [<sup>F4</sup>, (10) and (11)] below, make a community service order; or
  - subject to subsections (7) to (11) below, make a curfew order, in respect of the person in default instead of issuing a warrant of commitment or, as the case may be, proceeding under section 81 of the 1980 Act (enforcement of fines imposed on young offenders).
- (3) Where a magistrates' court has power to make an order under subsection (2)(a) or (b) above, it may, if it thinks it expedient to do so, postpone the making of the order until such time and on such conditions, if any, as it thinks just.
- [<sup>F5</sup>(4) Section 46(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (community service orders) shall apply for the purposes of subsection (2)(a) above as if for the

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words from the beginning to “make” there were substituted “Where section 35(2) of the Crime (Sentences) Act 1997 applies, the court may make in respect of the offender”; and—

- (a) section 46(3) and (4) of that Act, and
  - (b) so far as applicable, the following provisions of section 46 of that Act and the other provisions of Part IV of that Act relating to community service orders,
- have effect in relation to a community service order made by virtue of this section as they have effect in relation to any community service order made under that Act, subject to the exceptions in subsection (5) below.

<sup>F5</sup>(5) The following are the exceptions, namely—

- (a) the reference in section 46(3)(a) of that Act to 40 hours shall be construed as a reference to 20 hours;
  - (b) section 46(8) of that Act shall not apply;
  - (c) the power conferred by paragraph 4(1)(d) of Schedule 3 to that Act shall be construed as a power to revoke the order or deal with the person in respect of whom the order was made for his default in paying the sum in question or do both of those things;
  - (d) paragraph 4(2)(a) and (3) of that Schedule shall not apply;
  - (e) the reference in paragraph 10(1)(b) of that Schedule to the offence in respect of which the order was made shall be construed as a reference to the default in respect of which the order was made;
  - (f) the power conferred by paragraph 10(3)(b) of that Schedule to deal with an offender for the offence in respect of which the order was made shall be construed as a power to deal with the person in respect of whom the order was made for his default in paying the sum in question; and
  - (g) paragraph 11(2)(b) of that Schedule shall not apply.]
- (6) In the case of an amount in default which is described in the first column of the following Table, the period of community service specified in an order under subsection (2)(a) above shall not exceed the number of hours set out opposite that amount in the second column of that Table.

TABLE

<i>Amount</i>	<i>Number of hours</i>
An amount not exceeding £200	40 hours
An amount exceeding £200 but not exceeding £500	60 hours
An amount exceeding £500	100 hours

<sup>F6</sup>(7) Section 37(1) of the Powers of Criminal Courts (Sentencing) Act 2000 (curfew orders) shall apply for the purposes of subsection (2)(b) above as if for the words from the beginning to “make” there were substituted “Where section 35(2) of the Crime (Sentences) Act 1997 applies, the court may make in respect of the offender”; and—

- (a) section 37(3), (5) to (8) and (10) to (12) of that Act, and
- (b) so far as applicable, the other provisions of Part IV of that Act relating to curfew orders,

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have effect in relation to a curfew order made by virtue of this section as they have effect in relation to any curfew order made under that Act, subject to the exceptions in subsection (8) below.

<sup>F6</sup>(8) The following are the exceptions, namely—

- (a) the power conferred by paragraph 4(1)(d) of Schedule 3 to that Act shall be construed as a power to revoke the order or deal with the person in respect of whom the order was made for his default in paying the sum in question or do both of those things;
- (b) paragraph 4(2)(a) and (3) of that Schedule shall not apply;
- (c) the reference in paragraph 10(1)(b) of that Schedule to the offence in respect of which the order was made shall be construed as a reference to the default in respect of which the order was made;
- (d) the power conferred by paragraph 10(3)(b) of that Schedule to deal with an offender for the offence in respect of which the order was made shall be construed as a power to deal with the person in respect of whom the order was made for his default in paying the sum in question; and
- (e) paragraph 11(2)(b) of that Schedule shall not apply.]

(9) In the case of an amount in default which is described in the first column of the following Table, the number of days to which an order under subsection (2)(b) above relates shall not exceed the number of days set out opposite that amount in the second column of that Table.

TABLE

<i>Amount</i>	<i>Number of days</i>
An amount not exceeding £200	20 days
An amount exceeding £200 but not exceeding £500	30 days
An amount exceeding £500 but not exceeding £1,000	60 days
An amount exceeding £1,000 but not exceeding £2,500	90 days
An amount exceeding £2,500	180 days

(10) A magistrates' court shall not make an order under [<sup>F7</sup>subsection (2)(a) or (b)] above in respect of a person who is under 16.

(11) A magistrates court shall not make an order under subsection (2)(a) or (b) above unless the court has been notified by the Secretary of State that arrangements for implementing such orders are available in the relevant area and the notice has not been withdrawn.

(12) In subsection (11) above “the relevant area” means—

- (a) in relation to an order under subsection (2)(a) above, the area proposed to be specified in the order;
- (b) in relation to an order under subsection (2)(b) above, the area in which the place proposed to be specified in the order is situated.

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[<sup>F8</sup>(12A) Sections 35 and 36 of the Powers of Criminal Courts (Sentencing) Act 2000 (restrictions and procedural requirements for community sentences) do not apply in relation to an order under subsection (2)(a) or (b) above.]

- (13) Where an order has been made under subsection (2)(a) or (b) above for default in paying any sum—
- (a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect;
  - (b) on payment of a part of that sum to any such person, the total number of hours or days to which the order relates shall be reduced proportionately;
- and the total number is so reduced if it is reduced by such number of complete hours or days as bears to the total number the proportion most nearly approximating to, without exceeding, the proportion which the part paid bears to the whole sum.
- (14) The Secretary of State may by order direct that subsection (5)(a), (6) or (9) above shall be amended by substituting for any number of hours or days there specified such number of hours or days as may be specified in the order.
- (15) The power to make an order under this section shall be exercisable by statutory instrument; but no such order shall be made unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

- F1** Words in s. 35(1)(a) substituted (30.9.1998) by 1998 c. 37, s. 119, **Sch. 8 para. 132(1)**; S.I. 1998/2327, **art. 2(2)(nn)**.
- F2** Words in s. 35(1)(a) inserted (24.3.2003) by Proceeds of Crime Act 2002 (c. 29), s. 458(1), **Sch. 11 para. 32(2)**; S.I. 2003/333, **art. 2, Sch.**
- F3** Words in s. 35(1)(b) substituted (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 24 para. 147** (with **Sch. 24 para. 447, Sch. 27**); S.I. 2020/1236, **reg. 2**
- F4** Words in s. 35(2)(a) substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 50(1)**; S.I. 1998/2327, **art. 2(1)(w)**.
- F5** S. 35(4)(5) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 184(3)**
- F6** S. 35(7)(8) substituted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 184(4)**
- F7** Words in s. 35(10) substituted (30.9.1998) by 1998 c. 37, s. 106, **Sch. 7 para. 50(6)**; S.I. 1998/2327, **art. 2(1)(w)**.
- F8** S. 35(12A) inserted (25.8.2000) by 2000 c. 6, ss. 165, 168(1), **Sch. 9 para. 184(5)**

#### Commencement Information

- I1** S. 35 not in force at Royal Assent, see s. 57(2). S. 35 in force at 1.1.1998 by 1997/2200, **art. 3** (subject to savings in **art. 5**)

#### Marginal Citations

- M1** 1988 c.33.  
**M2** 1994 c.37.

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- s. 35 repealed by [2003 c. 44 s. 303\(b\)\(iii\)Sch. 37 Pt. 7](#)
- s. 35(1)(b) by [2000 c. 43 Sch. 7 para. 139\(a\)](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 35(5)(c)s. 35(8)(a) by [2000 c. 43 Sch. 7 para. 139\(b\)](#)
- s. 8(5) by [2000 c. 43 Sch. 7 para. 143](#)