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## SCHEDULES

### SCHEDULE 3 **E+W**

#### [<sup>F1</sup>BREACH, REVOCATION AND AMENDMENT OF CERTAIN COMMUNITY ORDERS]

##### Textual Amendments

- F1** Heading to Sch. 3 substituted (1.4.2001) by 2000 c. 43, s. 74, **Sch. 7 Pt. II para. 199(27)**; S.I. 2001/919, **art. 2(f)(iv)**

### PART II **E+W**

#### BREACH OF REQUIREMENT OF ORDER

##### *Issue of summons or warrant*

- 3 (1) If at any time while a relevant order is in force in respect of an offender it appears on information to a justice of the peace <sup>F1</sup>... that the offender has failed to comply with any of the 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.
- (2) Any summons or warrant issued under this paragraph shall direct the offender to appear or be brought—
- (a) in the case of a drug treatment and testing order [<sup>F2</sup>or a drug abstinence order], before the court responsible for the order;
  - (b) in the case of any other relevant order which was made by the Crown Court and included a direction that any failure to comply with any of the requirements of the order be dealt with by the Crown Court, before the Crown Court; and
  - [<sup>F3</sup>(c) in the case of a relevant order which is not an order to which paragraph (a) or (b) applies, before a magistrates' court acting for the petty sessions area in which the offender resides or, if it is not known where he resides, before a magistrates' court acting for the petty sessions area concerned.]
- [<sup>F4</sup>(3) Where a summons issued under sub-paragraph (1)(a) above requires an offender to appear before the Crown Court and the offender does not appear in answer to the summons, the Crown Court may issue a further summons requiring the offender to appear at the place and time specified in it.
- (4) Where a summons issued under sub-paragraph (1)(a) above or a further summons issued under sub-paragraph (3) above requires an 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.]

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#### Textual Amendments

- F1** Words in Sch. 3 para. 3(1) omitted (31.3.2005) by virtue of [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 5 para. 4\(2\)](#); S.I. 2005/579, art. 3(d)
- F2** Words in Sch. 3 para. 3(2)(a) inserted (20.6.2001 for specified purposes otherwise 2.7.2001) by [2000 c. 43](#), s. 74, [Sch. 7 Pt. II para. 199\(6\)\(a\)](#); S.I. 2001/2232, [art. 2\(m\)\(viii\)](#)
- F3** Sch. 3 para. 3(2)(c) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 5 para. 4\(3\)](#); S.I. 2005/579, art. 3(d)
- F4** Sch. 3 para. 3(3)(4) inserted (1.4.2001) by [2000 c. 43](#), s. 54; S.I. 2001/919, [art. 2\(d\)](#)

#### *Powers of magistrates' court*

- 4 (1) If it is proved to the satisfaction of a magistrates' court before which an offender appears or is brought under paragraph 3 above that he has failed without reasonable excuse to comply with any of the requirements of the relevant order, the court may deal with him in respect of the failure in any one of the following ways—
- (a) it may impose on him a fine not exceeding £1,000;
  - (b) where the offender is aged 16 or over it may, subject to paragraph 7 below, make a community service order in respect of him;
  - (c) where—
    - (i) the relevant order is a curfew order and the offender is aged under 16, or
    - (ii) the relevant order is a probation order or combination order and the offender is aged under 21,
 it may, subject to paragraph 8 below, make an attendance centre order in respect of him; or
  - (d) where the relevant order was made by a magistrates' court, it may deal with him, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted by the court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d) above, a magistrates' court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
  - (b) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence (where the relevant order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 79(2) of this Act.
- (3) Where a magistrates' court deals with an offender under sub-paragraph (1)(d) above, it shall revoke the relevant order if it is still in force.
- [<sup>F5</sup>(3A) Where a magistrates' court dealing with an offender under sub-paragraph (1)(a), (b) or (c) above would not otherwise have the power to amend the relevant order under paragraph 18 below (amendment by reason of change of residence), that paragraph has effect as if the reference to a magistrates' court acting in the local justice area concerned were a reference to the court dealing with the offender.]
- (4) Where a relevant order was made by the Crown Court and a magistrates' court has power to deal with the offender under sub-paragraph (1)(a), (b) or (c) above, it may

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instead commit him to custody or release him on bail until he can be brought or appear before the Crown Court.

- (5) A magistrates' court which deals with an offender's case under sub-paragraph (4) above shall 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 requirements of the relevant 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 shall be admissible as evidence of the failure before the Crown Court.
- (6) A person sentenced under sub-paragraph (1)(d) above for an offence may appeal to the Crown Court against the sentence.

#### Textual Amendments

- F5** Sch. 3 para. 4(3A) inserted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), s. 60, [Sch. 5 para. 4\(4\)](#) (as amended (1.4.2005) by S.I. 2005/886, Sch. para. 113(c)); S.I. 2005/579, art. 3(d)

#### *Powers of Crown Court*

- 5 (1) Where under paragraph 3 or by virtue of paragraph 4(4) above an offender is brought or appears before the Crown Court and it is proved to the satisfaction of that court that he has failed without reasonable excuse to comply with any of the requirements of the relevant order, the Crown Court may deal with him in respect of the failure in any one of the following ways—
- (a) it may impose on him a fine not exceeding £1,000;
  - (b) where the offender is aged 16 or over it may, subject to paragraph 7 below, make a community service order in respect of him;
  - (c) where—
    - (i) the relevant order is a curfew order and the offender is aged under 16, or
    - (ii) the relevant order is a probation order or combination order and the offender is aged under 21,it may, subject to paragraph 8 below, make an attendance centre order in respect of him; or
  - (d) it may deal with him, for the offence in respect of which the order was made, in any way in which it could deal with him if he had just been convicted before the Crown Court of the offence.
- (2) In dealing with an offender under sub-paragraph (1)(d) above, the Crown Court—
- (a) shall take into account the extent to which the offender has complied with the requirements of the relevant order; and
  - (b) in the case of an offender who has wilfully and persistently failed to comply with those requirements, may impose a custodial sentence (where the relevant order was made in respect of an offence punishable with such a sentence) notwithstanding anything in section 79(2) of this Act.
- (3) Where the Crown Court deals with an offender under sub-paragraph (1)(d) above, it shall revoke the relevant order if it is still in force.

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- (4) In proceedings before the Crown Court under this paragraph any question whether the offender has failed to comply with the requirements of the relevant order shall be determined by the court and not by the verdict of a jury.

*Exclusions from paragraphs 4 and 5*

- 6 (1) Without prejudice to paragraphs 10 and 11 below, an offender who is convicted of a further offence while a relevant order is in force in respect of him shall not on that account be liable to be dealt with under paragraph 4 or 5 above in respect of a failure to comply with any requirement of the order.
- (2) An offender who—
- (a) is required by a [<sup>F6</sup>community rehabilitation order] or [<sup>F7</sup>community punishment and rehabilitation order] to submit to treatment for his mental condition, or his dependency on or propensity to misuse drugs or alcohol, or
  - (b) is required by a drug treatment and testing order to submit to treatment for his dependency on or propensity to misuse drugs,
- shall not be treated for the purposes of paragraph 4 or 5 above as having failed to comply with that requirement on the ground only that he has 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.

**Textual Amendments**

- F6** Words in Sch. 3 para. 6(2)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. I para. 1(1)(a)(2); S.I. 2001/919, art. 2(f)(i)
- F7** Words in Sch. 3 para. 6(2)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. I para. 3(1)(a)(2); S.I. 2001/919, art. 2(f)(i)

*[<sup>F8</sup> Community punishment orders imposed for breach of relevant order]*

**Textual Amendments**

- F8** Sch. 3 cross-heading preceding para. 7 substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. II para. 199(10); S.I. 2001/919, art. 2(f)(iv)

- 7 (1) Section 46(1) of this Act ([<sup>F9</sup>community punishment orders]) shall apply for the purposes of paragraphs 4(1)(b) and 5(1)(b) above as if for the words from the beginning to “make” there were substituted “Where a court has power to deal with an offender aged 16 or over under Part II of Schedule 3 to this Act for failure to comply with any of the requirements of a relevant order, the court may make in respect of the offender”.
- (2) In this paragraph a “secondary order” means a [<sup>F9</sup>community punishment order] made by virtue of paragraph 4(1)(b) or 5(1)(b) above.
- (3) The number of hours which an offender may be required to work under a secondary order shall be specified in the order and shall not exceed 60 in the aggregate; and—
- (a) where the relevant order is a [<sup>F9</sup>community punishment order], the number of hours which the offender may be required to work under the secondary order

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- shall not be such that the total number of hours under both orders exceeds the maximum specified in section 46(3) of this Act; and
- (b) where the relevant order is a combination order, the number of hours which the offender may be required to work under the secondary order shall not be such that the total number of hours under—
- (i) the secondary order, and
  - (ii) the [F10community punishment element] of the combination order, exceeds the maximum specified in section 51(1)(b) of this Act.
- (4) Section 46(4) of this Act and, so far as applicable—
- (a) section 46(5) to (7) and (9) to (13), and
  - (b) section 47 and the provisions of this Schedule so far as relating to community service orders,
- have effect in relation to a secondary order as they have effect in relation to any other community service order, subject to sub-paragraph (6) below.
- (5) Sections 35 and 36 of this Act (restrictions and procedural requirements for community sentences) do not apply in relation to a secondary order.
- (6) Where the provisions of this Schedule have effect as mentioned in sub-paragraph (4) above in relation to a secondary order—
- (a) the power conferred on the court by each of paragraphs 4(1)(d) and 5(1)(d) above and paragraph 10(3)(b) below to deal with the offender for the offence in respect of which the order was made shall be construed as a power to deal with the offender, for his failure to comply with the original order, in any way in which the court could deal with him if that failure had just been proved to the satisfaction of the court;
  - (b) the references in paragraphs 10(1)(b) and 11(1)(a) below to the offence in respect of which the order was made shall be construed as references to the failure to comply in respect of which the order was made; and
  - (c) the power conferred on the Crown Court by paragraph 11(2)(b) below to deal with the offender for the offence in respect of which the order was made shall be construed as a power to deal with the offender, for his failure to comply with the original order, in any way in which a magistrates' court (if the original order was made by a magistrates' court) or the Crown Court (if the original order was made by the Crown Court) could deal with him if that failure had just been proved to its satisfaction;
- and in this sub-paragraph “the original order” means the relevant order the failure to comply with which led to the making of the secondary order.

#### Textual Amendments

- F9** Words in Sch. 3 para. 7(1)(2)(3)(a) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. I para. 2(1)(2); S.I. 2001/919, art. 2(f)(i)
- F10** Words in Sch. 3 para. 7(3)(b)(ii) substituted (1.4.2001) by 2000 c. 43, s. 74, Sch. 7 Pt. II para. 199(4); S.I. 2001/919, art. 2(f)(iv)

#### Modifications etc. (not altering text)

- C1** Sch. 3 para. 7(4) modified (*temp.*) by S.I. 2001/919, art. 4

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*Attendance centre orders imposed for breach of relevant order*

- 8 (1) Section 60(1) of this Act (attendance centre orders) shall apply for the purposes of paragraphs 4(1)(c) and 5(1)(c) above as if for the words from the beginning to “the court may,” there were substituted “Where a court—
- (a) has power to deal with an offender aged under 16 under Part II of Schedule 3 to this Act for failure to comply with any of the requirements of a curfew order, or
  - (b) has power to deal with an offender aged under 21 under that Part of that Schedule for failure to comply with any of the requirements of a probation or combination order,
- the court may, ”.
- (2) The following provisions of this Act, namely—
- (a) subsections (3) to (11) of section 60, and
  - (b) so far as applicable [<sup>F11</sup>section 36B and], Schedule 5,
- have effect in relation to an attendance centre order made by virtue of paragraph 4(1)(c) or 5(1)(c) above as they have effect in relation to any other attendance centre order, but as if there were omitted from each of paragraphs 2(1)(b), 3(1) and 4(3) of Schedule 5 the words “, for the offence in respect of which the order was made,” and “for that offence”.
- (3) Sections 35 and 36 of this Act (restrictions and procedural requirements for community sentences) do not apply in relation to an attendance centre order made by virtue of paragraph 4(1)(c) or 5(1)(c) above.

**Textual Amendments**

**F11** Words in *Sch. 3 para. 8(2)(b)* inserted (20.6.2001 for specified purposes otherwise 2.7.2001) by *2000 c. 43, s. 74, Sch. 7 Pt. II para. 199(11)(b)(i)*; *S.I. 2001/2232, art. 2(m)(viii)*

*Supplementary*

- 9 (1) Any exercise by a court of its powers under paragraph 4(1)(a), (b) or (c) or 5(1)(a), (b) or (c) above shall be without prejudice to the continuance of the relevant order.
- (2) A fine imposed under paragraph 4(1)(a) or 5(1)(a) above shall be deemed, for the purposes of any enactment, to be a sum adjudged to be paid by a conviction.
- (3) Where a relevant order was made by a magistrates’ court in the case of an offender under 18 years of age in respect of an offence triable only on indictment in the case of an adult, any powers exercisable under paragraph 4(1)(d) above in respect of the offender after he attains the age of 18 shall be powers to do either or both of the following—
- (a) to impose a fine not exceeding £5,000 for the offence in respect of which the order was made;
  - (b) to deal with the offender for that offence in any way in which a magistrates’ court could deal with him if it had just convicted him of an offence punishable with imprisonment for a term not exceeding six months.

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