

SCHEDULES

SCHEDULE 13

TRANSFER OF SUSPENDED SENTENCE ORDERS TO SCOTLAND OR NORTHERN IRELAND

PART 3

GENERAL PROVISIONS: BREACH OR AMENDMENT

- 10 This Part of this Schedule applies at any time while a suspended sentence order made or amended in accordance with paragraph 1 or 6 is in force in respect of an offender.
- 11 In this Part of this Schedule—
“home court” means—
(a) if the offender resides in Scotland, or will be residing there at the relevant time, the sheriff court having jurisdiction in the locality in which the offender resides or proposes to reside, and
(b) if he resides in Northern Ireland, or will be residing there at the relevant time, the court of summary jurisdiction acting for the petty sessions district in which he resides or proposes to reside;
“local authority” and “local authority area” are to be read in accordance with paragraph 5;
“original court” means the court in England and Wales which made or last amended the order;
“the relevant officer” means—
(a) where the order specifies a local authority area in Scotland, the local authority officer appointed or assigned under paragraph 2(b), and
(b) where the court specifies a petty sessions district in Northern Ireland, the probation officer appointed or assigned under paragraph 7(b);
“the relevant time” means the time when the order or the amendment to it comes into force.
- 12 (1) Where this Part of this Schedule applies, Schedule 12 has effect subject to the following modifications.
- (2) Any reference to the responsible officer has effect as a reference to the relevant officer.
- (3) Any reference to a magistrates' court acting for the petty sessions area concerned has effect as a reference to a magistrates' court acting for the same petty sessions area as the original court; and any reference to a justice of the peace acting for the petty sessions area concerned has effect as a reference to a justice of the peace acting for the same petty sessions area as that court.
- (4) Any reference to the appropriate court has effect as a reference to the original court.

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- (5) In paragraphs 4 and 5, any reference to causing an information to be laid before a justice of the peace has effect—
- (a) if the home court is in Scotland, as a reference to providing information to the home court with a view to it issuing a citation, and
 - (b) if the home court is in Northern Ireland, as a reference to making a complaint to a justice of the peace in Northern Ireland.
- (6) In paragraph 14—
- (a) if the home court is in Scotland—
 - (i) any reference to the petty sessions area concerned has effect as a reference to the local authority area specified in the order, and
 - (ii) any other reference to a petty sessions area has effect as a reference to a local authority area, and
 - (b) if the home court is in Northern Ireland—
 - (i) any reference to the petty sessions area concerned has effect as a reference to the petty sessions district specified in the order, and
 - (ii) any other reference to a petty sessions area has effect as a reference to a petty sessions district.
- (7) Paragraph 22 is omitted.
- (8) No court in England and Wales may—
- (a) exercise any power in relation to any failure by the offender to comply with any community requirement of the order unless the offender has been required in accordance with paragraph 14(1)(b) or (2)(a) of this Schedule to appear before that court;
 - (b) exercise any power under Part 3 of Schedule 12 unless the offender has been required in accordance with paragraph 15(2) or 16 of this Schedule to appear before that court.
- 13 (1) Sub-paragraph (2) applies where it appears to the home court—
- (a) if that court is in Scotland, on information from the relevant officer, or
 - (b) if that court is in Northern Ireland, upon a complaint being made by the relevant officer,
- that the offender has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order.
- (2) The home court may—
- (a) if it is in Scotland—
 - (i) issue a citation requiring the offender to appear before it at the time specified in the citation, or
 - (ii) issue a warrant for the offender’s arrest;
 - (b) if it is in Northern Ireland—
 - (i) issue a summons requiring the offender to appear before it at the time specified in the summons, or
 - (ii) issue a warrant for the offender’s arrest.
- 14 (1) The court before which an offender appears or is brought by virtue of paragraph 13 must—

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- (a) determine whether the offender has failed without reasonable excuse to comply with any of the community requirements of the suspended sentence order, or
- (b) require the offender to appear before the original court.
- (2) If the home court determines that the offender has failed without reasonable excuse to comply with any of the community requirements of the order—
- (a) the home court must require the offender to appear before the original court, and
- (b) when the offender appears before the original court, paragraph 8 of Schedule 12 applies as if it had already been proved to the satisfaction of the original court that the offender failed without reasonable excuse to comply with such of the community requirements of the order as may have been determined.
- (3) 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 sub-paragraph (2) 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.
- (4) The evidence of one witness shall, for the purposes of sub-paragraph (2), be sufficient.
- (5) Where the home court is in Scotland and the order contains an electronic monitoring requirement, section 245H of the Criminal Procedure (Scotland) Act 1995 (c. 46) (documentary evidence) applies to proceedings under this paragraph as it applies to proceedings under section 245F of that Act (breach of restriction of liberty order).
- (6) Where an offender is required by virtue of sub-paragraph (2) to appear before the original court—
- (a) the home court must send to the original court a certificate certifying that the offender has failed without reasonable excuse to comply with the requirements of the order in the respect specified, and
- (b) such a certificate signed by the clerk of the home court is admissible before the original court as conclusive evidence of the matters specified in it.
- 15 (1) The home court may exercise any power under Part 3 of Schedule 12 (amendment of suspended sentence order) as if it were the original court, except that the home court may not exercise the power conferred by paragraph 15(4) of that Schedule.
- (2) Where paragraph 15(4) of Schedule 12 applies the home court must require the offender to appear before the original court.
- (3) Subject to sub-paragraph (4), where the home court proposes to exercise the power conferred by paragraph 15(1) of Schedule 12, otherwise than on the application of the offender, the court—
- (a) if it is in Scotland—
- (i) must issue a citation requiring the offender to appear before it, and

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- (ii) if he does not appear in answer to the citation, may issue a warrant for the offender's arrest;
 - (b) if it is in Northern Ireland—
 - (i) must issue a summons requiring the offender to appear before it, and
 - (ii) if he does not appear in answer to the summons, may issue a warrant for the offender's arrest;
- and paragraph 20 of Schedule 12 does not apply to the home court.
- (4) Sub-paragraph (3) does not apply to an order cancelling any community requirement of a suspended sentence order.
- (5) Where the home court is considering amending a suspended sentence order, any reference in Chapter 4 of Part 12 of this Act to a local probation board has effect as a reference to a local authority in Scotland or, as the case may be, the Probation Board for Northern Ireland.
- 16 Where by virtue of paragraph 15 any application is made to the home court under Part 3 of Schedule 12, the home court may (instead of dealing with the application) require the offender to appear before the original court.
- 17 No court may amend or further amend a suspended sentence order unless it appears to the court that the conditions in paragraph 1(1)(a) and (b) or, as the case may be, paragraph 6(1)(a) and (b) are satisfied in relation to any requirement to be imposed; but this paragraph does not apply to any amendment by virtue of paragraph 20(2).
- 18 The preceding paragraphs of this Schedule have effect in relation to any amendment of a suspended order by any court as they have effect in relation to the amendment of such an order by virtue of paragraph 1(3) or 6(3).
- 19 On the making of an order amending a suspended sentence order—
- (a) the court must provide copies of the amending order to the offender and the relevant officer, and
 - (b) in the case of an amending order which substitutes a new local authority area or petty sessions district, paragraphs 2 and 3 or, as the case may be, 7 and 8 have effect in relation to the order as they have effect in relation to an order made or amended in accordance with paragraph 1 or 6.
- 20 (1) This paragraph applies where the home court is satisfied that the offender is residing or proposes to reside in England and Wales.
- (2) Subject to sub-paragraphs (3) and (4), the home court may, and on the application of the relevant officer must, amend the suspended sentence order by requiring it to be complied with in England and Wales.
- (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 in the petty sessions area in which the offender is residing or proposes to reside unless, in accordance with paragraph 15 of Schedule 12 it either—
- (a) cancels those requirements, or
 - (b) substitutes for those requirements other requirements which can be complied with if the offender resides 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 petty sessions area in England and Wales in which the offender is residing or proposes to reside.

- (5) The suspended sentence order as amended must specify the petty sessions area in which the offender resides or proposes to reside.
- (6) On the making under this paragraph of an order amending a suspended sentence order, the home court must—
 - (a) provide copies of the amending order to the offender, the relevant officer and the local probation board acting for the new petty sessions area, and
 - (b) provide the magistrates' court acting for that area with a copy of the amending order and such other documents and information relating to the case as the home court considers likely to be of assistance to a court acting for that area in the exercise of its functions in relation to the order.
- (7) Where an order has been amended under this paragraph, the preceding paragraphs of this Schedule shall cease to apply to the order as amended.