

SCHEDULES

SCHEDULE 12

Section 193

BREACH OR AMENDMENT OF SUSPENDED SENTENCE ORDER, AND EFFECT OF FURTHER CONVICTION

PART 1

PRELIMINARY

Interpretation

- 1 In this Schedule—
- “the offender”, in relation to a suspended sentence order, means the person in respect of whom the order is made;
 - “the petty sessions area concerned”, in relation to a suspended sentence order, means the petty sessions area for the time being specified in the order;
 - “the responsible officer” has the meaning given by section 197.
- 2 In this Schedule—
- (a) any reference to a suspended sentence order being subject to review is a reference to such an order being subject to review in accordance with section 191(1)(b) or to a drug rehabilitation requirement of such an order being subject to review in accordance with section 210(1)(b);
 - (b) any reference to the court responsible for a suspended sentence order which is subject to review is to be construed in accordance with section 191(3) or, as the case may be, 210(2).

Orders made on appeal

- 3 Where a suspended sentence order is made on appeal it is to be taken for the purposes of this Schedule to have been made by the Crown Court.

PART 2

BREACH OF COMMUNITY REQUIREMENT OR CONVICTION OF FURTHER OFFENCE

Duty to give warning in relation to community requirement

- 4 (1) If the responsible officer is of the opinion that the offender has failed without reasonable excuse to comply with any of the community requirements of a suspended sentence order, the officer must give him a warning under this paragraph unless—

Status: This is the original version (as it was originally enacted).

- (a) the offender has within the previous twelve months been given a warning under this paragraph in relation to a failure to comply with any of the community requirements of the order, or
 - (b) the officer causes an information to be laid before a justice of the peace in respect of the failure.
- (2) A warning under this paragraph must—
- (a) describe the circumstances of the failure,
 - (b) state that the failure is unacceptable, and
 - (c) inform the offender that if within the next twelve months he again fails to comply with any requirement of the order, he will be liable to be brought before a court.
- (3) The responsible officer must, as soon as practicable after the warning has been given, record that fact.
- (4) In relation to any suspended sentence order which is made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1)(b) to a justice of the peace is to be read as a reference to the Crown Court.

Breach of order after warning

- 5 (1) If—
- (a) the responsible officer has given a warning under paragraph 4 to the offender in respect of a suspended sentence order, and
 - (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the offender has since that date failed without reasonable excuse to comply with any of the community requirements of the order,
- the officer must cause an information to be laid before a justice of the peace in respect of the failure in question.
- (2) In relation to any suspended sentence order which is made by the Crown Court and does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the reference in sub-paragraph (1) to a justice of the peace is to be read as a reference to the Crown Court.

Issue of summons or warrant by justice of the peace

- 6 (1) This paragraph applies to—
- (a) a suspended sentence order made by a magistrates' court, or
 - (b) any suspended sentence order which was made by the Crown Court and includes a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court.
- (2) If at any time while a suspended sentence order to which this paragraph applies is in force it appears on information to a justice of the peace acting for the petty sessions area concerned that the offender has failed to comply with any of the community requirements of the order, the justice may—

- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- (3) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought—
- (a) in the case of a suspended sentence order which is subject to review, before the court responsible for the order,
 - (b) in any other case, before a magistrates' court acting for the petty sessions area concerned.
- (4) Where a summons issued under sub-paragraph (2)(a) requires the offender to appear before a magistrates' court and the offender does not appear in answer to the summons, the magistrates' court may issue a warrant for the arrest of the offender.

Issue of summons or warrant by Crown Court

- 7
- (1) This paragraph applies to a suspended sentence order made by the Crown Court which does not include a direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court.
- (2) If at any time while a suspended sentence order to which this paragraph applies is in force it appears on information to the Crown Court that the offender has failed to comply with any of the community requirements of the order, the Crown Court may—
- (a) issue a summons requiring the offender to appear at the place and time specified in it, or
 - (b) if the information is in writing and on oath, issue a warrant for his arrest.
- (3) Any summons or warrant issued under this paragraph must direct the offender to appear or be brought before the Crown Court.
- (4) Where a summons issued under sub-paragraph (1)(a) requires the offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a warrant for the arrest of the offender.

Powers of court on breach of community requirement or conviction of further offence

- 8
- (1) This paragraph applies where—
- (a) it is proved to the satisfaction of a court before which an offender appears or is brought under paragraph 6 or 7 or by virtue of section 192(6) that he has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order, or
 - (b) an offender is convicted of an offence committed during the operational period of a suspended sentence (other than one which has already taken effect) and either—
 - (i) he is so convicted by or before a court having power under paragraph 11 to deal with him in respect of the suspended sentence, or
 - (ii) he subsequently appears or is brought before such a court.
- (2) The court must consider his case and deal with him in one of the following ways—
- (a) the court may order that the suspended sentence is to take effect with its original term and custodial period unaltered,

Status: This is the original version (as it was originally enacted).

- (b) the court may order that the sentence is to take effect with either or both of the following modifications—
 - (i) the substitution for the original term of a lesser term complying with section 181(2), and
 - (ii) the substitution for the original custodial period of a lesser custodial period complying with section 181(5) and (6),
 - (c) the court may amend the order by doing any one or more of the following—
 - (i) imposing more onerous community requirements which the court could include if it were then making the order,
 - (ii) subject to subsections (3) and (4) of section 189, extending the supervision period, or
 - (iii) subject to subsection (3) of that section, extending the operational period.
- (3) The court must make an order under sub-paragraph (2)(a) or (b) unless it is of the opinion that it would be unjust to do so in view of all the circumstances, including the matters mentioned in sub-paragraph (4); and where it is of that opinion the court must state its reasons.
- (4) The matters referred to in sub-paragraph (3) are—
- (a) the extent to which the offender has complied with the community requirements of the suspended sentence order, and
 - (b) in a case falling within sub-paragraph (1)(b), the facts of the subsequent offence.
- (5) Where a court deals with an offender under sub-paragraph (2) in respect of a suspended sentence, the appropriate officer of the court must notify the appropriate officer of the court which passed the sentence of the method adopted.
- (6) Where a suspended sentence order was made by the Crown Court and a magistrates' court would (apart from this sub-paragraph) be required to deal with the offender under sub-paragraph (2)(a), (b) or (c) it may instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.
- (7) A magistrates' court which deals with an offender's case under sub-paragraph (6) must send to the Crown Court—
- (a) a certificate signed by a justice of the peace certifying that the offender has failed to comply with the community requirements of the suspended sentence order in the respect specified in the certificate, and
 - (b) such other particulars of the case as may be desirable;
- and a certificate purporting to be so signed is admissible as evidence of the failure before the Crown Court.
- (8) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the community requirements of the suspended sentence order and any question whether the offender has been convicted of an offence committed during the operational period of the suspended sentence is to be determined by the court and not by the verdict of a jury.

Further provisions as to order that suspended sentence is to take effect

- 9 (1) When making an order under paragraph 8(2)(a) or (b) that a sentence is to take effect (with or without any variation of the original term and custodial period), the court—

Status: This is the original version (as it was originally enacted).

- (a) must also make a custody plus order, and
 - (b) may order that the sentence is to take effect immediately or that the term of that sentence is to commence on the expiry of another term of imprisonment passed on the offender by that or another court.
- (2) The power to make an order under sub-paragraph (1)(b) has effect subject to section 265 (restriction on consecutive sentences for released prisoners).
- (3) For the purpose of any enactment conferring rights of appeal in criminal cases, any order made by the court under paragraph 8(2)(a) or (b) is to be treated as a sentence passed on the offender by that court for the offence for which the suspended sentence was passed.

Restriction of powers in paragraph 8 where treatment required

- 10 (1) An offender who is required by any of the following community requirements of a suspended sentence order—
- (a) a mental health treatment requirement,
 - (b) a drug rehabilitation requirement, or
 - (c) an alcohol treatment requirement,
- to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, is not to be treated for the purposes of paragraph 8(1) (a) as having failed to comply with that requirement on the ground only that he had refused to undergo any surgical, electrical or other treatment if, in the opinion of the court, his refusal was reasonable having regard to all the circumstances.
- (2) A court may not under paragraph 8(2)(c)(i) amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.

Court by which suspended sentence may be dealt with under paragraph 8(1)(b)

- 11 (1) An offender may be dealt with under paragraph 8(1)(b) in respect of a suspended sentence by the Crown Court or, where the sentence was passed by a magistrates' court, by any magistrates' court before which he appears or is brought.
- (2) Where an offender is convicted by a magistrates' court of any offence and the court is satisfied that the offence was committed during the operational period of a suspended sentence passed by the Crown Court—
- (a) the court may, if it thinks fit, commit him in custody or on bail to the Crown Court, and
 - (b) if it does not, must give written notice of the conviction to the appropriate officer of the Crown Court.

Procedure where court convicting of further offence does not deal with suspended sentence

- 12 (1) If it appears to the Crown Court, where that court has jurisdiction in accordance with sub-paragraph (2), or to a justice of the peace having jurisdiction in accordance with that sub-paragraph—
- (a) that an offender has been convicted in the United Kingdom of an offence committed during the operational period of a suspended sentence, and

- (b) that he has not been dealt with in respect of the suspended sentence, that court or justice may, subject to the following provisions of this paragraph, issue a summons requiring the offender to appear at the place and time specified in it, or a warrant for his arrest.
- (2) Jurisdiction for the purposes of sub-paragraph (1) may be exercised—
- (a) if the suspended sentence was passed by the Crown Court, by that court;
 - (b) if it was passed by a magistrates' court, by a justice acting for the petty sessions area for which that court acted.
- (3) Where—
- (a) an offender is convicted in Scotland or Northern Ireland of an offence, and
 - (b) the court is informed that the offence was committed during the operational period of a suspended sentence passed in England or Wales,
- the court must give written notice of the conviction to the appropriate officer of the court by which the suspended sentence was passed.
- (4) Unless he is acting in consequence of a notice under sub-paragraph (3), a justice of the peace may not issue a summons under this paragraph except on information and may not issue a warrant under this paragraph except on information in writing and on oath.
- (5) A summons or warrant issued under this paragraph must direct the offender to appear or be brought before the court by which the suspended sentence was passed.

PART 3

AMENDMENT OF SUSPENDED SENTENCE ORDER

Cancellation of community requirements of suspended sentence order

- 13 (1) Where at any time while a suspended sentence order is in force, it appears to the appropriate court on the application of the offender or the responsible officer that, having regard to the circumstances which have arisen since the order was made, it would be in the interests of justice to do so, the court may cancel the community requirements of the suspended sentence order.
- (2) The circumstances in which the appropriate court may exercise its power under sub-paragraph (1) include the offender's making good progress or his responding satisfactorily to supervision.
- (3) In this paragraph "the appropriate court" means—
- (a) in the case of a suspended sentence order which is subject to review, the court responsible for the order,
 - (b) in the case of a suspended sentence order which was made by the Crown Court and does not include any direction that any failure to comply with the community requirements of the order is to be dealt with by a magistrates' court, the Crown Court, and
 - (c) in any other case, a magistrates' court acting for the petty sessions area concerned.

Amendment by reason of change of residence

- 14 (1) This paragraph applies where, at any time while a suspended sentence order is in force, the appropriate court is satisfied that the offender proposes to change, or has changed, his residence from the petty sessions area concerned to another petty sessions area.
- (2) Subject to sub-paragraphs (3) and (4), the appropriate court may, and on the application of the responsible officer must, amend the suspended sentence order by substituting the other petty sessions area for the area specified in the order.
- (3) The court may not amend under this paragraph a suspended sentence order which contains requirements which, in the opinion of the court, cannot be complied with unless the offender resides in the petty sessions area concerned unless, in accordance with paragraph 15 it either—
- (a) cancels those requirements, or
 - (b) substitutes for those requirements other requirements which can be complied with if the offender does not reside in that area.
- (4) The court may not amend under this paragraph any suspended sentence order imposing a programme requirement unless it appears to the court that the accredited programme specified in the requirement is available in the other petty sessions area.
- (5) In this paragraph “the appropriate court” has the same meaning as in paragraph 13.

Amendment of community requirements of suspended sentence order

- 15 (1) At any time during the supervision period, the appropriate court may, on the application of the offender or the responsible officer, by order amend any community requirement of a suspended sentence order—
- (a) by cancelling the requirement, or
 - (b) by replacing it with a requirement of the same kind, which the court could include if it were then making the order.
- (2) For the purposes of sub-paragraph (1)—
- (a) a requirement falling within any paragraph of section 190(1) is of the same kind as any other requirement falling within that paragraph, and
 - (b) an electronic monitoring requirement is a requirement of the same kind as any requirement falling within section 190(1) to which it relates.
- (3) The court may not under this paragraph amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended.
- (4) If the offender fails to express his willingness to comply with a mental health treatment requirement, drug rehabilitation requirement or alcohol treatment requirement as proposed to be amended by the court under this paragraph, the court may—
- (a) revoke the suspended sentence order and the suspended sentence to which it relates, and
 - (b) deal with him, for the offence in respect of which the suspended sentence was imposed, in any way in which it could deal with him if he had just been convicted by or before the court of the offence.

- (5) In dealing with the offender under sub-paragraph (4)(b), the court must take into account the extent to which the offender has complied with the requirements of the order.
- (6) In this paragraph “the appropriate court” has the same meaning as in paragraph 13.

Amendment of treatment requirements on report of practitioner

- 16 (1) Where the medical practitioner or other person by whom or under whose direction an offender is, in pursuance of any requirement to which this sub-paragraph applies, being treated for his mental condition or his dependency on or propensity to misuse drugs or alcohol—
- (a) is of the opinion mentioned in sub-paragraph (3), or
 - (b) is for any reason unwilling to continue to treat or direct the treatment of the offender,
- he must make a report in writing to that effect to the responsible officer and that officer must apply under paragraph 15 to the appropriate court for the variation or cancellation of the requirement.
- (2) The requirements to which sub-paragraph (1) applies are—
- (a) a mental health treatment requirement,
 - (b) a drug rehabilitation requirement, and
 - (c) an alcohol treatment requirement.
- (3) The opinion referred to in sub-paragraph (1) is—
- (a) that the treatment of the offender should be continued beyond the period specified in that behalf in the order,
 - (b) that the offender needs different treatment,
 - (c) that the offender is not susceptible to treatment, or
 - (d) that the offender does not require further treatment.
- (4) In this paragraph “the appropriate court” has the same meaning as in paragraph 13.

Amendment in relation to review of drug rehabilitation requirement

- 17 Where the responsible officer is of the opinion that a suspended sentence order imposing a drug rehabilitation requirement which is subject to review should be so amended as to provide for each periodic review (required by section 211) to be made without a hearing instead of at a review hearing, or vice versa, he must apply under paragraph 15 to the court responsible for the order for the variation of the order.

Extension of unpaid work requirement

- 18 (1) Where—
- (a) a suspended sentence order imposing an unpaid work requirement is in force in respect of the offender, and
 - (b) on the application of the offender or the responsible officer, it appears to the appropriate court that it would be in the interests of justice to do so having regard to circumstances which have arisen since the order was made,
- the court may, in relation to the order, extend the period of twelve months specified in section 200(2).

(2) In this paragraph “the appropriate court” has the same meaning as in paragraph 13.

Supplementary

- 19 (1) No application may be made under paragraph 13, 15 or 18, and no order may be made under paragraph 14, while an appeal against the suspended sentence is pending.
- (2) Sub-paragraph (1) does not apply to an application under paragraph 15 which—
- (a) relates to a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement, and
 - (b) is made by the responsible officer with the consent of the offender.
- 20 (1) Subject to sub-paragraph (2), where a court proposes to exercise its powers under paragraph 15, otherwise than on the application of the offender, the court—
- (a) must summon him to appear before the court, and
 - (b) if he does not appear in answer to the summons, may issue a warrant for his arrest.
- (2) This paragraph does not apply to an order cancelling any community requirement of a suspended sentence order.
- 21 Paragraphs 8(2)(c) and 15(1)(b) have effect subject to the provisions mentioned in subsection (2) of section 190, and to subsections (3) and (5) of that section.
- 22 (1) On the making under this Schedule of an order amending a suspended sentence order, the proper officer of the court must—
- (a) provide copies of the amending order to the offender and the responsible officer,
 - (b) in the case of an amending order which substitutes a new petty sessions area, provide a copy of the amending order to—
 - (i) the local probation board acting for that area, and
 - (ii) the magistrates' court acting for that area, and
 - (c) in the case of an amending order which imposes or amends a requirement specified in the first column of Schedule 14, provide a copy of so much of the amending order as relates to that requirement to the person specified in relation to that requirement in the second column of that Schedule.
- (2) Where under sub-paragraph (1)(b) the proper officer of the court provides a copy of an amending order to a magistrates' court acting for a different area, the officer must also provide to that court such documents and information relating to the case as it considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
- (3) In this paragraph “proper officer” means—
- (a) in relation to a magistrates' court, the justices' chief executive for the court; and
 - (b) in relation to the Crown Court, the appropriate officer.