

SCHEDULES

SCHEDULE 1

YOUTH OFFENDER PANELS: FURTHER COURT PROCEEDINGS

PART I

REFERRAL BACK TO APPROPRIATE COURT

Introductory

- 1 (1) This Part of this Schedule applies where a youth offender panel refers an offender back to the appropriate court under section 7(2), 10(2) or (3), 11(5), (8) or (10) or 12(4).
- (2) For the purposes of this Part of this Schedule and the provisions mentioned in sub-paragraph (1) the appropriate court is—
- (a) in the case of an offender under the age of 18 at the time when (in pursuance of the referral back) he first appears before the court, a youth court acting for the petty sessions area in which it appears to the youth offender panel that the offender resides or will reside; and
 - (b) otherwise, a magistrates' court (other than a youth court) acting for that area.

Mode of referral back to court

- 2 The panel shall make the referral by sending a report to the appropriate court explaining why the offender is being referred back to it.

Bringing the offender before the court

- 3 (1) Where the appropriate court receives such a report, the court shall cause the offender to appear before it.
- (2) For the purpose of securing the attendance of the offender before the court, a justice acting for the petty sessions area for which the court acts may—
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the report is substantiated on oath, issue a warrant for the offender's arrest.
- (3) Any summons or warrant issued under sub-paragraph (2) shall direct the offender to appear or be brought before the appropriate court.
- (4) Section 4 of the Summary Jurisdiction (Process) Act 1881 (execution of process of English courts in Scotland) shall apply to any process issued under sub-paragraph (2) as it applies to process issued under the Magistrates' Courts Act 1980.

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Detention and remand of arrested offender

- 4 (1) Where the offender is arrested in pursuance of a warrant under paragraph 3(2) and cannot be brought immediately before the appropriate court—
- (a) the person in whose custody he is may make arrangements for his detention in a place of safety (within the meaning given by section 107(1) of the Children and Young Persons Act 1933) 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) that person shall within that period bring him before a court which—
 - (i) if he is under the age of 18 when he is brought before the court, shall be a youth court, and
 - (ii) if he has then attained that age, shall be a magistrates' court other than a youth court.
- (2) Sub-paragraphs (3) to (5) apply where the court before which the offender is brought under sub-paragraph (1)(b) (“the alternative court”) is not the appropriate court.
- (3) The alternative court may direct that he is to be released forthwith or remand him.
- (4) Section 128 of the Magistrates' Courts Act 1980 (remand in custody or on bail) shall have effect where the alternative court has power under sub-paragraph (3) to remand the offender as if the court referred to in subsections (1)(a), (3), (4)(a) and (5) were the appropriate court.
- (5) That section shall have effect where the alternative court has power to so remand him, or the appropriate court has (by virtue of sub-paragraph (4)) power to further remand him, as if in subsection (1) there were inserted after paragraph (c) “or
- (d) if he is under the age of 18, remand him to accommodation provided by or on behalf of a local authority (within the meaning of the Children Act 1989) and, if it does so, shall designate as the authority who are to receive him the local authority for the area in which it appears to the court that he resides or will reside;”.

Power of court where it upholds panel's decision

- 5 (1) If it is proved to the satisfaction of the appropriate court as regards any decision of the panel which resulted in the offender being referred back to the court—
- (a) that, so far as the decision relied on any finding of fact by the panel, the panel was entitled to make that finding in the circumstances, and
 - (b) that, so far as the decision involved any exercise of discretion by the panel, the panel reasonably exercised that discretion in the circumstances,
- the court may exercise the power conferred by sub-paragraph (2).
- (2) That power is a power to revoke the referral order (or each of the referral orders).
- (3) The revocation under sub-paragraph (2) of a referral order has the effect of revoking any related order under paragraph 11 or 12.
- (4) Where any order is revoked under sub-paragraph (2) or by virtue of sub-paragraph (3), the appropriate court may deal with the offender in accordance with sub-paragraph (5) for the offence in respect of which the revoked order was made.
- (5) In so dealing with the offender for such an offence, the appropriate court—

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- (a) may deal with him in any manner in which (assuming section 1 had not applied) he could have been dealt with for that offence by the court which made the order; and
 - (b) shall have regard to—
 - (i) the circumstances of his referral back to the court; and
 - (ii) where a contract has taken effect under section 8 between the offender and the panel, the extent of his compliance with the terms of the contract.
- (6) The appropriate court may not exercise the powers conferred by sub-paragraph (2) or (4) unless the offender is present before it; but those powers are exercisable even if, in a case where a contract has taken effect under section 8, the period for which the contract has effect has expired (whether before or after the referral of the offender back to the court).
- (7) Where, in exercise of the powers conferred by sub-paragraph (4), the appropriate court deals with the offender for an offence by committing him to the Crown Court for sentence, sub-paragraph (5) applies in relation to his being dealt with by the Crown Court, but as if—
- (a) the reference to the appropriate court were to the Crown Court; and
 - (b) the reference in paragraph (b)(i) to the court were to the appropriate court.

Appeal

- 6 Where the court in exercise of the power conferred by paragraph 5(4) deals with the offender for an offence, the offender may appeal to the Crown Court against the sentence.

Court not revoking referral order or orders

- 7 (1) This paragraph applies—
- (a) where the appropriate court decides that the matters mentioned in paragraphs (a) and (b) of paragraph 5(1) have not been proved to its satisfaction; or
 - (b) where, although by virtue of paragraph 5(1) the appropriate court—
 - (i) is able to exercise the power conferred by paragraph 5(2), or
 - (ii) would be able to do so if the offender were present before it,the court (for any reason) decides not to exercise that power.
- (2) If either—
- (a) no contract has taken effect under section 8 between the offender and the panel, or
 - (b) a contract has taken effect under that section but the period for which it has effect has not expired,
- the offender shall continue to remain subject to the referral order (or orders) in all respects as if he had not been referred back to the court.
- (3) If—
- (a) a contract had taken effect under section 8, but
 - (b) the period for which it has effect has expired (otherwise than by virtue of section 9(6)),

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the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

Exception where court satisfied as to completion of contract

- 8 If, in a case where the offender is referred back to the court under section 12(4), the court decides (contrary to the decision of the panel) that the offender's compliance with the terms of the contract has, or will have, been such as to justify the conclusion that he has satisfactorily completed the contract, the court shall make an order declaring that the referral order (or each of the referral orders) is discharged.

Discharge of extension orders

- 9 The discharge under paragraph 7(3) or 8 of a referral order has the effect of discharging any related order under paragraph 11 or 12.