

YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: Referrals to youth offender panels

Section 1: Referral of young offender to youth offender panel

34. **Section 1** introduces a new power for magistrates' courts of making referral orders in respect of first time offenders under the age of 18. These orders will refer young offenders to youth offender panels. This section sets out when the new sentencing power will be available. A referral order is intended to be the main disposal for young offenders who have not previously been convicted, but there are certain circumstances in which it would not be appropriate. These circumstances include cases where a custodial sentence is appropriate to reflect the seriousness of the offence or to protect the public. It is also recognised that there will be cases where it will be appropriate for the courts to order an absolute discharge. The new power does not replace sentences which are already fixed by law. Nor does it preclude courts from ordering hospital admission in respect of mentally ill offenders. The circumstances that take precedence over the making of a referral order are set out in *subsection (1)*.
35. The effect of the new order is to refer a young offender to a youth offender panel to be set up and administered by the local youth offending team. Multi-agency youth offending teams are provided for by the Crime and Disorder Act 1998 and are responsible for co-ordinating the delivery of local youth justice services. The availability of the new disposal will depend on whether a local youth offending team has been established to set up the youth offender panel. Accordingly *subsection (4)* limits the availability of the new order to those courts that have been notified by the Secretary of State that arrangements are in place for a youth offending team to implement referral orders.
36. The order-making power is available in the youth court and the adult magistrates' court. It is not available in the Crown Court, although, where the Crown Court is dealing with a young offender who may be suitable for a referral order, the case may be remitted to the youth court for sentencing. However, the Crown Court will have the same powers to award punishment as the lower court appealed against when sitting in its appellate jurisdiction (section 48(4) of the Supreme Court Act 1981) and so may make referral orders in cases where it allows an appeal against the sentencing of the youth court or adult magistrates' court.

Section 2: Referral conditions

37. **Section 2** sets out the conditions which have to be satisfied before a referral order may be imposed by the court. *Subsection (1)* describes the conditions required to trigger a compulsory referral order. In circumstances other than those described in section 1(1), every young offender who has never previously been convicted (or bound over) and who pleads guilty to the offence (and any associated offences, i.e. any other offences

for which the offender is being dealt with at the same time (section 15(2)) must be referred by the court to a youth offender panel. Such offenders appear to be the group most likely to benefit from this type of sentence.

38. *Subsection (2)* sets out a further category of young offender for which the court may make a referral order. The court may use its discretion to order a referral where a young offender pleads guilty to one or more offences but not guilty to others (of which he is, however, convicted). As with those cases referred to in subsection (1), the conditions in section 1(1) apply, and for a referral order to be made it must be the first time that the young offender has been convicted.
39. The new provisions will be piloted in selected areas across England and Wales. It may be that, in the light of the experience of the pilots, or following full implementation across the country, it will appear that other categories of young offender could also benefit from this new sentence. *Subsection (3)* allows the Secretary of State to amend the categories of offenders eligible for the new sentence subject to the agreement of Parliament by *affirmative resolution procedure*. This means that Parliament must discuss and approve the Secretary of State's amendments. *Subsection (4)* gives examples of the kind of amendments that might be made.
40. *Subsection (5)* ensures that young offenders who have previously been given a conditional discharge are treated as if they have a previous conviction for the purposes of considering whether they qualify for a referral order. This is in line with the concept of limiting the arrangements, in the first instance, to those young offenders who are being dealt with by a court for the first time.

Section 3: Making a referral order

41. **Section 3** sets out the practical and administrative arrangements for making an order. To ensure that the young offender fully understands the effect of referral, the contents of the order are prescribed in *subsection (1)* and a requirement is contained in *subsection (3)* to explain the order, and the consequences of not complying with it, in clear language.
42. The order must specify the length of the period for which any youth offender contract will have effect (*subsection (1)(c)*). This will be between 3 and 12 months. It will be set by the court on the basis of the seriousness of the offence to ensure that the sentence is proportionate to the offence. Where referral is being ordered for two or more offences, the court will make a referral order for each offence. However, each order will be supervised by the same youth offender panel (*subsection (5)*) and there can only be one youth offender contract. Although the period specified in each order may be of a different length, the total time for which any youth offender contract has effect will not exceed 12 months (*subsection (6)*).
43. The order must also specify which youth offending team is responsible for ensuring that a youth offender panel is set up to deal with the offender (*subsection (1)(a)*). *Subsection (2)* requires that the youth offending team identified in the order should be the team responsible for the young offender's home area or the area where he or she is expected to reside in the future.

Section 4: Effect of referral order on availability of other sentences

44. When a referral to a youth offender panel is made it will constitute the entire sentence for the offence (and any associated offences) with which the court is dealing. The referral is not to be treated as an additional sentence to run alongside others (*subsections (2) and (3)*) although the referral may be accompanied by certain ancillary orders such as orders for costs, compensation, forfeiture of items used in committing an offence, exclusion from football matches, etc. *Subsection (5)* prevents bind overs being made in respect of either the young offender or his or her parents and also prevents the making of parenting orders. But, as set out in *subsection (3)(a)*, the court may order an absolute discharge in respect of an associated offence.

45. Where a young offender is referred back to the court by the panel, because (for example) he is in breach of his contract, or he has committed a further offence while subject to a referral order, the court may decide to revoke the original order and re-sentence. At this point the sentencing restrictions imposed by subsections (2), (3) and (5) of this section will no longer apply and the court may deal with the offender in any way that, if section 1 of the Act had not applied, the court which originally sentenced the offender could have dealt with him (*subsection (6)*).

Section 5: Making of referral orders: attendance of parents etc

46. Referral to a youth offender panel is intended to provide an opportunity for the young offender to consider, with his or her parents and the panel, how best to address the offending behaviour and prevent its re-occurrence. The supportive role of the young offender's parents will be a particularly important element of this process. Section 5 regulates when the court may, and when it must, order parental attendance at meetings.
47. For those under 16 years of age at least one parent or guardian will be required to attend all youth offender panel meetings. *Subsection (2)* allows the court to place similar requirements on parents and guardians of young offenders who are over 16 (where this is considered to be appropriate). *Subsections (5) and (6)* recognise that a local authority may have a role to play in cases where young offenders are in their care or otherwise "looked after" by the authority. Here "looked after" has the meaning given by section 22 of the Children Act 1989. The requirement to attend will always be notified in writing if the parent or guardian, or local authority representative, is not present in court when the order is made (*subsection (7)*).
48. In *subsection (3)* it is recognised that there will be limited circumstances in which it would be unreasonable to expect the parent or guardian's attendance (for example, in the case of serious ill health). However, those parents, guardians or representatives who fail to attend the meeting against the order of the court without good reason may be brought before the court for contempt, in accordance with section 63 of the Magistrates' Courts Act 1980.

Section 6: Youth offender panels

49. **Section 6** sets out how the youth offender panel should be set up (*subsection (2)*), who should sit on it (*subsections (3) and (4)*), who is responsible for arranging its meetings (*subsection (1)*) and what happens if the offender moves to a different area part-way through his referral (*subsections (5) and (6)*).
50. Arrangements for the panel and its meetings will be the responsibility of the youth offending team. The panel will include a member of the youth offending team and at least two other members. It is intended that these other members will be directly recruited from the community by the youth offending team in accordance with qualification criteria to be set out in regulations to be issued by the Secretary of State under *negative resolution procedure* (which offers both Houses of Parliament an opportunity to object to the criteria chosen).
51. National standards will be devised, and issued in the form of guidance from the Secretary of State, to ensure that the first meeting between the offender and the panel charged with dealing with him takes place promptly following the making of the order.

Section 7: Attendance at panel meetings

52. **Section 7** describes how the youth offending team will be responsible for requiring the offender and others to attend panel meetings (*subsection (1)*) and sets out the arrangements for dealing with non-attendance (*subsection (2)*). If the young offender fails to attend a meeting, it may be adjourned. Alternatively, the youth offender panel may consider that this merits referring the offender back to court (as to which see Schedule 1).

53. The action taken by the panel following an offender's non-appearance will depend on a number of factors, including whether or not a reasonable explanation for non-attendance has been put forward and the general attitude of the young offender up until that point. These issues will be addressed in the guidance to be issued by the Secretary of State.
54. Apart from the duty to attend the meetings which may be imposed on the young offender's parents or guardian, there are no requirements on other adults participating in the meetings. Although it may be helpful for some of those present to play a specific role in the identified programme of behaviour with which the young offender agrees to comply (the 'contract'), any such participation would be voluntary.
55. The section also describes who else may be invited to each meeting. It is intended that the youth offender panel should consult the victims of the young offender's offending as to whether they also wish to attend. This might include anyone affected by the offence or, where appropriate, a representative of the community at large. Where the panel thinks it is appropriate for a victim to attend, he or she may be accompanied by a supporter, chosen by the victim and agreed by the panel. Meetings may also be attended by an adult supporter invited by the offender with the panel's agreement. The panel may also invite anyone they consider to be capable of having a good influence on the offender to attend.

Section 8: First meeting: agreement of contract with offender

56. **Section 8** governs the drawing up of a programme of behaviour with which the young offender agrees to comply (the 'contract'). *Subsection (1)* specifies the purpose of the first meeting as being the agreement of the contract and states that the principal aim of the programme for which the contract will provide is the prevention of re-offending. This reflects the principal aim of the youth justice system introduced by the Crime and Disorder Act 1998.
57. Guidance on the contents of programmes will be published. It is intended that the programme should always include an element of reparation to those affected by the offence, if those individuals consent. Depending on the nature of the offence and the views of the victim, this may involve a direct apology or financial or other reparation. Where there is no identifiable victim, reparation may be made to the community at large. Any additional elements of the programme will depend on the factors which appear to have led to the offending behaviour and may include a range of activities or requirements. *Subsection (2)* includes a suggested list of the provisions that might be included, but the list is not exhaustive.
58. A referral order is not a custodial sentence. Accordingly *subsection (3)* precludes the inclusion in the programme of electronic monitoring or any form of custody.
59. *Subsection (5)* requires that, once the contract has been devised and agreed, it should be set out in writing and explained in clear language. It should also be signed by both the offender and a member of the youth offender panel. The offender will be given a copy of the contract.

Section 9: Duration of contract

60. The contract runs from the date that it is agreed (*subsection (2)*) and lasts for the period specified by the court in its referral order (*subsection (3)*), except where the order is subsequently extended by the court following a further offence or is terminated by a court after the offender has been referred back to the court by the youth offender panel (*subsections (5) and (6)*).
61. Where the court has made two or more referral orders, the contract may not continue in force for more than 12 months after it is agreed (*subsection (4)*).

Section 10: First meeting: failure to agree contract

62. The intention is for the contract to be agreed at the first meeting of the youth offender panel. Where necessary the meeting may be reconvened in order to reach agreement, but section 10 provides that where there seems to be no prospect of reaching agreement, or where an agreement appears to have been reached but the young offender refuses to sign the contract, the youth offender panel must refer the young offender back to the court for re-sentencing (as to which see Schedule 1).

Section 11: Progress meetings

63. **Section 11** enables the youth offender panel to hold progress meetings during the course of the contract, as considered appropriate to monitor the young offender's progress. The number of meetings is not prescribed since it will depend on the length of the referral and the level of support the young offender appears to need in order to comply with the contract and complete the programme successfully. Progress meetings will also be required if a young offender wishes to vary the terms of the contract in any way or if there appears to a breach of the contract.
64. In the event of an apparent breach, the purpose of the meeting will be to discuss with the young offender what has happened so that the youth offender panel can assess whether it will be appropriate to continue with the contract, perhaps varied to take account of any genuine difficulties that may be preventing compliance. If the breach is without good reason the panel may consider it to be sufficiently serious to refer the young offender back to court for re-sentencing (as to which see Schedule 1).
65. Where there is a major change in the circumstances of the young offender (such as moving to live abroad) which would make it impossible to comply with the terms of the contract, the young offender may ask the youth offender panel to seek revocation of the order. In such cases the panel may terminate the meeting, where the request seems reasonable, and refer the case back to court for revocation to be considered (as to which see Schedule 1).
66. Where it is considered appropriate to vary the terms of the contract, *subsections (6) and (7)* provide that, as with the original contract, the revised version should be set out or explained in clear language, signed by both the offender and a member of the youth offender panel and then copied to the offender. *Subsection (9)* provides that the same general rules governing content should apply to the varied contract as to the original.

Section 12: Final meeting

67. **Section 12** provides for the youth offender panel to call a final meeting before the end of the period specified by the referral order in order to review the young offender's overall compliance with the agreed contract.
68. If the youth offender panel is satisfied that the contract is being successfully completed the order will be discharged as from the end of the period. If the panel is not so satisfied, the young offender will be referred back to court for re-sentencing (as to which see Schedule 1). The young offender must be provided with the panel's decision in writing.
69. If the young offender is unable to attend the final panel meeting but has otherwise satisfactorily complied with the terms of the contract, the youth offender panel may discharge the order in his absence.

Section 13 and Schedule 1: Referral back to court

70. The sanction for a young offender's non-compliance with a contract is for him or her to be sent back to court for re-sentencing. A referral back to court can be triggered by: failure to attend a meeting; failure to agree a contract; refusal to sign a contract; failure to meet the requirements of an agreed contract; or a request by the offender for referral

back to court. The mechanics of the referral back procedure are contained in Part I of Schedule 1.

71. [Schedule 1](#) stipulates that the appropriate court to which the young offender is to be referred back (and which will carry out the re-sentencing) is the youth court or, where the young offender has reached the age of 18, the adult magistrates' court. The youth offender panel will send a report to the court by way of notification. The court will then require the young offender to attend court for a hearing by issuing a summons or warrant as appropriate.
72. At such a hearing the court must consider the circumstances of the young offender's referral back to the court. The court must then make a finding of fact in respect of the report submitted by the youth offender panel.
73. Where the court is satisfied that the referral back was justified, [paragraph 5](#) empowers the court to revoke the referral order and to sentence the young offender afresh, with the same sentencing options (other than referral) as were available to the court which originally sentenced the offender. In reaching a decision on a fresh sentence, the court should consider the report of the youth offender panel and take into account the extent of the young offender's compliance with the contract up to the point of the referral back. The offender will have a right of appeal to the Crown Court against any sentence imposed.
74. It is hoped that inappropriate referrals back to the court will be rare, but where (for example) the court finds that an alleged breach is unsubstantiated or that a breach has indeed occurred but that it was a minor issue given the particular circumstances of the case, it should not revoke the referral order. If the panel refers the offender back to court because no contract has been agreed, but the court does not revoke the referral order, youth offender panel should continue to try to negotiate a contract. Any contract agreed before the referral back to court will have continued in force during the resulting court proceedings with the panel continuing to monitor the young offender's progress and compliance.
75. Part II of Schedule 1 provides for cases where a young offender who, having been referred by a court to a youth offender panel, is part-way through the referral period when he finds himself back before a court charged with a further offence. Where that offence (and any other further offences for which he is being sentenced on that occasion) occurred before the referral order was made, the court may sentence the offender for the further offence (or offences) by way of an extension to the existing referral period. Since any extension to the order must not extend its overall length beyond the maximum period of 12 months, this sentencing option will not be available where the original referral was for a full 12 months. Similarly, since the power of referral relates to young offenders aged from 10 to 17, this sentencing option will not be available if the young offender has reached the age of 18.
76. The option to extend an existing referral order also applies where a court is dealing with a further offence committed after the order had been made, although this course of action is only likely to be appropriate in exceptional circumstances. [Paragraph 12](#) of Schedule 1 requires the court to take account of any exceptional circumstances and, where they lead the court to make an extension of the original referral order, to give reasons for doing so in open court. The court's decision must be in line with the youth justice system's principal aim of preventing offending by children and young people.
77. The Secretary of State may vary the cases in which extensions to referral orders may be imposed by way of sentence for further convictions. Any such amendment would be made by regulations subject to the *affirmative resolution procedure* (i.e. Parliament will be asked to discuss and approve it).
78. The requirements of a youth offending contract under a referral order are incompatible with a custodial sentence and may interfere with aspects of other orders. Where a court

These notes refer to the Youth Justice and Criminal Evidence Act 1999 (c.23) which received Royal Assent on 27 July 1999

decides to sentence in respect of further convictions otherwise than by extending an existing referral order, [paragraph 14\(2\)](#) of Schedule 1 automatically revokes the referral order and any extension order. This, in turn, will cause the contract drawn up with the youth offender panel to expire.

79 In these circumstances, the court may re-sentence the offender for the offence in respect of which the revoked referral or extension order was made. But in doing so the court must take into account how far the young offender may have already complied with any contract that has been agreed.

80. The only exception to the automatic revocation is where the court gives an absolute discharge for the further offence as then there will be no difficulty with the existing referral order continuing to stand.

Section 14: Functions of youth offending teams

81. [Section 14](#) (along with paragraph 28 of Schedule 4) adds to the functions of youth offending teams, originally set by the Crime and Disorder Act 1998, to take account of their specific new responsibilities in respect of referral orders (which include the setting up of youth offender panels and the keeping of records of an offender's compliance with the terms of his contract).