



# Youth Justice and Criminal Evidence Act 1999

## 1999 CHAPTER 23

### PART I

#### REFERRALS TO YOUTH OFFENDER PANELS

##### *Referral orders*

#### **1 Referral of young offenders to youth offender panels**

- (1) This section applies where a youth court or other magistrates' court is dealing with a person under the age of 18 for an offence and—
- (a) neither the offence nor any associated offence is one for which the sentence is fixed by law;
  - (b) the court is not, in respect of the offence or any associated offence, proposing to impose a custodial sentence on the offender or make a hospital order in his case; and
  - (c) the court is not proposing to discharge him absolutely in respect of the offence.
- (2) If—
- (a) the compulsory referral conditions are satisfied in accordance with section 2, and
  - (b) referral is available to the court,
- the court shall sentence the offender for the offence by ordering him to be referred to a youth offender panel.
- (3) If—
- (a) the discretionary referral conditions are satisfied in accordance with section 2, and
  - (b) referral is available to the court,

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the court may sentence the offender for the offence by ordering him to be referred to a youth offender panel.

- (4) For the purposes of this section referral is available to a court if—
- (a) the court has been notified by the Secretary of State that arrangements for the implementation of referral orders are available in the area in which it appears to the court that the offender resides or will reside; and
  - (b) the notice has not been withdrawn.
- (5) In this Part “referral order” means an order under subsection (2) or (3).

## **2 The referral conditions**

- (1) For the purposes of section 1(2) the compulsory referral conditions are satisfied in relation to an offence if the offender—
- (a) pleaded guilty to the offence and to any associated offence;
  - (b) has never been convicted by or before a court in the United Kingdom of any offence other than the offence and any associated offence; and
  - (c) has never been bound over in criminal proceedings in England and Wales or Northern Ireland to keep the peace or to be of good behaviour.
- (2) For the purposes of section 1(3) the discretionary referral conditions are satisfied in relation to an offence if—
- (a) the offender is being dealt with by the court for the offence and one or more associated offences;
  - (b) although he pleaded guilty to at least one of the offences mentioned in paragraph (a), he also pleaded not guilty to at least one of them;
  - (c) he has never been convicted by or before a court in the United Kingdom of any offence other than the offences mentioned in paragraph (a); and
  - (d) he has never been bound over in criminal proceedings in England and Wales or Northern Ireland to keep the peace or to be of good behaviour.
- (3) The Secretary of State may by regulations make such amendments of this section as he considers appropriate for altering in any way the descriptions of offenders in the case of which the compulsory referral conditions or the discretionary referral conditions fall to be satisfied for the purposes of section 1(2) or (3) (as the case may be).
- (4) Any description of offender having effect for those purposes by virtue of such regulations may be framed by reference to such matters as the Secretary of State considers appropriate, including (in particular) one or more of the following—
- (a) the offender’s age;
  - (b) how the offender has pleaded;
  - (c) the offence (or offences) of which the offender has been convicted;
  - (d) the offender’s previous convictions (if any);
  - (e) how (if at all) the offender has been previously punished or otherwise dealt with by any court; and
  - (f) any characteristics or behaviour of, or circumstances relating to, any person who has at any time been charged in the same proceedings as the offender (whether or not in respect of the same offence).

- (5) For the purposes of this section an offender who has been convicted of an offence in respect of which he was conditionally discharged (whether by a court in England and Wales or in Northern Ireland) shall be treated, despite—
- (a) section 1C(1) of the Powers of Criminal Courts Act 1973 (conviction of offence for which offender so discharged deemed not a conviction), or
  - (b) Article 6(1) of the Criminal Justice (Northern Ireland) Order 1996 (corresponding provision for Northern Ireland),
- as having been convicted of that offence.

### **3 Making of referral orders: general**

- (1) A referral order shall—
- (a) specify the youth offending team responsible for implementing the order;
  - (b) require the offender to attend each of the meetings of a youth offender panel to be established by the team for the offender; and
  - (c) specify the period for which any youth offender contract taking effect between the offender and the panel under section 8 is to have effect (which must not be less than 3 nor more than 12 months).
- (2) The youth offending team specified under subsection (1)(a) shall be the team having the function of implementing referral orders in the area in which it appears to the court that the offender resides or will reside.
- (3) On making a referral order the court shall explain to the offender in ordinary language—
- (a) the effect of the order; and
  - (b) the consequences which may follow—
    - (i) if no youth offender contract takes effect between the offender and the panel under section 8, or
    - (ii) if the offender breaches any of the terms of any such contract.
- (4) Subsections (5) to (7) apply where, in dealing with an offender for two or more associated offences, a court makes a referral order in respect of each, or each of two or more, of the offences.
- (5) The orders shall have the effect of referring the offender to a single youth offender panel; and the provision made by them under subsection (1) shall accordingly be the same in each case, except that the periods specified under subsection (1)(c) may be different.
- (6) The court may direct that the period so specified in either or any of the orders is to run concurrently with or be additional to that specified in the other or any of the others; but in exercising its power under this subsection the court must ensure that the total period for which such a contract as is mentioned in subsection (1)(c) is to have effect does not exceed 12 months.
- (7) Each of the orders mentioned in subsection (4) shall, for the purposes of this Part, be treated as associated with the other or each of the others.

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#### **4 Making of referral orders: effect on court's other sentencing powers**

- (1) Subsections (2) to (5) apply where a court makes a referral order in respect of an offence.
- (2) The court may not deal with the offender for the offence in any of the prohibited ways.
- (3) The court—
  - (a) shall, in respect of any associated offence, either sentence the offender by making a referral order or make an order discharging him absolutely; and
  - (b) may not deal with the offender for any such offence in any of the prohibited ways.
- (4) For the purposes of subsections (2) and (3) the prohibited ways are—
  - (a) imposing a community sentence (within the meaning of Part I of the Criminal Justice Act 1991) on the offender;
  - (b) ordering him to pay a fine;
  - (c) making a reparation order under section 67 of the Crime and Disorder Act 1998 in respect of him; and
  - (d) making an order discharging him conditionally.
- (5) The court may not make, in connection with the conviction of the offender for the offence or any associated offence—
  - (a) an order binding him over to keep the peace or to be of good behaviour;
  - (b) an order under section 58 of the Criminal Justice Act 1991 (binding over of parent or guardian); or
  - (c) a parenting order under section 8 of the Crime and Disorder Act 1998.
- (6) Subsections (2), (3) and (5) do not affect the exercise of any power to deal with the offender conferred by paragraph 5 (offender referred back to court by panel) or paragraph 14 (powers of a court where offender convicted while subject to referral) of Schedule 1.
- (7) Where section 1(2) above requires a court to make a referral order, the court may not under section 1 of the Powers of Criminal Courts Act 1973 defer passing sentence on him, but section 1(2) and subsection (3)(a) above do not affect any power or duty of a magistrates' court under—
  - (a) section 56 of the Children and Young Persons Act 1933 (remission to youth court, or another such court, for sentence),
  - (b) section 7(8) of the Children and Young Persons Act 1969 (remission to youth court for sentence),
  - (c) section 10(3) of the Magistrates' Courts Act 1980 (adjournment for inquiries),
  - (d) section 37 of that Act (committal to Crown Court for sentence), or
  - (e) section 35, 38, 43 or 44 of the Mental Health Act 1983 (remand for reports, interim hospital orders and committal to Crown Court for restriction order).

#### **5 Making of referral orders: attendance of parents etc**

- (1) A court making a referral order may make an order requiring—
  - (a) the appropriate person, or
  - (b) in a case where there are two or more appropriate persons, any one or more of them,

to attend the meetings of the youth offender panel.

- (2) Where an offender is under the age of 16 when a court makes a referral order in his case—
  - (a) the court shall exercise its power under subsection (1) so as to require at least one appropriate person to attend meetings of the youth offender panel; and
  - (b) if the offender falls within subsection (6), the person or persons so required to attend those meetings shall be or include a representative of the local authority mentioned in that subsection.
- (3) The court shall not under this section make an order requiring a person to attend meetings of the youth offender panel—
  - (a) if the court is satisfied that it would be unreasonable to do so, or
  - (b) to an extent which the court is satisfied would be unreasonable.
- (4) Except where the offender falls within subsection (6), each person who is a parent or guardian of the offender is an “appropriate person” for the purposes of this section.
- (5) Where the offender falls within subsection (6), each of the following is an “appropriate person” for the purposes of this section—
  - (a) a representative of the local authority mentioned in that subsection, and
  - (b) each person who is a parent or guardian of the offender with whom the offender is allowed to live.
- (6) An offender falls within this subsection if he is (within the meaning of the Children Act 1989) a child who is looked after by a local authority.
- (7) If, at the time when a court makes an order under this section—
  - (a) a person who is required by the order to attend meetings of a youth offender panel is not present in court, or
  - (b) a local authority whose representative is so required to attend such meetings is not represented in court,the court must send him or (as the case may be) the authority a copy of the order forthwith.
- (8) In this section “guardian” has the same meaning as in the Children and Young Persons Act 1933.

### *Youth offender panels*

## **6 Establishment of panels**

- (1) Where a referral order has been made in respect of an offender (or two or more associated referral orders have been so made), it is the duty of the youth offending team specified in the order (or orders)—
  - (a) to establish a youth offender panel for the offender;
  - (b) to arrange for the first meeting of the panel to be held for the purposes of section 8; and
  - (c) subsequently to arrange for the holding of any further meetings of the panel required by virtue of section 10 (in addition to those required by virtue of any other provision of this Part).

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- (2) A youth offender panel shall—
- (a) be constituted,
  - (b) conduct its proceedings, and
  - (c) discharge its functions under this Part (and in particular those arising under section 8),
- in accordance with guidance given from time to time by the Secretary of State.
- (3) At each of its meetings a panel shall, however, consist of at least—
- (a) one member appointed by the youth offending team from among its members; and
  - (b) two members so appointed who are not members of the team.
- (4) The Secretary of State may by regulations make provision requiring persons appointed as members of a youth offender panel to have such qualifications, or satisfy such other criteria, as are specified in the regulations.
- (5) Where it appears to the court which made a referral order that, by reason of either a change or a prospective change in the offender's place or intended place of residence, the youth offending team for the time being specified in the order ("the current team") either does not or will not have the function of implementing referral orders in the area in which the offender resides or will reside, the court may vary the order so that it instead specifies the team which has the function of implementing such orders in that area ("the new team").
- (6) Where a court so varies a referral order—
- (a) subsection (1)(a) shall apply to the new team in any event;
  - (b) subsection (1)(b) shall apply to the new team if no youth offender contract has (or has under paragraph (c) below been treated as having) taken effect under section 8 between the offender and a youth offender panel established by the current team;
  - (c) if such a contract has (or has previously under this paragraph been treated as having) so taken effect, it shall (after the variation) be treated as if it were a contract which had taken effect under section 8 between the offender and the panel being established for the offender by the new team.
- (7) References in this Part to the meetings of a youth offender panel (or any such meeting) are to the following meetings of the panel (or any of them)—
- (a) the first meeting held in pursuance of subsection (1)(b);
  - (b) any further meetings held in pursuance of section 10;
  - (c) any progress meeting held under section 11; and
  - (d) the final meeting held under section 12.

## **7 Attendance at panel meetings**

- (1) The specified team shall, in the case of each meeting of the panel established for the offender, notify—
- (a) the offender, and
  - (b) any person to whom an order under section 5 applies,
- of the time and place at which he is required to attend that meeting.
- (2) If the offender fails to attend any part of such a meeting the panel may—

- (a) adjourn the meeting to such time and place as it may specify; or
  - (b) end the meeting and refer the offender back to the appropriate court;
- and subsection (1) shall apply in relation to any such adjourned meeting.
- (3) One person aged 18 or over chosen by the offender, with the agreement of the panel, shall be entitled to accompany the offender to any meeting of the panel (and it need not be the same person who accompanies him to every meeting).
  - (4) The panel may allow to attend any such meeting—
    - (a) any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, in respect of which the offender was referred to the panel;
    - (b) any person who appears to the panel to be someone capable of having a good influence on the offender.
  - (5) Where the panel allows any such person as is mentioned in subsection (4)(a) (“the victim”) to attend a meeting of the panel, the panel may allow the victim to be accompanied to the meeting by one person chosen by the victim with the agreement of the panel.

#### *Youth offender contracts*

### **8 First meeting: agreement of contract with offender**

- (1) At the first meeting of the youth offender panel established for an offender the panel shall seek to reach agreement with the offender on a programme of behaviour the aim (or principal aim) of which is the prevention of re-offending by the offender.
- (2) The terms of the programme may, in particular, include provision for any of the following—
  - (a) the offender to make financial or other reparation to any person who appears to the panel to be a victim of, or otherwise affected by, the offence, or any of the offences, for which the offender was referred to the panel;
  - (b) the offender to attend mediation sessions with any such victim or other person;
  - (c) the offender to carry out unpaid work or service in or for the community;
  - (d) the offender to be at home at times specified in or determined under the programme;
  - (e) attendance by the offender at a school or other educational establishment or at a place of work;
  - (f) the offender to participate in specified activities (such as those designed to address offending behaviour, those offering education or training or those assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);
  - (g) the offender to present himself to specified persons at times and places specified in or determined under the programme;
  - (h) the offender to stay away from specified places or persons (or both);
  - (i) enabling the offender’s compliance with the programme to be supervised and recorded.
- (3) The programme may not, however, provide—
  - (a) for the electronic monitoring of the offender’s whereabouts; or

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- (b) for the offender to have imposed on him any physical restriction on his movements.
- (4) No term which provides for anything to be done to or with any such victim or other affected person as is mentioned in subsection (2)(a) may be included in the programme without the consent of that person.
- (5) Where a programme is agreed between the offender and the panel, the panel shall cause a written record of the programme to be produced forthwith—
  - (a) in language capable of being readily understood by, or explained to, the offender, and
  - (b) for signature by him.
- (6) Once the record has been signed—
  - (a) by the offender, and
  - (b) by a member of the panel on behalf of the panel,
 the terms of the programme, as set out in the record, take effect as the terms of a “youth offender contract” between the offender and the panel; and the panel shall cause a copy of the record to be given or sent to the offender.

## **9 First meeting: duration of contract**

- (1) This section applies where a youth offender contract has taken effect under section 8 between an offender and a youth offender panel.
- (2) The day on which the contract so takes effect shall be the first day of the period for which it has effect.
- (3) Where the panel was established in pursuance of a single referral order, the length of the period for which the contract has effect shall be that of the period specified under section 3(1)(c) in the referral order.
- (4) Where the panel was established in pursuance of two or more associated referral orders, the length of the period for which the contract has effect shall be that resulting from the court’s directions under section 3(6).
- (5) Subsections (3) and (4) have effect subject to—
  - (a) any order under paragraph 11 or 12 of Schedule 1 extending the length of the period for which the contract has effect; and
  - (b) subsection (6).
- (6) If the referral order, or each of the associated referral orders, is revoked (whether under paragraph 5(2) of Schedule 1 or by virtue of paragraph 14(2) of that Schedule), the period for which the contract has effect expires at the time when the order or orders is or are revoked unless it has already expired.

## **10 First meeting: failure to agree contract**

- (1) Where it appears to a youth offender panel to be appropriate to do so, the panel may—
  - (a) end the first meeting (or any further meeting held in pursuance of paragraph (b)) without having reached agreement with the offender on a programme of behaviour of the kind mentioned in section 8(1), and
  - (b) resume consideration of the offender’s case at a further meeting of the panel.



- (2) If, however, it appears to the panel at the first meeting or any such further meeting that there is no prospect of agreement being reached with the offender within a reasonable period after the making of the referral order (or orders)—
  - (a) subsection (1)(b) shall not apply; and
  - (b) instead the panel shall refer the offender back to the appropriate court.
- (3) If at a meeting of the panel—
  - (a) agreement is reached with the offender but he does not sign the record produced in pursuance of section 8(5), and
  - (b) his failure to do so appears to the panel to be unreasonable, the panel shall end the meeting and refer the offender back to the appropriate court.

## **11 Progress meetings**

- (1) At any time—
  - (a) after a youth offender contract has taken effect under section 8, but
  - (b) before the end of the period for which the contract has effect,the specified team shall, if so requested by the panel, arrange for the holding of a meeting of the panel under this section (“a progress meeting”).
- (2) The panel may make a request under subsection (1) if it appears to the panel to be expedient to review—
  - (a) the offender’s progress in implementing the programme of behaviour contained in the contract, or
  - (b) any other matter arising in connection with the contract.
- (3) The panel shall make such a request if—
  - (a) the offender has notified the panel that—
    - (i) he wishes to seek the panel’s agreement to a variation in the terms of the contract, or
    - (ii) he wishes the panel to refer him back to the appropriate court with a view to the referral order (or orders) being revoked on account of a significant change in his circumstances (such as his being taken to live abroad) making compliance with any youth offender contract impractical; or
  - (b) it appears to the panel that the offender is in breach of any of the terms of the contract.
- (4) At a progress meeting the panel shall do such one or more of the following things as it considers appropriate in the circumstances, namely—
  - (a) review the offender’s progress or any such other matter as is mentioned in subsection (2);
  - (b) discuss with the offender any breach of the terms of the contract which it appears to the panel that he has committed;
  - (c) consider any variation in the terms of the contract sought by the offender or which it appears to the panel to be expedient to make in the light of any such review or discussion;
  - (d) consider whether to accede to any request by the offender that he be referred back to the appropriate court.

- (5) Where the panel has discussed with the offender such a breach as is mentioned in subsection (4)(b)—
- (a) the panel and the offender may agree that the offender is to continue to be required to comply with the contract (either in its original form or with any agreed variation in its terms) without being referred back to the appropriate court; or
  - (b) the panel may decide to end the meeting and refer the offender back to that court.
- (6) Where a variation in the terms of the contract is agreed between the offender and the panel, the panel shall cause a written record of the variation to be produced forthwith—
- (a) in language capable of being readily understood by, or explained to, the offender; and
  - (b) for signature by him.
- (7) Any such variation shall take effect once the record has been signed—
- (a) by the offender, and
  - (b) by a member of the panel on behalf of the panel;
- and the panel shall cause a copy of the record to be given or sent to the offender.
- (8) If at a progress meeting—
- (a) any such variation is agreed but the offender does not sign the record produced in pursuance of subsection (6), and
  - (b) his failure to do so appears to the panel to be unreasonable,
- the panel may end the meeting and refer the offender back to the appropriate court.
- (9) Section 8(2) to (4) shall apply in connection with what may be provided for by the terms of the contract as varied under this section as they apply in connection with what may be provided for by the terms of a programme of behaviour of the kind mentioned in section 8(1).
- (10) Where the panel has discussed with the offender such a request as is mentioned in subsection (4)(d), the panel may, if it is satisfied that there is (or is soon to be) such a change in circumstances as is mentioned in subsection (3)(a)(ii), decide to end the meeting and refer the offender back to the appropriate court.

## 12 Final meeting

- (1) Where the compliance period in the case of a youth offender contract is due to expire, the specified team shall arrange for the holding, before the end of that period, of a meeting of the panel under this section (“the final meeting”).
- (2) At the final meeting the panel shall—
- (a) review the extent of the offender’s compliance to date with the terms of the contract; and
  - (b) decide, in the light of that review, whether his compliance with those terms has been such as to justify the conclusion that, by the time the compliance period expires, he will have satisfactorily completed the contract;
- and the panel shall give the offender written confirmation of its decision.

- (3) Where the panel decides that the offender’s compliance with the terms of the contract has been such as to justify that conclusion, the panel’s decision shall have the effect of discharging the referral order (or orders) as from the end of the compliance period.
- (4) Otherwise the panel shall refer the offender back to the appropriate court.
- (5) Nothing in section 7(2) prevents the panel from making the decision mentioned in subsection (3) in the offender’s absence if it appears to the panel to be appropriate to do that instead of exercising either of its powers under section 7(2).
- (6) Section 7(2)(a) does not permit the final meeting to be adjourned (or re-adjourned) to a time falling after the end of the compliance period.
- (7) In this section “the compliance period” in relation to a youth offender contract means the period for which the contract has effect in accordance with section 9.

#### *Further court proceedings*

### **13 Offender referred back to court or convicted while subject to referral order**

Schedule 1, which—

- (a) in Part I makes provision for what is to happen when a youth offender panel refers an offender back to the appropriate court, and
  - (b) in Part II makes provision for what is to happen when an offender is convicted of further offences while for the time being subject to a referral order,
- shall have effect.

#### *Supplementary*

### **14 Functions of youth offending teams**

- (1) The functions of a youth offending team responsible for implementing a referral order include, in particular, arranging for the provision of such administrative staff, accommodation or other facilities as are required by the youth offender panel established in pursuance of the order.
- (2) During the period for which a youth offender contract between a youth offender panel and an offender has effect—
  - (a) the specified team shall make arrangements for supervising the offender’s compliance with the terms of the contract; and
  - (b) the person who is the member of the panel referred to in section 6(3)(a) shall ensure that records are kept of the offender’s compliance (or non-compliance) with those terms.
- (3) In implementing referral orders a youth offending team shall have regard to any guidance given from time to time by the Secretary of State.

### **15 Interpretation of Part I**

- (1) In this Part—

“the appropriate court” shall be construed in accordance with paragraph 1(2) of Schedule 1;

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“custodial sentence” means a sentence of detention in a young offender institution, a secure training order under section 1 of the Criminal Justice and Public Order Act 1994, a detention and training order within the meaning given by section 73(3) of the Crime and Disorder Act 1998 or a sentence of detention under section 53(3) of the Children and Young Persons Act 1933;

“hospital order” has the meaning given in section 37 of the Mental Health Act 1983;

“meeting”, in relation to a youth offender panel, shall be construed in accordance with section 6(7);

“referral order” means (in accordance with section 1(5)) an order under section 1(2) or (3);

“the specified team”, in relation to an offender to whom a referral order applies (or two or more associated referral orders apply), means the youth offending team for the time being specified in the order (or orders);

“youth offending team” means a team established under section 39 of the Crime and Disorder Act 1998.

- (2) For the purposes of this Part an offence is associated with another if the offender falls to be dealt with for it at the same time as he is dealt with for the other offence (whether or not he is convicted of the offences at the same time or by or before the same court).
- (3) References in this Part to a referral order being associated with another shall be construed in accordance with section 3(7).