



# Sentencing Act 2020

## 2020 CHAPTER 17

### THIRD GROUP OF PARTS Disposals

#### PART 9

##### COMMUNITY SENTENCES

#### CHAPTER 2

##### COMMUNITY ORDERS

##### *What a community order is*

#### **200 Community order**

- (1) In this Code “community order” means an order imposing one or more community order requirements.
- (2) The community order requirements are listed in column 1 of the community order requirements table (see section 201).
- (3) Provision about each requirement is made by the Part of Schedule 9 mentioned in the corresponding entry in column 2 of that table.

#### **201 Community order requirements table**

The community order requirements table referred to in sections 200, 206 and 208 is—

<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
unpaid work requirement	Part 1	

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<i>Requirement</i>	<i>Part of Schedule 9 relating to requirement</i>	<i>Restrictions on availability</i>
rehabilitation activity requirement	Part 2	
programme requirement	Part 3	
prohibited activity requirement	Part 4	
curfew requirement	Part 5	
exclusion requirement	Part 6	
residence requirement	Part 7	
foreign travel prohibition requirement	Part 8	
mental health treatment requirement	Part 9	
drug rehabilitation requirement	Part 10	
alcohol treatment requirement	Part 11	
alcohol abstinence and monitoring requirement	Part 12	section 207(1) or (2)
attendance centre requirement	Part 13	section 207(3)
electronic compliance monitoring requirement	Part 14	section 207(4)
electronic whereabouts monitoring requirement	Part 14	

### *Availability*

## **202 Community order: availability**

- (1) A community order is available to a court by or before which an offender is convicted of an offence if—
  - (a) the offender is aged 18 or over when convicted, and
  - (b) the offence is punishable with imprisonment by that court.
- (2) Subsection (1) is subject to—
  - (a) subsection (3),
  - (b) section 203 (restriction on making both community order and suspended sentence order), and
  - (c) section 37(8) of the Mental Health Act 1983 (community order not to be made in combination with hospital order or guardianship order in respect of same offence).
- (3) A community order is not available in respect of an offence in relation to which a mandatory sentence requirement applies (see section 399).

But this is subject to section 74 and Chapter 4 of Part 12 (reduction of sentence for assistance to prosecution).

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### **203 Restriction on making both community order and suspended sentence order**

A court may not make a community order in respect of an offence if it makes a suspended sentence order in respect of—

- (a) the offence,
- (b) any other offence of which the offender is convicted by or before it, or
- (c) any other offence for which it deals with the offender.

*Exercise of power to make community order*

### **204 Exercise of power to impose community order: general considerations**

- (1) This section applies where a community order is available.
- (2) The court must not make a community order unless it is of the opinion that—
  - (a) the offence, or
  - (b) the combination of the offence and one or more offences associated with it, was serious enough to warrant the making of such an order.
- (3) In forming its opinion for the purposes of subsection (2), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.
- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (5) The fact that, by virtue of subsection (2), the court may make a community order does not require it to do so.

### **205 Community order: effect of remand in custody**

- (1) In determining the restrictions on liberty to be imposed by a community order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with—
  - (a) the offence, or
  - (b) any other offence the charge for which was founded on the same facts or evidence.
- (2) For this purpose, a person is remanded in custody if—
  - (a) remanded in or committed to custody by order of a court,
  - (b) remanded to youth detention accommodation (see subsection (3)), or
  - (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.
- (3) The reference in subsection (2)(b) to being remanded to youth detention accommodation—
  - (a) has the same meaning as in Chapter 3 of Part 3 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (remands of children otherwise than on bail): see, in particular, section 91 of that Act, but

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- (b) also includes a reference to being remanded or committed before 3 December 2012 to local authority accommodation under section 23 of the Children and Young Persons Act 1969 and—
- (i) kept in secure accommodation (within the meaning of that section), or
  - (ii) detained in a secure training centre pursuant to arrangements under subsection (7A) of that section.

*Available requirements*

**206 Community order: available requirements**

- (1) A court may not make a community order which imposes a community order requirement that is not an available requirement.
- (2) A community order requirement is an available requirement unless a provision mentioned in column 3 of the entry for that requirement in the community order requirements table (see section 201) provides otherwise.

**207 Community order: availability of particular requirements**

*Alcohol abstinence and monitoring requirement*

- (1) An alcohol abstinence and monitoring requirement is not an available requirement unless regulations are in force under paragraph 25(7)(c) of Schedule 9 (prescribed arrangements for monitoring).
- (2) An alcohol abstinence and monitoring requirement imposing a requirement within paragraph 25(1)(a)(ii) of Schedule 9 (alcohol level to be kept below specified level) is not an available requirement unless regulations are in force under 25(7)(b) of that Schedule (prescribed alcohol level).

*Attendance centre requirement*

- (3) An attendance centre requirement is not an available requirement unless the offender is aged under 25 when convicted of the offence.

*Electronic compliance monitoring requirement*

- (4) An electronic compliance monitoring requirement is not an available requirement in relation to a community order unless the community order imposes at least one other available requirement, other than—
  - (a) an alcohol abstinence and monitoring requirement;
  - (b) an electronic whereabouts monitoring requirement.

*Exercise of power to impose requirements*

**208 Community order: exercise of power to impose particular requirements**

- (1) This section applies where a court makes a community order in respect of an offence.

*Restrictions and obligations relating to imposing particular requirements*

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- (2) The power to impose a particular community order requirement is subject to the provisions of the Part of Schedule 9 relating to requirements of that kind (see column 2 of the table in section 201).

*Suitability of requirements*

- (3) The particular community order requirement or community order requirements imposed by the order must, in the opinion of the court, be the most suitable for the offender.

This is subject to subsection (10).

- (4) The pre-sentence report requirements (see section 30) apply to the court in relation to forming any opinion on whether a particular requirement or combination of requirements is suitable for the offender.
- (5) In forming its opinion for the purposes of subsection (3) on which requirement or combination of requirements is most suitable for the offender, the court may take into account any information about the offender which is before it.

*Considerations of seriousness and punishment etc*

- (6) The restrictions on liberty imposed by the order must be such as are in the opinion of the court commensurate with the seriousness of—
- (a) the offence, or
  - (b) the combination of the offence and one or more offences associated with it.

This is subject to subsection (10).

- (7) In forming its opinion for the purposes of subsection (6), the court must take into account all the information that is available to it about the circumstances of the offence, or of it and the associated offence or offences, including any aggravating or mitigating factors.
- (8) The pre-sentence report requirements (see section 30) apply to the court in relation to forming that opinion.
- (9) The fact that, by virtue of subsection (6), particular restrictions on liberty may be imposed by a community order does not require the court to impose those restrictions.
- (10) The order must include at least one community order requirement imposed for the purpose of punishment.
- (11) Subsection (10) does not apply where—
- (a) the court also imposes a fine, or
  - (b) there are exceptional circumstances relating to the offence or to the offender which—
    - (i) would make it unjust in all the circumstances for the court to impose a requirement for the purpose of punishment in the particular case, and
    - (ii) would make it unjust in all the circumstances for the court to impose a fine for the offence concerned.

*Compatibility with other matters*

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- (12) If the order imposes two or more different community order requirements, the court must, before making the order, consider whether, in the circumstances of the case, the requirements are compatible with each other.
- (13) The court must ensure, so far as practicable, that any community order requirement imposed by the order is such as to avoid—
- (a) any conflict with the offender’s religious beliefs,
  - (b) any conflict with the requirements of any other court order to which the offender may be subject, and
  - (c) any interference with the times, if any, at which the offender normally—
    - (i) works, or
    - (ii) attends any educational establishment,
 and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (14) Regulations under subsection (13) are subject to the negative resolution procedure.

*Making a community order*

**209 Community order to specify end date etc**

- (1) A community order must specify a date (the “end date”) by which all the requirements in it must have been complied with.
- (2) The end date must not be more than 3 years after the date of the order.
- (3) If a community order imposes two or more different community order requirements—
- (a) the order may also specify, for each of the requirements, a date by which the requirement must have been complied with;
  - (b) if it does so, the last of those dates must be the same as the end date.
- (4) Section 220 sets out the effect of the end date.

**210 Community order to specify offender’s home local justice area**

- (1) A community order must specify which local justice area is the offender’s home local justice area.
- (2) The area specified must be the local justice area in which the offender resides or will reside.

**211 Power for Crown Court to direct magistrates’ court supervision**

Where the Crown Court makes a community order, it may include a direction that the order is to be subject to magistrates’ court supervision.

**212 Provision of copies of community order and related documents**

- (1) This section applies when a court makes a community order.
- (2) The court must forthwith provide copies of the order—
- (a) to the offender,

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- (b) to the responsible officer,
- (c) to an officer of a provider of probation services that is a public sector provider who is acting at the court, and
- (d) if the court does not act in the offender’s home local justice area, to a provider of probation services that is a public sector provider and is operating in that area.

(3) If the order imposes any requirement specified in column 1 of the following table, the court must also forthwith provide the person specified in the corresponding entry in column 2 with a copy of so much of the order as relates to the requirement.

<i>The requirement</i>	<i>The person to whom a copy must be provided</i>
An exclusion requirement imposed for the purpose (or partly for the purpose) of protecting a person from being approached by the offender	The person intended to be protected
A residence requirement relating to residence in an institution	The person in charge of the institution
A mental health treatment requirement	The person specified under paragraph 16(3)(b)(iii) of Schedule 9 or the person in charge of the institution or place specified under paragraph 16(3)(b)(i) or (ii) of that Schedule
A drug rehabilitation requirement	The person in charge of the institution or place specified under paragraph 19(5)(b) or (c) of Schedule 9
An alcohol treatment requirement	The person in charge of the institution or place specified under paragraph 23(5)(c) or (d) of Schedule 9 or, in the case of practitioner-based treatment, the person specified under paragraph 23(5)(a) of that Schedule
An electronic monitoring requirement	Any person who by virtue of paragraph 31(1) of Schedule 9 will be responsible for the electronic monitoring Any person without whose consent the requirement could not be included in the order.

- (4) If the court does not act in the offender’s home local justice area, it must provide the magistrates’ court acting in that area with—
- (a) a copy of the order, and
  - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting in that area in the exercise of its functions in relation to the order.
- (5) In subsection (2) “public sector provider” means—
- (a) a probation trust or other public body, or
  - (b) the Secretary of State.

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### *Obligations of responsible officer and offender*

#### **213 The responsible officer**

- (1) For the purposes of this Chapter, “the responsible officer”, in relation to an offender to whom a community order relates, means the person who is for the time being responsible for discharging the functions conferred by this Code on the responsible officer in accordance with arrangements made by the Secretary of State.
- (2) The responsible officer must be—
  - (a) an officer of a provider of probation services, or
  - (b) a person responsible for monitoring the offender in accordance with an electronic monitoring requirement imposed by the community order.

#### **214 Obligations of responsible officer**

- (1) This section applies where a community order is in force.

##### *Functions of the responsible officer*

- (2) The responsible officer must—
  - (a) make any arrangements that are necessary in connection with the requirements imposed by the order, and
  - (b) promote the offender’s compliance with those requirements.
- (3) This is subject to paragraph 16(6) of Schedule 9 (in-patient treatment under mental health treatment requirement).

##### *Exercise of functions by responsible officer*

- (4) The responsible officer must ensure, as far as practicable, that any instruction given by the responsible officer is such as to avoid—
  - (a) any conflict with the offender’s religious beliefs,
  - (b) any conflict with the requirements of any other court order to which the offender may be subject, and
  - (c) any interference with the times, if any, at which the offender normally—
    - (i) works, or
    - (ii) attends any educational establishment,and satisfies any additional restrictions that the Secretary of State may specify in regulations.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

#### **215 Duty of offender to keep in touch with responsible officer**

- (1) This section applies where a community order is in force.
- (2) The offender must keep in touch with the responsible officer in accordance with any instructions the responsible officer may give the offender from time to time.
- (3) This obligation is enforceable as if it were a community order requirement of the community order.



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## **216 Duty of offender to obtain permission before changing residence**

- (1) This section applies where a community order—
  - (a) is in force, and
  - (b) does not include a residence requirement imposed under paragraph 13 of Schedule 9.
- (2) The offender must not change residence except with permission given in accordance with this section by—
  - (a) the responsible officer, or
  - (b) a court.
- (3) This obligation has effect as if it were a community order requirement of the community order.
- (4) The appropriate court may, on an application made by the offender, give permission in a case in which the responsible officer has refused.

For this purpose, “appropriate court” has the same meaning as in Schedule 10 (see paragraph 1 of that Schedule).
- (5) A court may also give permission in any proceedings before it under Schedule 10 (breach or amendment of order etc).
- (6) The grounds on which the responsible officer or court may refuse an application for permission are that, in the opinion of the officer or court, the change in residence—
  - (a) is likely to prevent the offender complying with a requirement imposed by the community order, or
  - (b) would hinder the offender’s rehabilitation.
- (7) The responsible officer must refuse an application for permission if—
  - (a) the offender’s present residence is in England or Wales, and
  - (b) the offender’s proposed residence is outside England and Wales.
- (8) For cases in which a community order has to be amended because of permission given under this section, see paragraph 16 of Schedule 10 (amendment to reflect change in local justice area).

### *Review*

## **217 Power to provide for court review of community orders**

- (1) The Secretary of State may by regulations—
  - (a) enable or require a court making a community order to provide for the community order to be reviewed periodically by that or another court,
  - (b) enable a court to amend a community order so as to include or remove a provision for review by a court, and
  - (c) make provision as to the timing and conduct of reviews and as to the powers of the court on a review.
- (2) Regulations under this section may, in particular, make provision in relation to community orders corresponding to any provision made by sections 293 to 295 in relation to suspended sentence orders.

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- (3) Regulations under this section may repeal or amend any provision of this Chapter.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

*Breach, revocation or amendment of community order*

**218 Breach, revocation or amendment of community order**

Schedule 10 makes provision about—

- (a) failures to comply with the requirements of community orders;
- (b) revocation of community orders;
- (c) amendment of community orders.

*Transferring order to Scotland or Northern Ireland*

**219 Transfer of community orders to Scotland or Northern Ireland**

Schedule 11 makes provision about transfers of community orders to Scotland or Northern Ireland.

*Community orders: supplementary*

**220 When a community order ceases to be in force**

- (1) A community order ceases to be in force—
  - (a) at the end of the end date (see section 209), or
  - (b) if later, when the offender has completed any unpaid work requirement imposed by the order.
- (2) But a community order ceases to be in force when it is revoked.
- (3) An unpaid work requirement is completed when the offender has worked under it for the number of hours specified in the order.