

## SCHEDULES

### SCHEDULE 5

Sections 68(3) and 70(5).

#### ENFORCEMENT ETC. OF REPARATION AND ACTION PLAN ORDERS

##### *Preliminary*

1 In this Schedule—

“the appropriate court”, in relation to a reparation order or action plan order, means the youth court acting for the petty sessions area for the time being named in the order in pursuance of section 67(9) or, as the case may be, section 69(9) of this Act;

“local authority accommodation” means accommodation provided by or on behalf of a local authority (within the meaning of the 1989 Act).

##### *General power to discharge or vary order*

- 2 (1) If while a reparation order or action plan order is in force in respect of an offender it appears to the appropriate court, on the application of the responsible officer or the offender, that it is appropriate to make an order under this sub-paragraph, the court may make an order discharging the reparation order or action plan order or varying it—
- (a) by cancelling any provision included in it; or
  - (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.
- (2) Where an application under this paragraph for the discharge of a reparation order or action plan order is dismissed, no further application for its discharge shall be made under this paragraph by any person except with the consent of the appropriate court.

##### *Failure to comply with order*

- 3 (1) This paragraph applies where a reparation order or action plan order is in force and it is proved to the satisfaction of the appropriate court, on the application of the responsible officer, that the offender has failed to comply with any requirement included in the order.
- (2) The court—
- (a) whether or not it also makes an order under paragraph 2 above, may order the offender to pay a fine of an amount not exceeding £1,000, or make an attendance centre order or curfew order in respect of him; or
  - (b) if the reparation order or action plan order was made by a youth court, may discharge the order and deal with him, for the offence in respect of which the order was made, in any manner in which he could have been dealt with

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for that offence by the court which made the order if the order had not been made; or

- (c) if the reparation order or action plan order was made by the Crown Court, may commit him in custody or release him on bail until he can be brought or appear before the Crown Court.

(3) For the purposes of sub-paragraph (2)(b) and (c) above, a reparation order or action plan order made on appeal from a decision of a magistrates' court or the Crown Court shall be treated as if it had been made by a magistrates' court or the Crown Court, as the case may be.

(4) Where a court deals with an offender under sub-paragraph (2)(c) above, it shall send to the Crown Court a certificate signed by a justice of the peace giving—

- (a) particulars of the offender's failure to comply with the requirement in question; 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 before the Crown Court.

(5) Where—

- (a) by virtue of sub-paragraph (2)(c) above the offender is brought or appears before the Crown Court; and  
 (b) it is proved to the satisfaction of the court that he has failed to comply with the requirement in question,

that court may deal with him, for the offence in respect of which the order was made, in any manner in which it could have dealt with him for that offence if it had not made the order.

(6) Where the Crown Court deals with an offender under sub-paragraph (5) above, it shall revoke the reparation order or action plan order if it is still in force.

(7) A fine imposed under this paragraph shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.

(8) In dealing with an offender under this paragraph, a court shall take into account the extent to which he has complied with the requirements of the reparation order or action plan order.

*Presence of offender in court, remands etc.*

4 (1) Where the responsible officer makes an application under paragraph 2 or 3 above to the appropriate court, he may bring the offender before the court and, subject to sub-paragraph (9) below, the court shall not make an order under that paragraph unless the offender is present before it.

(2) Without prejudice to any power to issue a summons or warrant apart from this sub-paragraph, the court to which an application under paragraph 2 or 3 above is made may issue a summons or warrant for the purpose of securing the attendance of the offender before it.

(3) Subsections (3) and (4) of section 55 of the 1980 Act (which among other things restrict the circumstances in which a warrant may be issued) shall apply with the necessary modifications to a warrant under sub-paragraph (2) above as they apply

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to a warrant under that section and as if in subsection (3) after the word “summons” there were inserted the words “cannot be served or”.

- (4) Where the offender is arrested in pursuance of a warrant under sub-paragraph (2) above and cannot be brought immediately before the appropriate court, the person in whose custody he is—
  - (a) may make arrangements for his detention in a place of safety for a period of not more than 72 hours from the time of the arrest (and it shall be lawful for him to be detained in pursuance of the arrangements); and
  - (b) shall within that period bring him before a youth court.
- (5) Where an offender is, under sub-paragraph (4) above, brought before a youth court other than the appropriate court, that court may—
  - (a) direct that he be released forthwith; or
  - (b) subject to sub-paragraph (6) below, remand him to local authority accommodation.
- (6) Where the offender is aged 18 or over at the time when he is brought before the court, he shall not be remanded to local authority accommodation but may instead be remanded—
  - (a) to a remand centre, if the court has been notified that such a centre is available for the reception of persons under this sub-paragraph; or
  - (b) to a prison, if it has not been so notified.
- (7) Where an application is made to a court under paragraph 2(1) above, the court may remand (or further remand) the offender to local authority accommodation if—
  - (a) a warrant has been issued under sub-paragraph (2) of this paragraph for the purpose of securing the attendance of the offender before the court; or
  - (b) the court considers that remanding (or further remanding) him will enable information to be obtained which is likely to assist the court in deciding whether and, if so, how to exercise its powers under paragraph 2(1) above.
- (8) A court remanding an offender to local authority accommodation under this paragraph shall designate, as the authority who are to receive him, the local authority for the area in which the offender resides or, where it appears to the court that he does not reside in the area of a local authority, the local authority—
  - (a) specified by the court; and
  - (b) in whose area the offence or an offence associated with it was committed.
- (9) A court may make an order under paragraph 2 above in the absence of the offender if the effect of the order is one or more of the following, that is to say—
  - (a) discharging the reparation order or action plan order;
  - (b) cancelling a requirement included in the reparation order or action plan order;
  - (c) altering in the reparation order or action plan order the name of any area;
  - (d) changing the responsible officer.

#### *Supplemental*

- 5 (1) The provisions of section 17 of the 1982 Act (attendance centre orders) shall apply for the purposes of paragraph 3(2)(a) above but as if—

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- (a) in subsection (1), for the words from “has power” to “probation order” there were substituted the words “considers it appropriate to make an attendance centre order in respect of any person in pursuance of paragraph 3(2) of Schedule 5 to the Crime and Disorder Act 1998”; and
  - (b) subsection (13) were omitted.
- (2) Sections 18 and 19 of the 1982 Act (discharge and variation of attendance centre order and breach of attendance centre orders or attendance centre rules) shall also apply for the purposes of that paragraph but as if there were omitted—
- (a) from subsection (4A) of section 18 and subsections (3) and (5) of section 19, the words “, for the offence in respect of which the order was made,” and “for that offence”; and
  - (b) from subsection (4B) of section 18 and subsection (6) of section 19, the words “for an offence”.
- (3) The provisions of section 12 of the 1991 Act (curfew orders) shall apply for the purposes of paragraph 3(2)(a) above but as if—
- (a) in subsection (1), for the words from the beginning to “before which he is convicted” there were substituted the words “Where a court considers it appropriate to make a curfew order in respect of any person in pursuance of paragraph 3(2)(a) of Schedule 5 to the Crime and Disorder Act 1998, the court”; and
  - (b) in subsection (8), for the words “on conviction” there were substituted the words “on the date on which his failure to comply with a requirement included in the reparation order or action plan order was proved to the court”.
- (4) Schedule 2 to the 1991 Act (enforcement etc. of community orders), so far as relating to curfew orders, shall also apply for the purposes of that paragraph but as if—
- (a) the power conferred on the magistrates' court by each of paragraphs 3(1)(d) and 7(2)(a)(ii) to deal with the offender for the offence in respect of which the order was made were a power to deal with the offender, for his failure to comply with a requirement included in the reparation order or action plan order, in any manner in which the appropriate court could deal with him for that failure to comply if it had just been proved to the satisfaction of that court;
  - (b) the power conferred on the Crown Court by paragraph 4(1)(d) to deal with the offender for the offence in respect of which the order was made were a power to deal with the offender, for his failure to comply with such a requirement, in any manner in which that court could deal with him for that failure to comply if it had just been proved to its satisfaction;
  - (c) the reference in paragraph 7(1)(b) to the offence in respect of which the order was made were a reference to the failure to comply in respect of which the curfew order was made; and
  - (d) the power conferred on the Crown Court by paragraph 8(2)(b) to deal with the offender for the offence in respect of which the order was made were a power to deal with the offender, for his failure to comply with a requirement included in the reparation order or action plan order, in any manner in which the appropriate court (if that order was made by a magistrates' court) or the Crown Court (if that order was made by the Crown Court) could deal with him for that failure to comply if it had just been proved to the satisfaction of that court.

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- (5) For the purposes of the provisions mentioned in sub-paragraph (4)(a) and (d) above, as applied by that sub-paragraph, if the reparation order or action plan order is no longer in force the appropriate court's powers shall be determined on the assumption that it is still in force.
- (6) If while an application to the appropriate court in pursuance of paragraph 2 or 3 above is pending the offender attains the age of 18 years, the court shall, subject to paragraph 4(6) above, deal with the application as if he had not attained that age.
- (7) The offender may appeal to the Crown Court against—
  - (a) any order made under paragraphs 2 or 3 above, except an order made or which could have been made in his absence (by virtue of paragraph 4(9) above);
  - (b) the dismissal of an application under paragraph 2 above to discharge a reparation order or action plan order.