

CRIMINAL JUSTICE ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 12 - Sentencing

Chapter 4 : Further provisions about orders under Chapters 2 and 3

Section 196: Meaning of “relevant order”

520. This section defines “relevant order” for the purposes of this Chapter as meaning a community order, a suspended sentence order, a custody plus order or an intermittent custody order.

Section 197: Meaning of “the responsible officer”

521. This Section defines who the responsible officer is. Under *subsection (1)(a)*, if an order imposes a curfew or exclusion requirement but no other requirement, and if that curfew or exclusion order is electronically monitored, the responsible officer is the person responsible for the electronic monitoring (currently the private sector providers under contract to the Home Office). If an offender is 18 or over and under 25, he may be given an attendance centre requirement. If this is as the only requirement of the order, *subsection (1)(b)* provides that the responsible officer is the officer in charge of the attendance centre. In all other cases, under *subsections (1)(c) and (2)*, the responsible officer is either an officer of the local probation board, or for offenders under 18 at the time of the order, the responsible officer can be either an officer of the local probation board or a member of a youth offending team. *Subsection (3)* confers a power on the Secretary of State to amend subsections (1) and (2) by order subject to affirmative procedure, and *subsection (4)* provides that such an order may provide for the court to decide in individual cases which description of 'relevant officer' is to apply.

Section 198: Duties of responsible officer

522. The statutory duties of the responsible officer are set out in *subsection (1)*. Where the responsible officer is an officer of a local probation board or a youth offending team member, he or she must make any necessary arrangements for the offender to fulfil the requirements of the order, promote the offender’s compliance with the requirements, and take enforcement action in the case of non-compliance. *Subsection (2)* makes an exception for responsible officers who are electronic monitoring providers.

Section 199: Unpaid work requirement

523. This section re-enacts, with some modification, section 46 of the Powers of Criminal Courts (Sentencing) Act (which deals with “community punishment”, previously called “community service”). Unpaid work is done on projects set up by the probation service in consultation with sentencers and the local community. These can include environmental projects such as clearing canals, removing graffiti, painting and decorating community facilities, and working in homes for the elderly. Under

subsection (2) no offender can be required to do more than 300 hours of unpaid work or less than 40. The Act increases the current upper limit from 240 hours. By *subsection (3)*, the court must not impose an unpaid work requirement unless it is satisfied that the offender is a suitable person to perform work under such a requirement. If the court thinks that it is necessary to do so, it will first hear from an appropriate officer (as defined in *subsection (4)*). *Subsection (5)* provides that where the court is sentencing an offender for two or more offences, and imposes unpaid work requirements in respect of each of them, it can decide whether the hours of unpaid work should be served concurrently or consecutively. However, the total number of hours must not exceed 300.

Section 200: Obligations of person subject to unpaid work requirement

524. Under *subsection (1)* the offender must perform work as and when required by his responsible officer. *Subsection (2)* applies where an unpaid work requirement is imposed as part of a community order or a suspended sentence order. In these cases, the work must generally be completed within twelve months. *Subsections (3) and (4)* deal with the situation where an offender fails to complete the unpaid work within that period of time.

Section 201: Activity requirement

525. These provisions are based on the requirements as to activities at paragraph 2 of Schedule 2 of the Powers of Criminal Courts (Sentencing) Act 2000. *Subsection (1)* defines an activity requirement as a requirement that the offender must either present himself to a specified person, at a specified place, for a certain number of days, and/or take part in specified activities for a certain number of days. An activity requirement may include such tasks as receiving help with employment, or group work on social problems. Reparative activities are a particular aim of this requirement. *Subsection (3)* also requires the court to consult before making such an order. If the offender is aged 18 or over, the court must consult an officer of a local probation board. If the offender is under 18, the court must consult either an officer of a local probation board or a member of a youth offending team. By virtue of *subsection (4)*, the court must not impose an activity requirement on an offender before obtaining the consent of any other person whose co-operation is needed. *Subsection (5)* sets the maximum number of days of activity at 60. *Subsection (6)* sets out the duties of a person subject to an activity requirement. The offender is required to present himself at a place or places specified by his responsible officer on the number of days specified in the order, and to comply with instructions given by or under the authority of the person in charge of that place. The responsible officer will tell the offender where he needs to go and for how many hours, and that he must comply with the instructions of the person in charge of the place. *Subsection (7)* describes where activities must take place. If the place is a community rehabilitation centre, *subsection (8)* requires an offender to present himself elsewhere if the person in charge of the community rehabilitation centre instructs him to. *Subsection (9)* makes further provision as to the obligations of the offender when he is required to participate in activities. *Subsection (10)* defines the terms used in the section.

Section 202: Programme requirement

526. *Subsection (1)* defines a “programme requirement” as a requirement that the offender must participate in an accredited programme on a certain number of days. Programmes are courses which address offending behaviour, covering such topics as anger management, sex offending, substance misuse, etc. *Subsections (2) and (3)* define “accredited programme”, “programme” and “the accreditation body”. The Secretary of State may by order designate what the accreditation body is. This is left to delegated legislation as changes in the list of accredited bodies will be required from time to time. Under *subsection (4)* an officer of a local probation board (an officer of a local probation board or youth offending team member if the offender is under 18) must recommend that the specified programme is suitable for the offender before the court imposes a programme requirement. The court must also be satisfied that a place on the

programme is available for the offender. *Subsection (5)* provides that the court must not impose a programme requirement on an offender before obtaining the consent of any person (other than the offender or responsible officer) whose co-operation is needed. *Subsection (6)* sets out the obligations of an offender who is subject to a programme requirement. The offender is required to participate in the programme as specified in the order in accordance with instructions given by his responsible officer. The offender must also comply with any instructions given by, or under the authority of, the person in charge of the programme. By virtue of *subsection (7)*, a place must not be specified in an order unless it has been approved by the local probation board.

Section 203: Prohibited activity requirement

527. *Subsection (1)* defines a prohibited activity requirement. The court can require an offender to refrain from participating in certain activities. For example, it might forbid him to contact a certain person. The offender may be prohibited from participating in specified activities on a certain day or on a number of days or during a period of time. Under *subsection (2)*, before setting such a requirement the court must consult an officer of the local probation board, or, in the case of an offender who is under 18, an officer of the local probation board or a member of a youth offending team. *Subsection (3)* makes it clear that the court can make a prohibited activity requirement which prohibits a defendant from possessing, using or carrying a firearm.

Section 204: Curfew requirement

528. This section re-enacts, with some modification, section 37 of the Powers of Criminal Courts (Sentencing) Act *Subsection (1)* defines a curfew requirement as a requirement that the offender must remain at a place specified by the court for certain periods of time. By *subsection (2)*, the periods of time must not be less than two hours or more than twelve hours in any given day. The order might, for example, require the offender to stay at home during the evening and night hours. *Subsections (3) to (5)* limit the curfew period(s) for community orders, custody plus orders and intermittent custody orders respectively. Under *subsection (6)* the court must obtain and consider information about the place specified in the order and the attitude of persons likely to be affected by the presence of the offender.

Section 205: Exclusion requirement

529. This section re-enacts, with some modification, section 40A of the Powers of Criminal Courts (Sentencing) Act (inserted by section 46 of the Criminal Justice and Court Services Act 2000). That provision has not yet been brought into force. *Subsection (1)* defines an exclusion requirement as a requirement prohibiting the offender from entering a place during a period specified in the order. *Subsection (3)* makes it clear that the order may stipulate that the prohibition operates only for certain periods of time and may specify different places for different periods. By *subsection (2)* an exclusion requirement cannot last longer than two years. Under *subsection (4)* the order can specify an area rather than a specific place. For example, an offender might be required to stay away from a specified town centre at night.

Section 206: Residence requirement

530. The residence requirement is based on the existing requirements as to residence that can be included in a community rehabilitation order (see paragraph 1 of Schedule 2 to the Powers of Criminal Courts (Sentencing) Act 2000). *Subsection (1)* defines residence requirement as a requirement that the offender must reside at a place specified in the order for a specified period. Under *subsection (2)* the court can allow the offender to live at an alternative address, with the approval of his responsible officer. Under *subsection (3)*, before making a residence requirement the court must consider the situation at the offender's accommodation. *Subsection (4)* provides that the court must

only place the offender in a hostel or similar accommodation with the recommendation of an officer of the local probation board.

Section 207: Mental health treatment requirement

531. The mental health treatment requirement is based on the requirements as to treatment as part of a community rehabilitation order (paragraph 5 of Schedule 2 of the Powers of Criminal Courts (Sentencing) Act 2000). *Subsection (1)* provides for the court to direct an offender to undergo mental health treatment for certain period(s) as part of a community sentence or suspended sentence order, under the treatment of registered medical practitioner or chartered psychologist. *Subsection (2)* provides that treatment may be provided in an independent hospital or care home (within the meaning of the Care Standards Act 2000) or a hospital (within the meaning of the Mental Health Act 1983), or as a non-resident patient at a place specified in the order, or as treatment under the direction of such registered medical practitioner or chartered psychologist as specified in the order. Under *subsection (3)*, before including a mental health treatment requirement, the court must be satisfied that the mental condition of the offender requires treatment and may be helped by treatment, but is not such that it warrants making a hospital or guardianship order (within the meaning of the Mental Health Act 1983). The court must also be satisfied that arrangements can be made for the offender to receive treatment as specified in the order, and the offender's consent must be obtained before imposing the requirement.
532. Under *subsection (4)*, the offender's responsible officer will supervise him only to the extent necessary for revoking or amending the order. *Subsection (5)* applies section 54(2) and (3) of the Mental Health Act 1983 for the purposes of the section. *Subsection (6)* defines "chartered psychologist".

Section 208: Mental health treatment at place other than that specified in order

533. *Subsection (1)* allows the medical practitioner or chartered psychologist to decide that treatment would be better or more convenient in a different place from that specified in the order and make arrangements to change the place of treatment. The change cannot be made without the consent of the offender. Under *subsection (2)* the offender can be placed in residential treatment, even if the institution was not one that could have been specified for that purpose in the original order. Arrangements for informing appropriate people are set out in *subsection (3)*.

Section 209: Drug rehabilitation requirement

534. As part of a community sentence or suspended sentence the court may impose a drug rehabilitation requirement, which includes drug treatment and testing. In order to impose such a requirement, the court must be satisfied that the offender is dependent on or has a propensity to misuse any controlled drug and as such requires and would benefit from treatment. In addition, the court must be satisfied that the necessary arrangements are or can be made for the treatment and that the offender has expressed a willingness to comply with the drug rehabilitation requirement. The treatment provided may not be for a period of less than six months. A suitably qualified or experienced individual supervises the treatment. It is for the court to decide whether treatment should be residential or non-residential. The Secretary of State may provide guidance as to the arrangements for testing.

Section 210: Drug rehabilitation requirement: provision for review by court

535. *Subsection (1)* provides that the court may provide for the review of any drug treatment and testing requirement, and it must provide for the review of any drug treatment and testing requirement lasting more than 12 months. The reviews cannot take place more frequently than once a month. The review occurs at a review hearing, at which the offender is present. The responsible officer is to provide a written report on the

offender's progress before each hearing, which is to include the results of the offender's drug tests. A review hearing takes place before the court responsible for the order. *Subsections (2) to (3)* provide that the court responsible for a drug treatment and testing requirement is the court which made the order, unless it specifies a different court in the case where an offender does not live in the area of the court which convicts him. Where the drug treatment and testing requirement was made on appeal from the Crown Court, under *subsection (4)* the Crown Court will be the responsible court.

Section 211: Periodic review of drug rehabilitation requirement

536. This section sets out what happens at a review of a drug rehabilitation requirement. *Subsection (1)* provides for the court to amend the order as respects that requirement after considering the responsible officer's report. *Subsection (2)* prevents the court from amending the requirement unless the offender consents. It cannot reduce the term of treatment and testing below the minimum specified in section 209(3) (i.e. six months). Unless the offender's consent is obtained the court cannot amend a requirement while an appeal against the order is pending. Under *subsection (3)*, if the offender does not consent to amending the order, the court may revoke the order and re-sentence the offender as if he had just been convicted. If it does so, under *subsection (4)* it must take into account the extent to which the offender has complied with the requirements of the order. If the court wishes, it may sentence the offender to a custodial sentence, providing the offence was punishable with imprisonment. *Subsection (5)* relates to the powers of a magistrates' court in a case where the offender was under 18 when the order was made, the offence would have been triable only on indictment had it been committed by an adult and the offender has attained the age of 18 by the time of the review hearing. In these circumstances, *subsection (5)* extends the court's powers where a person has failed to consent to an amendment proposed by the court.
537. If the offender's progress is satisfactory, under *subsection (6)* the court can state that for future reviews the offender need not be present. *Subsection (7)* provides that, if an offender's progress is unsatisfactory and he is not present, the court can require the offender to attend a future hearing. Under *subsection (8)* at that hearing the court may exercise the powers that it has in the case of a review hearing. It may also amend the order to provide for future review hearings. *Subsection (9)* explains what is meant by "court" in this section.

Section 212: Alcohol treatment requirement

538. Alcohol treatment is currently available as part of a community rehabilitation order, under paragraph 6 of Schedule 2 of the Powers of Criminal Courts (Sentencing) Act. Under *subsection (1)* the court can require the offender to undergo alcohol treatment. The treatment must be by or under the direction of a person who is qualified or experienced to reduce or eliminate the offender's dependency on alcohol. This person is to be identified in the order. *Subsection (2)* requires that the court be satisfied that the offender is dependent on alcohol, that his dependency requires and is susceptible to treatment, and that arrangements can be made for treatment. *Subsection (3)* requires the court to obtain the offender's consent before imposing an alcohol treatment requirement. *Subsection (4)* states that an alcohol treatment requirement must last at least six months. Under *subsection (5)* the treatment itself must consist of either residential or non-residential treatment in a place the court decides, or by or under a qualified or experienced person whom the court identifies in the order.

Section 213: Supervision requirement

539. Supervision is a central part of community rehabilitation orders imposed under section 41 of the Powers of Criminal Courts (Sentencing) Act. The responsible officer might review with the offender his supervision plan, challenge his offending behaviour, hold him to account on the requirements, monitor his progress, and assist him with various problems, such as accommodation, employment, or finance. *Subsection (1)*

provides that the court can oblige the offender to meet with his responsible officer, or someone else specified by the responsible officer, or attend a community rehabilitation centre as required. *Subsection (2)* states that a supervision requirement is for the purpose of rehabilitation. *Subsection (3)* sets the length of the supervision requirement for the different orders.

Section 214: Attendance centre requirement

540. Attendance centre orders are currently free-standing orders for certain young offenders, under Chapter 4 of Part 4 of the Powers of Criminal Courts (Sentencing) Act. At an attendance centre, practical activities, including sport, can be run to occupy offenders for a certain number of hours to keep them out of trouble. This is often on Saturdays as attendance centres were originally set up for football-related offenders. *Subsection (1)* enables the court to require an offender to attend an attendance centre for a specified number of hours. *Subsection (2)* requires the total number of hours an order may specify to be between 12 and 36. Under *subsection (3)* the court must be satisfied that the offender can get to the centre and must consider the circumstances of the offender when making the appointments. *Subsection (4)* provides that the first appointment is to be set by the responsible officer, and under *subsection (5)* any subsequent appointments are to be made by the person in charge of the centre. *Subsection (6)* provides that the offender cannot be required to attend more than once a day or for more than three hours on any one day.

Section 215: Electronic monitoring requirement

541. The court can order the electronic monitoring of the compliance of an offender with any of the other requirements set out in the order. Electronic monitoring has been available throughout England and Wales since 1999, following a series of pilot projects which operated in selected areas during the previous ten years.

542. In almost all cases of electronic monitoring, the technical equipment uses radio frequency transmissions. It consists of a transmitter (the “tag”), which is usually worn round the ankle, and a receiver unit which is either connected to a landline telephone or incorporates mobile phone technology. The receiver unit communicates with a central computer system at a monitoring centre. The transmitter sends signals to the receiver at regular intervals and these are sent on to the central computer. The signal strength of the transmitter is calibrated to the receiver so that if the subject goes out of range (generally this means outside the building where the receiver is located), there is a break in signal and this is also registered by the central computer which generates follow-up action. The transmitter can be removed only by breaking its strap. This interferes with the fibre-optic circuitry inside the strap and is immediately registered as a tamper, also generating follow-up action.

543. Under the existing law electronic monitoring can be used as part of home detention curfew (see [Section 246](#)), curfew orders (which will be replaced for adults by community orders with curfew requirements), bail (12-16 year olds throughout England and Wales, and 17 year olds in specified areas), and detention and training orders (under 18s).

544. *Subsection (1)* enables the court to set an electronic monitoring requirement to ensure an offender's compliance with other requirements in the order. The period(s) of electronic monitoring can be set by the court or the responsible officer. Under *subsection (2)*, if another person's compliance is needed to effect the electronic monitoring, that person's consent must be obtained before the order is made. This person might include a landlord. *Subsections (3) and (4)* set out administrative arrangements surrounding electronic monitoring, and in particular deal with the notification of the requirement by the responsible officer to the relevant parties. *Subsection (3)* gives the Secretary of State an order making power to specify a description of a person responsible for electronic monitoring. This is left to delegated legislation as changes in the description

of electronic monitoring providers will be required from time to time. For example new types of electronic monitoring technologies are being developed which may necessitate changes in the description of providers.

Section 216: Petty sessions area to be specified in relevant order

545. This section provides that a petty sessions area in which the offender will live must be specified in the case of community orders and suspended sentence orders, and for the supervision periods of short custodial sentences and intermittent custody. This means that where an offender is sentenced in an area in which he does not reside, his home area will have to be specified in the order.

Section 217: Requirement to avoid conflict with religious beliefs, etc.

546. *Subsection (1)* requires the court to try to avoid, as far as practicable, making any order which clashes with an offender's religious beliefs, or with the times of his education or employment. *Subsection (2)* applies the same requirement to any instructions the responsible officer is to give during the course of the order. Under *subsection (3)* the Secretary of State has the power to add further restrictions by order. Additional restrictions may be required in the light of the experience of operating the new sentencing framework. For example, it might become necessary to introduce additional restrictions on the making of orders for offenders with particular domestic responsibilities if it were found that the new sentences were interfering with their caring responsibilities.

Section 218: Availability of arrangements in local area

547. This section obliges the court to ensure that certain requirements are available in the local area before imposing them. Under *subsection (1)* unpaid work is one such requirement. *Subsection (2)* applies the obligation to an activity requirement, and *subsection (3)* to an attendance centre requirement. *Subsections (4) to (8)* prevent a court from imposing an electronic monitoring requirement unless the Secretary of State has notified the court that electronic monitoring is available and can be provided in the relevant areas.

Section 219: Provision of copies of relevant orders

548. The court has to provide copies of the order it makes to certain people who are relevant to the carrying out of the order. *Subsection (1)* requires the court to provide copies to the offender, an officer of a local probation board assigned to the court (if an offender is over 18) or an officer of a local probation board assigned to the court or a youth offending team member if the offender is 16 or 17. Where the order specifies another petty sessions area the court must send a copy to the local probation board in that area. *Subsection (2)* introduces Schedule 14, which contains a list of persons to whom copies of the order must be given depending on what requirements are included in the order. Under *subsection (3)* if an offender will be carrying out the order in a different area, the court will have to send a copy of the order to the magistrates' court in that area as well as to the local probation board in that area. Any other documents and information relating to the case that the court thinks the second court would find necessary it must send to that court.

Section 220: Duty of offender to keep in touch with responsible officer

549. An offender must keep in touch with his responsible officer, in accordance with any instructions in that regard from the responsible officer. The offender must also notify the responsible officer of any change of residence. Under *subsection (2)*, if the offender does not keep in touch as required, or if he changes his residence without notifying the responsible officer, he is liable to breach proceedings.

Section 221: Provision of attendance centres

550. This section re-enacts section 62 of the Powers of Criminal Courts (Sentencing) Act 2000, which enables the Secretary of State to provide attendance centres and make arrangements with local authorities and police authorities regarding premises to be used. *Subsection (2)* defines “attendance centres”.

Section 222: Rules

551. This section gives the Secretary of State the power to regulate a number of aspects of the different requirements. These are: the supervision of offenders subject to relevant orders; the functions of responsible officers; arrangements for unpaid work; providing and managing attendance centres and community rehabilitation centres; the attendance of offenders (including attendance records) at activity requirements; attendance centre requirements or supervision requirements; electronic monitoring; the duties of the people responsible for delivering electronic monitoring. *Subsection (2)* specifies that in particular, these rules might limit the number of hours of unpaid work to be done on any one day, the reckoning of hours worked and the payment of expenses involved in unpaid work.
552. This is left to delegated legislation given the need for flexibility and the level of detail that is likely to be required. It is intended that any rules under this section will be made after consultation with practitioners.

Section 223: Power to amend limits

553. Various of the requirements described in the previous paragraphs have limits attached to them. A person cannot be required to do more than 300 hours of unpaid work, for example. This section gives the Secretary of State the power to amend certain limits by order. This is left to delegated legislation as amendments may be desirable in the light of experience. The Secretary of State currently has this power relating to community sentences.