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Powers of Criminal Courts (Sentencing) Act 2000

2000 CHAPTER 6

PART IV

COMMUNITY ORDERS AND REPARATION ORDERS

CHAPTER I

COMMUNITY ORDERS: GENERAL PROVISIONS

33 Meaning of “community order” and “community sentence”.

- (1) In this Act, “community order” means any of the following orders—
- (a) a curfew order;
 - (b) a probation order;
 - (c) a community service order;
 - (d) a combination order;
 - (e) a drug treatment and testing order;
 - (f) an attendance centre order;
 - (g) a supervision order;
 - (h) an action plan order.
- (2) In this Act, “community sentence” means a sentence which consists of or includes one or more community orders.

34 Community orders not available where sentence fixed by law etc.

None of the powers to make community orders which are conferred by this Part is exercisable in respect of an offence for which the sentence—

- (a) is fixed by law; or

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- (b) falls to be imposed under section 109(2), 110(2) or 111(2) below (requirement to impose custodial sentences for certain repeated offences committed by offenders aged 18 or over).

35 Restrictions on imposing community sentences.

- (1) A court shall not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.
- (2) In consequence of the provision made by section 51 below with respect to combination orders, a community sentence shall not consist of or include both a probation order and a community service order.
- (3) Subject to subsection (2) above and to section 69(5) below (which limits the community orders that may be combined with an action plan order), where a court passes a community sentence—
 - (a) the particular order or orders comprising or forming part of the sentence shall be such as in the opinion of the court is, or taken together are, the most suitable for the offender; and
 - (b) the restrictions on liberty imposed by the order or orders shall be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.
- (4) Subsections (1) and (3)(b) above have effect subject to section 59 below (curfew orders and community service orders for persistent petty offenders).

36 Procedural requirements for community sentences: pre-sentence reports etc.

- (1) In forming any such opinion as is mentioned in subsection (1) or (3)(b) of section 35 above, a court shall take into account all such information as is available to it about the circumstances of the offence or (as the case may be) of the offence and the offence or offences associated with it, including any aggravating or mitigating factors.
- (2) In forming any such opinion as is mentioned in subsection (3)(a) of that section, a court may take into account any information about the offender which is before it.
- (3) The following provisions of this section apply in relation to—
 - (a) a probation order which includes additional requirements authorised by Schedule 2 to this Act;
 - (b) a community service order;
 - (c) a combination order;
 - (d) a drug treatment and testing order;
 - (e) a supervision order which includes requirements authorised by Schedule 6 to this Act.
- (4) Subject to subsection (5) below, a court shall obtain and consider a pre-sentence report before forming an opinion as to the suitability for the offender of one or more of the orders mentioned in subsection (3) above.
- (5) Subsection (4) above does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a pre-sentence report.

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- (6) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (5) above unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
 - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (7) No community sentence which consists of or includes such an order as is mentioned in subsection (3) above shall be invalidated by the failure of a court to obtain and consider a pre-sentence report before forming an opinion as to the suitability of the order for the offender, but any court on an appeal against such a sentence—
- (a) shall, subject to subsection (8) below, obtain a pre-sentence report if none was obtained by the court below; and
 - (b) shall consider any such report obtained by it or by that court.
- (8) Subsection (7)(a) above does not apply if the court is of the opinion—
- (a) that the court below was justified in forming an opinion that it was unnecessary to obtain a pre-sentence report; or
 - (b) that, although the court below was not justified in forming that opinion, in the circumstances of the case at the time it is before the court, it is unnecessary to obtain a pre-sentence report.
- (9) In a case where the offender is aged under 18 and the offence is not triable only on indictment and there is no other offence associated with it that is triable only on indictment, the court shall not form such an opinion as is mentioned in subsection (8) above unless—
- (a) there exists a previous pre-sentence report obtained in respect of the offender; and
 - (b) the court has had regard to the information contained in that report, or, if there is more than one such report, the most recent report.
- (10) Section 156 below (disclosure of pre-sentence report to offender etc.) applies to any pre-sentence report obtained in pursuance of this section.

VALID FROM 20/06/2001

[^{F1}36A Pre-sentence drug testing.

- (1) Where a person aged 18 or over is convicted of an offence and the court is considering passing a community sentence, it may make an order under subsection (2) below for the purpose of ascertaining whether the offender has any specified Class A drug in his body.
- (2) The order shall require the offender to provide, in accordance with the order, samples of any description specified in the order.
- (3) If it is proved to the satisfaction of the court that the offender has, without reasonable excuse, failed to comply with the order it may impose on him a fine of an amount not exceeding level 4.

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In this subsection, “level 4” means the amount which, in relation to a fine for a summary offence, is level 4 on the standard scale.

- (4) The court shall not make an order under subsection (2) above unless it has been notified by the Secretary of State that the power to make such orders is exercisable by the court and the notice has not been withdrawn.]

Textual Amendments

- F1** S. 36A inserted (20.6.2001 for specified purposes otherwise 2.7.2001) by 2000 c. 43, s. 48; S.I. 2001/2232, art. 2(b)

VALID FROM 20/06/2001

[^{F2}36B Electronic monitoring of requirements in community orders.

- (1) Subject to subsections (2) to (4) below, a community order may include requirements for securing the electronic monitoring of the offender’s compliance with any other requirements imposed by the order.
- (2) A court shall not include in a community order a requirement under subsection (1) above unless the court—
- (a) has been notified by the Secretary of State that electronic monitoring arrangements are available in the relevant areas specified in subsections (7) to (10) below; and
 - (b) is satisfied that the necessary provision can be made under those arrangements.
- (3) Where—
- (a) it is proposed to include in an exclusion order a requirement for securing electronic monitoring in accordance with this section; but
 - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,
- the requirement shall not be included in the order without that person’s consent.
- (4) Where—
- (a) it is proposed to include in a community rehabilitation order or a community punishment and rehabilitation order a requirement for securing the electronic monitoring of the offender’s compliance with a requirement such as is mentioned in paragraph 8(1) of Schedule 2 to this Act; but
 - (b) there is a person (other than the offender) without whose co-operation it will not be practicable to secure the monitoring,
- the requirement shall not be included in the order without that person’s consent.
- (5) An order which includes requirements under subsection (1) above shall include provision for making a person responsible for the monitoring; and a person who is made so responsible shall be of a description specified in an order made by the Secretary of State.
- (6) The Secretary of State may make rules for regulating—

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- (a) the electronic monitoring of compliance with requirements included in a community order; and
 - (b) without prejudice to the generality of paragraph (a) above, the functions of persons made responsible for securing the electronic monitoring of compliance with requirements included in the order.
- (7) In the case of a curfew order or an exclusion order, the relevant area is the area in which the place proposed to be specified in the order is situated.
- In this subsection, “place”, in relation to an exclusion order, has the same meaning as in section 40A below.
- (8) In the case of a community rehabilitation order or a community punishment and rehabilitation order, the relevant areas are each of the following—
- (a) where it is proposed to include in the order a requirement for securing compliance with a requirement such as is mentioned in sub-paragraph (1) of paragraph 7 of Schedule 2 to this Act, the area mentioned in sub-paragraph (5) of that paragraph;
 - (b) where it is proposed to include in the order a requirement for securing compliance with a requirement such as is mentioned in sub-paragraph (1) of paragraph 8 of that Schedule, the area mentioned in sub-paragraph (5) of that paragraph;
 - (c) where it is proposed to include in the order a requirement for securing compliance with any other requirement, the area proposed to be specified under section 41(3) below.
- (9) In the case of a community punishment order, a drug treatment and testing order, a drug abstinence order, a supervision order or an action plan order, the relevant area is the petty sessions area proposed to be specified in the order.
- (10) In the case of an attendance centre order, the relevant area is the petty sessions area in which the attendance centre proposed to be specified in the order is situated.]

Textual Amendments

- F2** S. 36B inserted (20.6.2001 for specified purposes and 2.7.2001 for further specified purposes otherwise^{prosp.}) by 2000 c. 43, ss. 52, 80(1); S.I. 2001/2232, art. 2(e)

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